

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT P. HYATT,

Appellants,

v.

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,

Respondents.

Docket No. 84707

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**APPENDIX OF EXHIBITS TO
APPELLANT'S OPENING BRIEF
VOLUME 5 OF 42**

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9	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	10/15/2019	4-7	AA000708	AA001592
10	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	10/15/2019	7-11	AA001593	AA002438
11	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	10/15/2019	11-15	AA002439	AA003430
12	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	10/15/2019	15-19	AA003431	AA004403

13	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	10/15/2019	19-21	AA004404	AA004733
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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPENDIX OF EXHIBITS TO APPELLANT’S OPENING BRIEF VOLUME 5 OF 42** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list.

DATED this 10th day of October, 2022.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 interfere, or in any way impair the FTB's collection of taxes from Hyatt or anyone else. It will
2 be up to the FTB and California courts to later decide what, if any, effect this Court's decision
3 on residency will have on the tax proceedings in California. Under no circumstances, however,
4 will this Court's decision on residency enjoin the FTB from collecting taxes.

5 Hyatt is asserting the privileges and protections afforded to a Nevada resident against
6 the FTB, which in turn has an interest in contesting that right. Again, declaratory relief is
7 needed to resolve the ongoing dispute.

8 **C. THIS ACTION IS NOT IN CALIFORNIA OR FEDERAL COURT AND**
9 **NO INJUNCTIVE RELIEF IS SOUGHT BY HYATT.**

10 The FTB's argument that the Tax Injunction Act would bar this action in California or
11 the Federal Courts is frivolous. The FTB complains that, if Hyatt had sought relief in either
12 California or in federal court rather than Nevada state court, his remedies would be foreclosed.
13 Even if these propositions were true, they ignore the fact that this action is in Nevada state
14 court. And Nevada courts decide cases all the time which could not be brought in another state
15 or federal court. Hyatt is neither seeking an injunction against California tax proceedings nor
16 relief from a state tax case. This Nevada Court can and must hear this Nevada case challenging
17 the FTB's tortious conduct.

18 **D. COMITY HAS NO APPLICATION TO THIS CASE.**

19 The FTB's "comity" argument, like so many others, simply has no place in its Motion.
20 The subject of comity is not mentioned in the pleadings, nor was it the subject of an affirmative
21 defense in the FTB's Answer. Moreover, it was given lengthy attention in the pleadings
22 involving the FTB's Motion to Quash Service of Process -- a motion that was appropriately
23 withdrawn by the FTB. Hyatt repeats here the position he took in opposition to the FTB's plea
24 for comity in its Motion to Quash. There are compelling reasons why comity should not be
25 entertained by this Court.

26 **1. California has not and will not extend comity to Nevada.**

27 "The rule of comity . . . is reciprocal." *Kroc v. Sheriff of Clark County*, 85 Nev. 91, 94,
28 450 P.2d 788, 790 (1969). California clearly refused comity to Nevada before the United
States Supreme Court in the seminal case of *Nevada v. Hall*, 440 U.S. 410, 99 S. Ct. 1182, 59

1 L. Ed. 2d 416 (1979).

2 In *Hall*, the United States Supreme Court noted California's position: "the California
3 courts have told us that whatever California law may have been in the past, it no longer extends
4 immunity to Nevada as a matter of comity." *Id.* at 418 (emphasis added). The Court
5 determined that "the Full Faith and Credit Clause does not require a State to apply another
6 State's law in violation of its own legitimate public policy." *Id.* at 422 (citing *Pacific*
7 *Employers Insurance Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 59 S. Ct. 629, 83 L.
8 Ed. 940 (1939)).

9 In his dissenting opinion, Justice Blackmun further emphasized California's attitude
10 toward Nevada on the subject of comity by quoting the California Court of Appeal's decision
11 in the case. "When the sister state enters into activities in this state, it is not exercising
12 sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign
13 immunity doctrine as to those activities unless this state has conferred immunity by law or as a
14 matter of comity." *Id.* at 428 (Blackmun, J., dissenting). Justice Blackmun further observed
15 that the California Court of Appeals concluded that "Nevada was not a 'sovereign' when its
16 agent entered California and committed a tort there. Indeed, they said flatly that "state
17 sovereignty ends at the state boundary." *Id.* (quoting 141 Cal. Rptr. at 441 (quoting 503 P.2d at
18 1365)).

19 When the FTB crossed into Nevada by mail, automobile, and airplane to commit torts
20 against Hyatt, California's sovereignty ended at the Nevada border. The FTB was not free to
21 "disengage" Nevada's sovereignty and, as an agent of California, commit fraud, abuse of
22 process, and privacy torts and other misconduct in Nevada under the mantra of the FTB's
23 taxing authority on behalf of California.

24 In its moving papers, the FTB quotes a footnote from *Nevada v. Hall* arguing that
25 Hyatt's tort case poses a threat to California's "capacity to fulfill its own sovereign
26 responsibilities." (Motion at 10.) The FTB then argues that California's "taxing power" is an
27 attribute of California's sovereignty. *Id.* Such footnote and its progeny apply, at most, to cases
28 challenging high level policy decisions by a sister state. This potential but narrow issue in the

1 broad holding in *Nevada v. Hall* has no application where, as here, the torts were committed
2 during "operational acts" by FTB personnel.

3 Furthermore, Hyatt does not seek to challenge any governmental tax policies of the
4 State of California. This is a tort case. The relief sought in the Complaint is for *respondent*
5 *superior* liability against the FTB for tortious actions of its employees while acting within the
6 course and scope of their employment. In that regard, this tort case is remarkably similar to
7 *Nevada v. Hall*, where one state was found liable to a resident of a sister state for tortious
8 conduct by state employees occurring within the course and scope of their employment.

9 **2. Nevada's important state interests in protecting its citizens and providing a**
10 **fair, effective, speedy, and impartial forum for redress favor jurisdiction**
and a denial of comity.

11 In *Mianecki v. District Court*, 99 Nev. 93, 658 P.2d 422 (1983), the Nevada Supreme
12 Court approved the rationale expressed by the California Supreme Court in *Hall v. University*
13 *of Nevada*, 8 Cal. 3d 522, 503 P.2d 1363 (1973), *aff'd*, 440 U.S. 410 (1979). "We approve the
14 reasoning of the California court and hold that where the injured party is a citizen of this state,
15 injured in this state and sues in the courts of this state, there is no immunity, by law or as a
16 matter of comity, covering a sister state activities in this state." *Id.* at 423-24 (emphasis
17 added).

18 The reasoning in *Mianecki* is wholly applicable to this case. The court first recognized
19 that "Nevada has a paramount interest in protecting its citizens" *id.* at 424, and that comity
20 cannot trump the rights of the citizens of Nevada. "[I]n considering comity, there should be
21 due regard by the court to the duties, obligations, rights and convenience of its own citizens
22 and of persons who are within the protection of its jurisdiction." *Id.* at 425 (quoting *State ex*
23 *rel. Speer v. Haynes*, 392 So. 2d 1183, 1185 (Ala. Civ. App. 1979), *rev'd on other grounds*,
24 392 So. 2d 1187 (1980). With these principles in mind, the *Mianecki* court held:

25 [W]e believe greater weight is to be accorded Nevada's interest in protecting its
26 citizens from injurious operational acts committed within its borders by
27 employees of sister states, than Wisconsin's policy favoring governmental
immunity. Therefore we hold that the law of Wisconsin should not be granted
comity where to do so would be contrary to the policies of this state.

28 *Id.* at 425 (emphasis added).

1 Indeed, the United States Supreme Court has recognized that a state has a particular
2 interest in exercising jurisdiction over those responsible for engaging in tortious activity within
3 its state.

4 A state has an especial interest in exercising judicial jurisdiction over those who
5 commit torts within its territory. This is because torts involve wrongful conduct
6 which a state seeks to deter, and against which it attempts to afford protection,
by providing that a tortfeasor shall be liable for damages which are the
proximate result of his tort.

7 *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984)
8 (quoting *Leeper v. Leeper*, 319 A.2d 626, 629 (N.H. 1974) (quoting *Restatement (Second) of*
9 *Conflict of Law* sec. 36, comment c (1971)).

10 Hyatt is a resident and citizen of Nevada. The FTB has crossed Nevada's state border,
11 entered Nevada, and commenced a paper foray and "hands on" investigation of Hyatt that
12 included unannounced interrogation and observation of Hyatt's neighbors, associates, health
13 care providers, landlord, mail carrier, and trash collector as well as the propounding of "quasi-
14 subpoenas" to Nevada citizens and businesses in an effort to collect taxes from a Nevada
15 resident on income earned while residing in Nevada. The FTB's conduct in Nevada readily
16 supports Hyatt's tort and declaratory relief claims.

17 In a very real sense, this Court is duty-bound to exercise jurisdiction over the FTB to
18 support these important interests and rights. *Compare Fegert, Inc. v. Chase Commercial*
19 *Corp.*, 586 F.Supp. 933, 935 (D. Nev. 1984) (holding that states have an "especial interest in
20 asserting jurisdiction over those who commit torts within [their] territory" and are "motivated
21 by the objectives of deterring wrongful conduct and protecting [their] residents").

22 **3. The FTB's shotgun approach to alternative theories for dismissal similarly**
23 **fails.**

24 Finally, the FTB includes a footnote citing to three other legal principles it claims are
25 applicable to this case. (Motion at 10.) The first, "the exhaustion of administrative remedies,"
26 has been previously discussed. There is no administrative remedy in California for the relief,
27 tort and declaratory, sought here by Hyatt.

28 The second, the "primary jurisdiction doctrine," is equally inapplicable. In *Reiter v.*
Cooper, 507 U.S. 258, 268, 113 S. Ct. 1213, 122 L. Ed. 2d 604 (1993), the Court stated that

1 such doctrine "is a doctrine specifically applicable to claims properly cognizable in court that
2 contain some issue within the special competence of an administrative agency." *Id.* The
3 FTB's intentional torts against Hyatt, committed against him in the state of his residence, are
4 not before an administrative agency in any jurisdiction, including California, and thus the FTB
5 has no "special competence" to decide tort cases.

6 Finally, the FTB contends that "courts have the power to abstain in cases where
7 resolution of certain issues might unnecessarily interfere with a state system for the collection
8 of taxes." (quoting "generally," *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 116 S. Ct.
9 1712, 1721, 135 L. Ed. 2d 1 (1996)). The *Quackenbush* ruling is limited to the power of
10 federal courts refraining from the exercise of jurisdiction over several matters, including "cases
11 whose resolution by a federal court might unnecessarily interfere with a state system for the
12 collection of taxes." *Id.* (emphasis added). That is not this case. Here, a Nevada court
13 providing redress for torts and related declaratory relief will not interfere with the FTB's ability
14 to collect taxes. This Court's rulings will not interfere at all with California's system for
15 collection of taxes. California courts and the FTB will decide what, if any, weight to give this
16 Court's judgment stemming from the FTB's torts.

17 In conclusion, the FTB's plea for comity has no merit. It would be a travesty of justice
18 to recognize any comity in favor of the FTB, and thus deny Hyatt his day in a Nevada court to
19 prove that the FTB has tortiously assailed his Nevada residency in the course of committing
20 highly injurious, intentional torts against him in Nevada in total disregard of Nevada's
21 sovereignty.

22 **E. HYATT'S TORT CLAIMS ARE NOT BARRED IN NEVADA.**

23 The FTB proclaims that Hyatt's action is barred because "California, as a sovereign, is
24 immune from tort lawsuits except to the extent it allows itself to be sued pursuant to the
25 California Tort Claims Act." This averment is also meritless and frivolous as is the entirety of
26 the FTB's Motion. Both *Nevada v. Hall*, 440 U.S. 410, 99 S. Ct. 1182, 59 L. Ed. 2d. 416
27 (1979) and *Miannecki v. District Court*, 99 Nev. 93, 658 P.2d 422 (1983), dispose of this
28 argument. The FTB must accept the reality that if it commits torts in someone else's backyard,

1 it will have to pay according to the laws of its neighbors, irrespective of what any California
2 law may say about torts in California.

3 **F. HYATT PROPERLY PLED INVASION OF PRIVACY.**

4 Hyatt had a reasonable expectation of privacy. His expectation of privacy in his home,
5 papers, and government records about him is guaranteed by the United States, Nevada, and
6 California Constitutions, statutes, case law, and the FTB's own policies, notices, regulations,
7 handbooks, guidelines, and written and oral promises to Hyatt.

8 In considering this recently emerged tort in its various and still multiplying forms, the
9 historical origins of the right of privacy are instructive and therefore reviewed briefly below.
10 In particular the new right to "informational privacy" is discussed as it is now well-recognized
11 by courts. Hyatt then addresses the FTB's inherently inconsistent assertion that its invasive
12 conduct was privileged and therefore not on actionable invasion of privacy. Lastly, Hyatt
13 establishes that each of the traditional forms of invasion of privacy have been properly pled in
14 the Complaint.

15 **1. The right to privacy -- in particular "informational privacy" -- protects an**
16 **individual such as Hyatt from the type of abuse committed by the FTB.**

17 The U.S. Constitution (specifically the Fourth Amendment) and the Constitutions of
18 many states -- including Nevada and California -- forbid unreasonable searches and seizures.
19 Springing forth from this constitutional right, is the right of privacy.¹¹ Nevada, California, and
20 the U.S. Supreme Court enshrine privacy as a fundamental right.¹²

21 Nevada has "long recognized the existence of the right to privacy." *People for the*
22 *Ethical Treatment of Animals (PETA) v. Bobby Berosini, Ltd.*, 111 Nev. 615, 895 P.2d 1269
23 (1995), *modified on other grounds*, 113 Nev. 622, 940 P.2d 134 (1993) (crediting Justice Louis
24 Brandeis and Professor William Prosser for the invention of the tort of privacy, noting that the

25
26 ¹¹*Griswold v. Connecticut*, 381 U.S. 479, 484, 85 S. Ct. 1678, 14 L. Ed. 2d 570 (1965). The
27 Fourth Amendment, including the right to privacy, applies in a civil context as well as criminal.
28 *Soldal v. Cook County*, 506 U.S. 56, 87, n. 11, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992) (holding
"the protection against unreasonable searches and seizures fully applies in the civil context").

¹²See Request for Judicial Notice, at 5.

1 Restatement language, drafted by Dean Prosser, has been "adopted, often verbatim, by the vast
2 majority of American jurisdictions."). *PETA* further held that in determining whether a
3 particular action is "highly offensive," courts should and do consider the degree of intrusion,
4 the intruder's objectives, and the expectations of those whose privacy is invaded. *PETA*, 111
5 Nev. at 634 (emphasis added).

6 The Nevada Supreme Court articulated one of the reasons that the FTB's massive
7 intrusion into Hyatt's life infringed on his privacy: "The principle is well established that
8 'searches conducted outside the judicial process, without prior approval by judge or magistrate,
9 are *per se* unreasonable under the Fourth Amendment -- subject only to a few specifically
10 established and well-delineated exceptions.'" *Alward v. State*, 112 Nev. 141, 151, 912 P.2d
11 243, 250 (1996) (citing to U.S. Supreme Court precedent and earlier Nevada Supreme Court
12 precedent).¹³

13 **a. Actions for invasion of privacy against a taxing body are increasingly**
14 **frequent.**

15 Of importance to Hyatt's action,"[d]uring the past five years about 150 lawsuits have
16 been filed against the IRS claiming wrongful disclosure of confidential information." Louis R.
17 Mizell, Jr., *Invasion of Privacy* 127 (Berkley Books 1998) (relevant excerpts attached as
18 Exhibit to Appendix). In 1997, a Denver Colorado judge awarded \$250,000 in punitive
19 damages against the IRS for being "grossly negligent" and "reckless" in placing a woman in a
20 false light by claiming she owed \$380,000 more than she in fact owed. *Id.* at 127-128.
21 Consider the damage, as here, when a taxing agency recklessly, intentionally, and fraudulently
22 claims millions of dollars in unpaid taxes and penalties are owed. This is in addition to the
23 destruction of Hyatt's licensing business.

24 Another recent large verdict against tax authorities for invasion of privacy rights and
25 abuse of authority is *Jones v. United States*, 9 F. Supp. 2d 1119 (D. Neb. 1998). There the

26
27 ¹³The Court is asked to take judicial notice of the Nevada Attorney General's opinions
28 setting forth the right of privacy pursuant to the accompanying Request to Take Judicial Notice,
which is filed as separate document but incorporated herein by reference. In sum, the Nevada
Attorney General has concluded privacy is an important right.

1 district court awarded two taxpayers over \$5,700,000, including over \$325,000 in emotional
2 distress damages for the destruction of their business caused by an IRS agent leaking
3 confidential information that damaged their sterling reputation in the oil business. There are
4 striking parallels between this case and *Jones*. For the businesses involved in each case,
5 morals, character, and integrity are extremely important. *Id.* at 1134. A potential patent
6 infringer has much more to fear from a patent holder known to be honest, than one suspected of
7 multi-million-dollar tax fraud. An infringer has little incentive to take a license from a patent
8 owner who is under a cloud of suspicion. Here the FTB alerted over one hundred sources,
9 including three newspapers, two reporters, a dozen neighbors, the Licensing Executives
10 Society, and Hyatt's Japanese licensees that he was under a cloud of suspicion.

11 *Katz v. United States*, 389 U.S. 347, 351, 88 S. Ct. 507, L. Ed. 2d 576 (1967), held that
12 a person can have a reasonable expectation of privacy "even in an area accessible to the public"
13 since "the Fourth Amendment protects people not places." Justice Harlan's influential
14 concurring opinion set out a two part formula for assessing whether governmental action
15 violates the Fourth Amendment.

16 The first question is whether a person has exhibited an actual or subjective expectation
17 of privacy. Gil Hyatt will easily pass muster on this subjective prong of the test for he is very
18 private.

19 The second question is whether that expectation is one that society deems to be
20 reasonable. Here the FTB announced in its very first contact letter with him that he could
21 expect confidential treatment of all of his personal information. Subsequently, FTB auditors
22 promised Hyatt confidential treatment both orally and in writing. In addition, the FTB
23 publishes on its web page and in booklets that taxpayers have a right to confidential treatment.

24 Ironically, the FTB's own internal policies, notices, regulations, handbooks, guidelines
25 -- all of which were ignored by the FTB in this case -- also promise the right to privacy.

26 The FTB nonetheless shrugs off as insignificant its disclosure of Hyatt's private
27 information through "mandatory" Demands for Information to individuals, government
28 agencies, and businesses for which no judicial permission was sought or received and no notice

1 was given to Hyatt.

2 **b. Courts are particularly vigilant in enforcing informational privacy rights**
3 **related to social security numbers, addresses, and other private**
4 **information.**

5 Contrary to the FTB's bald assertion that disclosing Hyatt's social security number and
6 secret address to dozens of third parties was no big deal; courts of every level -- including the
7 United States Supreme Court -- find such disclosures actionable and a violation of an
8 individual's "informational privacy" rights.

9 **i. United States Supreme Court informational privacy cases.**

10 The United States Supreme Court has issued three opinions bearing on the issue.
11 *United States Department of Defense v. Federal Labor Relations Authority (FLRA)*, 510 U.S.
12 487, 489, 502, 114 S. Ct. 1006, 127 L. Ed. 2d 325 (1994), held that disclosure of employees
13 home addresses to their union was a "clearly unwarranted invasion of privacy." (emphasis
14 added.) That case was largely based on *United States Dept. of Justice v. Reporters Committee*
15 *for Freedom of Press*, 489 U.S. 749, 763, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989)
16 (recognizing that "both the common law and the literal understandings of privacy encompass
17 the individual's control of information concerning his or her person."); see also *United States*
18 *Department of State v. Ray*, 502 U.S. 164, 177, 112 S. Ct. 541, 116 L. Ed. 2d 526 (1991)
19 (holding that the disclosure of names and addresses would be a clearly unwarranted invasion of
20 privacy because confidentiality had been promised and disclosure of the information would be
21 "a special affront to his or her privacy").

22 **ii. State and Federal Courts also protect informational privacy (social**
23 **security numbers and home addresses).**

24 *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 607,
25 640 N.E.2d 164, 166 (Ohio 1994), found that the disclosure of social security numbers "would
26 violate the federal constitutional right of privacy" and held that because the Privacy Act of
27 1974 regulates the use of Social Security numbers, individuals "have a legitimate expectation
28 of privacy in their Social Security numbers." Two recent Washington cases have found
disclosure of social security numbers to be highly offensive. *Progressive Animal Welfare*
Society v. University of Washington, 125 Wash. 2d 243, 884 P.2d 592 (Wash. 1994), held that

1 "[T]he disclosure of a public employee's social security number would be highly offensive to a
2 reasonable person" Furthermore, in *Tacoma Public Library v. Woessner*, 90 Wash. App.
3 205, 951 P.2d 357 (Wash. App. 1998), opinion amended on remand on other grounds ___ P.2d
4 ___, 1999 WL 126948 (Wash. App. Feb. 5, 1999), the Court similarly held that "[w]e agree
5 that release of employees' identification number would be highly offensive."¹⁴

6 Other cases concluded that certain citizens -- such as Gil Hyatt -- have a particular need
7 and/or a desire to keep their address confidential. *National Association of Retired Federal*
8 *Employees v. Horner*, 879 F.2d 873 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990), held
9 that "[i]n our society, individuals generally have a large measure of control over the disclosure
10 of their own identities and whereabouts. That people expect to be able to exercise that control
11

12
13 ¹⁴Other cases where social security numbers were given protection under the right of
14 privacy include: *Sheet Metal Workers International Association, Local Union No. 19 v. United*
15 *States Department of Veterans Affairs*, 135 F.3d 891 (3d Cir. 1998) (holding that disclosures of
16 names, **social security numbers** and addresses of employees would constitute an unwarranted
17 invasion of personal privacy); *Sapp Roofing Co. v. Sheet Metal Workers' International Ass'n,*
18 *Local Union No. 12*, 552 Pa. 105, 713 A.2d 627, 630 (1998) (forbidding "the disclosure of personal
19 information (names, addresses, **social security numbers**, and phone numbers)" because of the
20 individual employees' "strong privacy interests"); *Tribune-Review Co. v. Allegheny County*
21 *Housing Authority*, 662 A.2d 677, 682 (Pa. Cmwlth. 1995) (concluding that "the Privacy Act of
22 1974 limits the availability of **social security numbers** and creates an expectation of privacy in
23 the minds of all employees concerning the use and disclosure of their social security numbers" and
24 finding that since the social security number is an identifier, "If stolen it can create a new identity
25 for the thief. When misused it can destroy a life."); *Times Publishing Co. v. Michel*, 633 A.2d 1233
26 (Pa. Comwlth. Ct. 1993) (holding that disclosure of gun licensees' home telephone number, **social**
27 **security number**, and address would constitute an unwarranted invasion of personal privacy);
28 *Greidinger v. Davis*, 988 F.2d 1344, 1352, 1354 (4th Cir. 1993) (finding that the Virginia voter
registrar's public disclosure of voters' **social security numbers** brought the attendant possibility
of "a serious invasion of privacy" and detailing horror stories of stolen identities and concluding
that "the harm that can be inflicted from the disclosure of a **social security number** to an
unscrupulous individual is alarming and potentially financially ruinous."); *Oliva v. U.S. Dept. of*
HUD, 756 F.Supp. 105, 107 (E.D.N.Y. 1991) (holding that disclosure of **social security numbers**
and dates of birth would be a "clearly unwarranted invasion of personal privacy" since "**social**
security numbers and dates of birth, are a private matter"); *Yeager v. Hackensack Water Co.*, 615
F. Supp. 1087, 1091-92 (D.N.J. 1985) (citing to Federal Privacy Act, Public Law No. 93-579 and
holding that **social security numbers** were "within the constitutionally protected right of privacy"
as Congress designed the Federal Privacy Act of 1974 to discourage improper uses of **social**
security numbers and to allow individuals the opportunity to make an intelligent decision
regarding disclosure). The foregoing is far from an exhaustive list of cases on this issue.

1 is 'evidenced by . . . unlisted telephone numbers by which subscribers may avoid publication of
2 an address in the public directory, and postal boxes, which permit the receipt of mail without
3 disclosing the location of one's residence.'" Moreover, the court could have had Gil Hyatt in
4 mind when it noted that it is public knowledge that when one gains wealth, "that individual
5 may become a target for those who would like to secure a share of that sum by means
6 scrupulous or otherwise." *Id.* at 876 (emphasis added).¹⁵

7 *American Federation of Government Employees, AFL-CIO, Local 1923 v. United*
8 *States*, 712 F.2d 931 (4th Cir. 1983), expresses privacy concerns similar to those alleged by
9 Hyatt in this case. The court held that union members had a privacy right not to disclose their
10 home addresses to their own union, because disclosure could subject the employees to an
11 unchecked barrage of mailings and perhaps personal solicitations. The court then observed that
12 no effective constraints could be placed on the range of uses to which the information, once
13 revealed, might be employed. *Id.* at 932. The dissent pointed out that only a rare person -- like
14 Hyatt -- conceals his address from real property records, voting lists, motor vehicle registration,
15 licensing records and telephone directories. The court majority nevertheless recognized the
16
17

18
19 ¹⁵Other cases where home addresses were given protection under the right of privacy
20 include: *Painting Industry of Hawaii Market Recovery Fund v. United States Dept. of Air Force*,
21 26 F.3d 1479, 1486-1487 (9th Cir. 1994) (forbidding disclosure of social security numbers, names,
22 and **home addresses** with concurring opinion stating "publishing your phone number may invite
23 annoying phone calls, but publishing your address can lead to far more intrusive breaches of
24 privacy, and even physical danger."); *FLRA v. United States Dept. of Veterans Affairs*, 958 F.2d
25 503, 516 (2d Cir. 1992) (holding that disclosure of federal employees' names and **home addresses**
26 to their union "would result in a clearly unwarranted invasion of personal privacy."); *Painting and*
27 *Drywall Work Preservation Fund, Inc. v. Dept. of HUD*, 936 F.2d 1300, 1303 (D.C. Cir. 1991)
28 (concluding that disclosure of names and **addresses** of construction workers would be "a
substantial invasion of privacy," indeed, "a clearly unwarranted invasion of personal privacy.");
Hopkins v. United States Dept. of HUD, 929 F.2d 81 (2d Cir. 1991) (holding that because privacy
encompasses all interest involving the individual's control of information concerning his or her
person, "we have no doubt that individual private employees have a significant privacy interest in
avoiding disclosure of their names and **addresses**."); *FLRA v. United States Dept. of Navy*, 941
F.2d 49 (1st Cir. 1991) (finding individuals have a discernable interest in "the ability to retreat to
the seclusion of one's home and to avoid enforced disclosure of one's **address**"). Again, the
foregoing is far from an exhaustive list of cases on this issue.

1 privacy right even for those less sensitive about secrecy.¹⁶

2 **2. Hyatt has pled invasion of his informational privacy.**

3 As the cases cited above demonstrate, courts recognize an individual's right to privacy
4 in personal information gathered by government agencies and then placed in government
5 records. The right of informational privacy is a significant part of Hyatt's invasion of privacy
6 claim.

7 Because Nevada is a notice pleading state (see Nev. R. Civ. P. 8(a)), Hyatt has alleged
8 more than sufficient facts to recover from the FTB for its invasion of his informational privacy
9 as well as a myriad of other privacy claims supported by both the United States and Nevada
10 Constitutions. (*E.g.*, FAC, ¶¶ 8, 34, 35, 61, 62.)

11 **3. Hyatt has also pled the traditional forms of invasion of privacy.**

12 Moreover, Hyatt has pled viable causes of action in regard to the three more traditional
13 forms of invasion of privacy claims: (1) unreasonable intrusion upon the seclusion of another,
14 (2) unreasonable publicity given to private facts, and (3) casting in a false light.

15 **a. The FTB unreasonably intruded upon Hyatt's seclusion.**

16 For Hyatt to recover for intrusion upon his seclusion, he must "prove the following
17 elements: (1) an intentional intrusion (physical or otherwise); (2) on the solitude or seclusion of
18 another; and (3) that would be highly offensive to a reasonable person." *PETA*, 111 Nev. 615,
19 630, 895 P.2d 1269 (1995). In addition, Hyatt must show that he had "an actual expectation of
20 seclusion or solitude and that expectation was objectively reasonable." *Id.* at 631.

21 Hyatt has alleged a litany of facts which if proven would establish each of these

22
23 ¹⁶One of the first home address cases, *Wine Hobby USA, Inc. v. IRS*, 502 F.2d 133, 137 n.
24 15 (3d Cir. 1974), forbade disclosure of individual home-wine-maker names and home addresses
25 since "there are few things which pertain to an individual in which his privacy has traditionally
26 been more respected than his own home. Mr. Chief Justice Burger recently stated: 'The ancient
27 concept that "a man's home is his castle" into which "not even the king may enter" has lost none
28 of its vitality.'" It also held that "That society recognizes an interest in keeping his address private
is indicated in such practices as non-listing of telephone numbers and the renting of post office
boxes." One of the most recent cases, *Scottsdale Unified School Dist. No 48 of Maricopa County
v. KPNX Broadcasting Co.*, 191 Ariz. 297, 955 P.2d 534, 536 (1998), held that school districts
need not disclose the home addresses or birth dates of teachers to reporters since "birth dates, like
social security numbers are private information."

1 elements and support recovery. (E.g. FAC, ¶¶ 12-15, 20, 34-37.) Hyatt's need and desire for
2 privacy and seclusion was pled in significant detail. That the FTB's conduct in intruding on
3 Hyatt's seclusion was highly offensive is set forth in the above cited cases protecting
4 information privacy.

5 **b. The FTB gave unreasonable publicity to private facts about Hyatt.**

6 A Nevada resident has a claim for unreasonable publicity given to private facts when
7 there is a public disclosure of private facts that would be offensive and objectionable to a
8 reasonable person of ordinary sensibilities. *Kuhn v. Account Control Technology, Inc.*, 865 F.
9 Supp. 1443, 1448 (D. Nev. 1994) (quoting *Montesano v. Donrey Media Group*, 99 Nev. 644,
10 668 P.2d 1081, 1084 (1983), *cert. denied*, 466 U.S. 959 (1984)). The FTB's disclosure to
11 dozens of third parties of sensitive documentation concerning Hyatt's private information falls
12 well within the ambit of the tort of unreasonable publicity. Contrary to the FTB's assertion
13 that its disclosures of Hyatt's personal information was not "publicity," the FTB's disclosure
14 was wide spread. The FTB communicated with businesses, governmental officials and
15 agencies, and individuals, including disclosures of his social security number to three
16 newspapers, two reporters and a key industry trade association -- the Licensing Executive
17 Society -- with thousands of members who were highly interested in Hyatt's licensing program.

18 Twenty two years ago when the *Restatement of Torts (Second)* was published,
19 Comment A to section 652(d) suggested that the courts might well relax the requirement of
20 wide spread publicity, at least in those cases where there were statutes regulating disclosure of
21 certain types of information. In this case, the Federal Privacy Act, the California Information
22 Practices Act, the California Revenue and Taxation Code, and the California Constitution all
23 forbid disclosures of the type made by the FTB as violations of informational privacy.¹⁷ The
24 California Supreme Court has made it clear that due to these statutes and the Constitution that
25 all individuals, including out of state residents, can have a reasonable expectation of privacy in
26 personal information about them which is maintained by government agencies, banks, hotels,
27
28

¹⁷See accompanying Request for Judicial Notice, at 6.

1 and telephone companies.¹⁸

2 The Nevada Supreme Court has indicated that information relating to a person's
3 financial condition is private, and that even in litigation, the discovery of such information
4 should be scrupulously limited. *Hetter v. Eighth Judicial District*, 110 Nev. 513, 520-21, 874
5 P.2d 762 (1994) ("[S]acrifice of [privacy] should be kept to the minimum, and this requires
6 scrupulous limitation of discovery [P]ublic policy suggests that [discovery regarding] tax
7 returns or financial status not be had for the mere asking.").

8 In addition, under strict conditions of confidentiality guaranteed by the FTB, Hyatt
9 revealed to the FTB, among other things, his secret address in Nevada. Thereafter, the FTB
10 flaunted its obligation of confidentiality and in many instances even made Hyatt's address
11 known to various businesses in its deceitful, unauthorized Demands to Furnish Information.
12 As a result, Hyatt's home-office address may now be part of the public domain, a fact that is of
13 the utmost concern and disgust to Hyatt for reasons that any reasonable person in his situation
14 would consider to be of compelling importance. (FAC, ¶ 62.)

15 Contrary to the FTB's assertion, there was wide spread dissemination of Hyatt's
16 personal and confidential information. At least 90 pieces of correspondence were disseminated
17 by the FTB to individuals, businesses, trade groups, licensees, etc., whose collective
18 membership totaled in the thousands. In particular, the fact that he was under "investigation"
19 by a taxing authority was published virtually throughout the industry as the FTB "demanded"
20 information from a major industry trade association -- the Licensing Executives Society -- with
21 thousands of members as well as Hyatt licensees in Japan. Also, the FTB sent Demand letters
22 to three separate newspapers with millions of readers.

23 Hyatt has alleged that he turned over to the FTB highly personal and confidential
24 information with the understanding that it would remain confidential. Hyatt has alleged that he
25 had every right to expect that the FTB would hold this information in confidence. However,
26 the FTB violated Hyatt's privacy by revealing this information to third parties. (FAC, ¶¶ 34-
27

28

¹⁸See accompanying Request for Judicial Notice, at 3.

1 35.)

2 c. The FTB cast Hyatt in a false light.

3 In a false light claim, the focus of the plaintiff's injury is on mental distress from
4 having been disparaged by revealing false or misleading information to the public as opposed
5 to damage to his reputation. See *PETA*, 111 Nev. at 622, n. 4. According to the *Restatement*
6 (*Second*) of *Torts*,¹⁹ false light consists of: (1) giving publicity to a matter concerning another;
7 (2) that places the person in a false light; (3) that would be highly offensive to a reasonable
8 person; and (4) that the actor had knowledge of or acted in reckless disregard as to the falsity of
9 the publicized matter and the false light in which the other would be placed. See *Restatement*
10 (*Second*) of *Torts* § 652E (1977). Courts have held, however, that to recover for false light, the
11 subject of the publication need not necessarily be false.²⁰

12 Hyatt has alleged that during the FTB's contacts with Hyatt's neighbors, trade
13 association, licensees, employees of patronized businesses, and governmental officials in
14 Nevada, the FTB disclosed that Hyatt was under investigation in California, and engaged in
15 other conduct which would cause these persons to have doubts as to Hyatt's moral character
16 and his integrity. (FAC, ¶ 47.) In short, the FTB's actions in conducting interviews and
17 interrogations of Hyatt's neighbors, business associates, and other Nevada residents, and its
18 conduct in issuing deceitful, unauthorized "Demands to Furnish Information" gave the false,
19 yet distinct appearance that Hyatt was a fugitive from California being investigated for illegal
20 and immoral activities.

21 In sum, invasion of privacy takes many forms. Here, Hyatt has sufficiently pled the
22 newer form emanating from "informational" privacy as well as the traditional forms.

23

24

25 ¹⁹ In dealing with claims of invasion of privacy, the Supreme Court of Nevada has relied
26 on the *Restatement* numerous times "for guidance in this area . . ." *PETA v. Bobby Berosini, Ltd.*,
111 Nev. 615, 630, 895 P.2d 1269 (1995).

27 ²⁰See, e.g., *Douglass v. Hustler Magazine*, 769 F.2d 1128 (7th Cir. 1985), *cert. denied*, 475
28 U.S. 1094 (1986) (reasoning that use of a photograph out of context was grounds for recovery on
false light theory even though photograph was not "false.").

1 **G. CONTRARY TO THE FTB, CALIFORNIA LAW DOES NOT**
2 **AUTHORIZE THE FTB TO DISCLOSE TAX INFORMATION --**
3 **PRECISELY THE OPPOSITE IS TRUE AS CALIFORNIA LAW**
4 **MAKES IT A CRIME.**

5 The FTB cites California Revenue & Taxation Code Section 19545 as support for its
6 premise that it was privileged to disclose Hyatt's secret information. Such statute has no
7 application of the facts alleged by Hyatt. On its face, the statutory provision states that "[a]
8 return or return information may be disclosed in a judicial or administrative proceeding
9 pertaining to tax administration" (emphasis supplied). That is not what the FTB did.
10 Rather, the FTB's publication of Hyatt's secret information to third parties was done wherever
11 and whenever the FTB deemed appropriate during its investigation. There is no, nor has there
12 ever been any kind of Judicial or administrative proceeding in California by the FTB regarding
13 Hyatt. Rather, there is only a six year investigation which the FTB still deems incomplete.

14 The FTB knows that disclosure of taxpayer information without permission is, not only
15 not privileged, but is in fact a crime in California. Cal. Rev. & Tax Code § 19542. The FTB
16 argued this point in a prior discovery motion.²¹

17 Nevertheless, the FTB cites *McLain v. Boise Cascade Corp.*, 533 P.2d 343 (Ore. 1975),
18 for the proposition that it was somehow justified in disclosing Hyatt's private information to
19 third parties, stating that the case "illustrates the privilege allowed state agencies to investigate
20 matters within their agencies' concern." (Motion at 16.) The *McLain* case, however, stands for
21 nothing of the sort. In *McLain*, a workers compensation case, the employer had a "day in the
22 life" videotape prepared through surveillance of an employee. The Court dismissed an
23 invasion of privacy claim brought by the employee; reasoning that the activities that had been
24 filmed "could have been observed by his neighbors or passersby on the road running in front of
25 his property." *Id.* at 346. The FTB's disclosure of private facts about Hyatt to third persons,
26 and its implicit suggestion that Hyatt was a tax evader or a law breaking citizen who was
27 refusing to pay his taxes is quite different from the facts described in *McLain*.

28 The FTB also misrepresents to this Court that "[t]he pleadings show that the FTB

²¹See FTB's Opposition to Motion to Compel, at 5-9, filed on February 11, 1999.

1 auditor was only verifying the truthfulness of the Hyatt's claim of Nevada residency and any
2 disclosures made were authorized under California law." (Motion at 16.) The "pleadings"
3 disclose no such thing. Hyatt has alleged repeatedly in the pleadings that the FTB's intrusive,
4 tortious investigative efforts in Nevada were designed to intimidate Hyatt and extort money
5 from him. (FAC, ¶ 17, 21, 23, 25, 56(c), (g), (j).) Moreover, the FTB disclosures were in
6 violation of California law.

7 The FTB knew that Hyatt and his representatives were extremely concerned about
8 maintaining the confidentiality of such things as his secret home address and social security
9 number. Hyatt's insistence upon confidentiality was so non-negotiable that the FTB was
10 forced to promise strict confidentiality as a *quid pro quo* for obtaining the information and
11 documents its auditors claimed it needed to complete the audit. (FAC, ¶ 62.) Moreover, the
12 FTB was fully aware that Hyatt placed title to his home in a trust bearing the name of his
13 trusted Nevada CPA in order to maintain the security and anonymity of his secret home-office
14 address. The FTB nonetheless made the wholesale disclosures alleged by Hyatt.

15 In sum, the FTB is not excused or privileged in regard to its damaging disclosures.

16 **H. HYATT PROPERLY PLED OUTRAGE.**

17 The FTB makes a short effort to strike Hyatt's claim for the tort of outrage. Hyatt's
18 outrage, the FTB intones, stems from his discomfort at that agency's efficiency in imposing
19 additional taxes and penalties on his purse. (Motion at 26.)

20 Hyatt's Complaint, however, never declares that the tort of outrage resides in the mere
21 presentation of a bill for more taxes. Instead, it speaks of holding the FTB accountable for that
22 agency's extreme and outrageous conduct in preparing and justifying that exaction from a
23 Nevada citizen. The relaxed standards of notice pleading are used to determine whether that
24 conduct provides an actionable tort of outrage. *See Branda v. Sanford*, 97 Nev. 643, 648, 637
25 P.2d 1223, 1228 (1981) citing Nev. R. Civ. P. 8. The tort itself has three elements: 1) extreme
26 or outrageous conduct showing an intention to inflict, or a reckless disregard for, the ensuing
27 emotional distress; 2) a plaintiff that suffered severe or extreme emotional distress; and 3)
28 actual or proximate causation. *See Shoen v. Amerco, Inc.*, 111 Nev. 735, 747, 896 P.2d 469,

1 477 (1995). Hyatt's Complaint must simply give adequate notice of these elements and the
2 relief he seeks; his pleadings should be liberally construed to do substantial justice. *Branda*,
3 *supra*.

4 Hyatt's Complaint meets these standards. The FTB's extreme or outrageous conduct
5 began with a "clandestine and reprehensible investigation" of Hyatt's Nevada residency.
6 (FAC, ¶ 51.) The FTB interrogated his neighbors and the businesses he patronized. (FAC,
7 ¶ 12.) Nevada citizens got authoritative Demands for Information. (FAC, ¶ 13.) Their elected
8 leaders and government officials received gently deferential requests. (FAC, ¶ 14.) The FTB
9 proposed an unsavory *quid pro quo*: you pay your taxes or we will not hold your personal
10 financial information with all the confidentiality that California law demands. (FAC, ¶ 20.)
11 The FTB's actions served not the goals of an honest investigation into Hyatt's residency, but
12 more base objectives of harassment, embarrassment, coercion, and intimidation. (FAC, ¶ 51.)
13 That conduct caused the effect the FTB sought: Hyatt's extreme emotional distress as
14 manifested by his "fear, grief, humiliation, embarrassment, anger and a strong sense of
15 outrage." (FAC, ¶ 51.)

16 Past Nevada Supreme Court precedent also shows the adequacy of Hyatt's Complaint
17 under the Nev. R. Civ. P 12(c) standard that his pleadings need only set out allegations
18 permitting recovery if proved true. See *Bernard v. Rockhill Development Co.*, 103 Nev. 132,
19 136, 734 P.2d 1238, 1241 (1987). Patrons who berate a restaurant busgirl with crude sexual
20 propositions, engendering predictable emotional distress, commit an actionable tort of outrage.
21 See *Branda v. Sanford*, 97 Nev. 643, 637 P.2d 1223 (1981). Companies that breach
22 employment contracts to harass an employee and engender financial hardships are similarly
23 liable. See *Shoen v. Amerco, Inc.*, 111 Nev. 735, 747, 896 P.2d 469, 477 (1995). City officials
24 that charge a police officer with perjury in a press release, exposing the officer to ridicule and
25 embarrassment, face potential liabilities for the officer's resulting emotional distress. See
26 *Posadas v. City of Reno*, 109 Nev. 448, 456, 851 P.2d 438, 444 (1993).

27 The FTB's actions are simply another example in this category of extreme and
28 outrageous conduct. The FTB's conduct is all the more outrageous given Hyatt's life

1 threatening battle with cancer during the period of time on which the FTB is focusing its
2 investigation. In any case, whether Hyatt's Complaint is measured by judicial precedent or a
3 recounting of the allegations his Complaint provides, the end result is the same: the FTB's
4 motion for judgment on the pleadings must be denied.

5 **I. HYATT PROPERLY PLED ABUSE OF PROCESS.**

6 **1. Abuse of process can occur in an administrative process.**

7 The FTB's contention that Hyatt does not state a viable claim for abuse of process
8 because no judicial process is involved is simply wrong. Since 1932, the courts (including the
9 9th Circuit) have clearly recognized the tort of abuse of process when it involves
10 administrative abuse, as opposed to judicial abuse. See *e.g. Hillside v. Stravato*, 642 A.2d 664,
11 666 (R.I. 1994) ("Numerous jurisdictions have recognized that misuse of certain administrative
12 proceedings may give rise to claims for malicious prosecution and abuse of process.")²²

13 **2. A government entity in particular may be held liable for administrative**
14 **abuse of process.**

15 The FTB then arrogantly contends that it alone may determine whether it abused its
16 powers because: "[w]hether or not the process of a non-judicial agency was used for an
17 improper purpose is for the agency to decide." (Motion, at 28-29.) This second notion put
18 forth by the FTB is also wrong. Significantly, the cases cited by the FTB involve no
19
20

21 ²²See also *Melvin v. Pence*, 130 F.2d 423, 426-27 (D.C. Cir. 1942) ("The administrative
22 process is also a legal process, and its abuse in the same way with the same injury should receive
23 the same penalty When private as well as public rights more and more are coming to be
24 determined by administrative proceedings, it would be anomalous to have one rule for them and
25 another for the courts in respect to redress for abuse of their powers and processes."); *United States*
26 *v. Carrozzella*, 105 F.3d 796, 799 (2d Cir. 1997) (holding "abuse of judicial process seems to us
27 a term that . . . includes any serious misuse of judicial or administrative process proceedings
28 intended to inflict unnecessary costs or delay on an adversary or to confer undeserved advantages
on the actor."); *Clipper Express v. Rocky Mountain Motor*, 690 F.2d 1240, 1257 (9th Cir. 1982),
cert. denied, 459 U.S. 1227 (1983) (finding harassment through administrative proceedings has
same effect as harassment through the court system.); and *SEC v. ESM Government Securities, Inc.*,
645 F.2d 310 (5th Cir. 1981) ("The Supreme Court directives . . . leave no doubt that this power
(the equitable power of the courts of the United States . . . over their own process, to prevent abuse)
may be properly invoked in cases involving the enforcement of administrative subpoenas.")

1 government entities, rather a panoply of private litigants.²³ None of the private parties in the
2 cases cited by the FTB had the FTB's "subpoena" powers used so liberally as in this case, as a
3 voice of authority demanding information from individual and less powerful third parties. The
4 abuse of process standards are different for a government agency.

5 Agencies commit an abuse of process when their demands for information are
6 motivated by an improper purpose, such as to harass the taxpayer or to put pressure on him to
7 settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular
8 investigation. *United States v. Powell*, 379 U.S. 48, 58, 85 S. Ct. 248, 255, 13 L. Ed. 2d 112
9 (1964). An agency that obtains information by misleading a taxpayer's accountant acts beyond
10 the pale of good faith. *United States v. Tweel*, 550 F.2d 297, 299 (5th Cir. 1977). An agency
11 that acquires information in an investigation by fraud, deceit, or trickery commits an abuse of
12 process. *SEC v. ESM Government Securities, Inc.*, 645 F.2d 310, 317 (5th Cir. 1981). The
13 standards for abuse of process must remain flexible to safeguard citizen liberties:

14 Decency, security, and liberty alike demand that government officials shall be
15 subjected to the same rules of conduct that are commands to the citizen. In a
16 government of laws, existence of the government will be imperiled if it fails to
observe the law scrupulously. Our Government is the potent, the omnipresent
teacher. For good or for ill, it teaches the whole people by its example.

17 *Id.* at 316-17 quoting *Olmstead v. United States*, 277 U.S. 438, 483-85, 48 S. Ct. 564, 574, 72
18 L. Ed. 944 (1928).

19 The FTB's Demands for Information were issued for improper purposes devoid of good
20 faith. They provided Hyatt's social security number and his secret address to third parties,
21 violating the FTB's express promises of confidentiality. (FAC, ¶ 56(a).) FTB representatives
22 made *sotto voce* offers to protect Hyatt's confidentiality for cash. (FAC, ¶ 56(g).) Its actions
23

24 ²³*Sea-Pac Co., Inc. v. United Food and Commer. Worker's Loc. Union*, 699 P.2d 217
25 (Wash. 1985) (involves a union and the president of a fish processing company angered by labor
26 agitations); *Dutt v. Kremp*, 111 Nev. 567, 894 P.2d 354 (1995) (doctors versus a lawyer); *Nevada*
27 *Credit Rating Bureau v. Williams*, 88 Nev. 601, 503 P.2d 9 (1972) (creditor versus debtor);
28 *Foothill Indus. Bank v. Mikkelsen*, 623 P.2d 748 (Wyo. 1981) (borrower versus lender); *Laxalt v.*
McClatchy, 622 F. Supp. 737 (D.Nev. 1985) (a U.S. Senator alleging slander against a newspaper);
and *Nienstedt v. Wetzel*, 651 P.2d 876 (Ariz. 1982) (two neighbors squabbling over the costs of a
retaining wall).

1 violated the due process guarantees of Article 1, Section 8 of the Nevada Constitution. (FAC,
2 ¶ 56(d).) Each of these allegations, if proved, would permit recovery against the FTB for abuse
3 of process.²⁴ The FTB's Motion must therefore be denied.

4 **J. HYATT PROPERLY PLED FRAUD.**

5 The FTB's argument regarding Hyatt's fraud claims are fatally abstract and not tangibly
6 concrete. Of course, the FTB trots out the black-letter law that fraud is a tort of five pieces: 1)
7 *falsity* (a false representation by the FTB); 2) *scienter* (the FTB knew or believed its
8 representation was false); 3) *inducement* (the FTB intended Hyatt to act upon the
9 representation); 4) *justifiable reliance* (Hyatt acted and justifiably relied on the FTB's
10 representation; and 5) *damages* (Hyatt was damaged by his reliance). See *Albert H. Wohlers*
11 *and Co. v. Bartgis* 969 P.2d 949, 956 (Nev. 1998). Moreover, Nev. R. Civ. P. 9 (b), states that
12 "[m]alice, intent, knowledge, and other condition of mind [motive is also a condition of the
13 mind] of a person may be averred generally."

14 The FTB's notion that fraud requires allegations of fact essentially transforms this tort
15 into a balancing scale heavily weighted in that agency's favor. A viable fraud claim, the FTB
16 avows, requires Hyatt to tip those scales with the hard metal of particular factual allegations.
17 His failure to do so allows the FTB's motion for judgment on the pleadings to reach and decide
18 the merits of Hyatt's claims of fraud. The reality, of course, is quite different: A failure by
19 Hyatt to meet Nev. R. Civ. P. 9(b) exposes his complaint to a motion for a more definite
20

21 ²⁴For purposes of Hyatt's abuse of process claim, the FTB is estopped from asserting as a
22 defense, that no administrative process in California exists upon which the abuse of process claim
23 may be based. Each "Demand" cites to California law for its authority, and invariably included
24 Hyatt's social security number, and in many instances his actual, personal home address, making
25 this highly sensitive and confidential information a part of readily accessible databases. The FTB
26 knew that this abusive process was in direct violation of its commitments of confidentiality to
27 Hyatt. To now allow the FTB to avoid the consequences of its abuse of process would be the
28 height of injustice. See *McKeeman v. General American Life Ins.*, 111 Nev. 1042, 1050, 899 P.2d
1124 (1995) ("[T]he party to be estopped must have been aware of the facts; it must have intended
that its act or omission be acted upon, or act in such a manner that the party asserting estoppel had
a right to believe that it so intended; the party asserting estoppel must have been unaware of the
true facts; and it must have relied upon the other party's conduct to its detriment.") (quoting
Lusardi Const. Co. v. Aubry, 824 P.2d 643, 654 (Cal. 1992).

1 statement "or at the very worst dismissal with leave to amend." *See Britz v. Consolidated*
2 *Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 916 (1971). But we need not debate the
3 accuracy of the FTB's portrayal of the Nev. R. Civ. P. 9(b) standard; Hyatt's complaint
4 contains more than enough specific factual allegations to fulfill even the FTB's concocted
5 criterion. And unlike the FTB, Hyatt has no qualms about comparing his Complaint to the five
6 required elements of a fraud claim:

7 **Falsity**—The FTB "absolutely promised to maintain in the strictest of confidence" the
8 information it sought from Hyatt. (FAC, ¶ 60, ¶ 61.) Hyatt expressed his concerns repeatedly
9 both orally and in writing. (FAC, ¶¶ 62(a) & 62(b)(iii).) The FTB's own records verify these
10 concerns and its assurances of confidentiality. (FAC, ¶¶ 62(b)(i)-(v).)

11 **Scienter**—Hyatt has pleaded scienter in two ways. First, even as the FTB made
12 assurances of confidentiality it violated those assurances by releasing confidential data. (FAC,
13 ¶¶ 62 & 62(c).) Second, the FTB assurances were part of a pattern of extortionate conduct to
14 persuade Hyatt of a truly enormous tax liability. (FAC, ¶¶ 63(a)-(e).)

15 **Inducement**—The complaint alleges how the FTB sought to induce Hyatt's reliance on
16 its representations. The FTB's actions were part of a pattern of extortionate conduct (FAC, ¶
17 63) by which the agency sought to relieve itself of the uncertainties of a judicial process to
18 compel the production of Hyatt's confidential information. (FAC, ¶ 64.)

19 **Justifiable Reliance**—The complaint alleges the trust and confidence Hyatt afforded the
20 FTB based on this past dealings with that agency. (FAC, ¶ 60.) Moreover, he had no reason to
21 suspect that the FTB, as an organ of California government, would act in a less than truthful
22 manner. (FAC, ¶ 65.)

23 **Damages**—The FTB contends that fraud requires pecuniary losses. (Motion at 30.)
24 Hyatt's fraud claims, it argues, embrace only matters of "emotional distress or hurt feelings."
25 The FTB is doubly wrong. First, Hyatt's Complaint avers pecuniary losses of "an extent and
26 nature to be revealed only to the Court *in camera*." (FAC, ¶ 66.) Second, the FTB misstates
27 the law; fraud actions provide a redress for emotional distress. The Nevada Supreme Court
28 upheld a compensatory damages award for emotional distress "as a result of [a defendant's]

1 fraudulent misrepresentations, concealment, and bad faith course of conduct.” *See Wohlers*,
2 969 P.2d at 958.

3 In sum, Hyatt’s allegations are legally sufficient to provide fair notice to the FTB as to
4 the nature and basis of the fraud. *See Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216
5 (1979) (“the pleading of conclusions, either of law or fact, is sufficient so long as the pleading
6 gives fair notice of the nature and basis of the claim”). *See also Hay v. Hay*, 100 Nev. 196,
7 198, 678 P.2d 672 (1984) (“Because Nevada is a notice-pleading jurisdiction, our courts
8 liberally construe pleadings to place into issue matters which are fairly noticed to the adverse
9 party . . .”).

10 **K. HYATT PROPERLY PLED NEGLIGENT MISREPRESENTATION.**

11 We finally reach the FTB’s last flawed argument that Hyatt improperly pleaded a cause
12 of action for negligent misrepresentation. The FTB styles his allegations as
13 “incomprehensible.” (Motion at 30.) We are puzzled too. How could an agency of the FTB’s
14 resources and sophistication be baffled by this simple claim: You asked me to give you my
15 sensitive and highly confidential information. You promised to hold this information in the
16 strictest confidence. Rather than contesting your request, I trusted you and voluntarily
17 disclosed the information you sought. After obtaining the information, you broke your
18 promise. And you knew when you made the promise that you could not or would not keep it.
19 Reduced to their essence, Hyatt’s allegations say exactly this. (FAC, ¶¶ 69 & 70.)

20 The FTB, however, hears something else. Hyatt’s claims illicitly superimpose a
21 “business relationship” of “trust” on the FTB’s statutory and regulatory duties under
22 California law. (Motion at 30.) Those laws allow it to use taxpayer information. *Id.* The
23 unstated thrust of the FTB’s argument is that its veracity in obtaining information does not
24 matter. Taxes are too important to let things like fair play impede progress. To the FTB’s
25 exclamation that Hyatt “would have it that the FTB be his trusted agent!” should be added
26 another: The FTB has a job to do! (Motion at 30.)

27 Contrary to the FTB’s assertions, courts hold government agencies accountable for their
28 negligent misrepresentations of fact. The Minnesota Supreme Court explained the public

1 policy of doing so:

2 We will continue to allow a cause of action against government officers
3 and employees for negligent misrepresentation of fact because other public
4 policy considerations are more compelling in that context. Members of the
5 public have no other access to factual information maintained by the
6 government except through government officers and employees. Therefore, the
7 policy of promoting accuracy through the prospect of tort liability outweighs the
8 possibility of inhibiting performance of duties of office or employment.

9 *Northernair Productions, Inc. v. Crow Wing County*, 244 N.W. 2d 279, 282 (Minn. 1976).

10 Those public policies received further development in *M.H. v. Caritas Family Services*, 475
11 N.W. 2d 94 (Minn. App. 1991). Holding the agency accountable for negligent
12 misrepresentation promoted the accuracy of its communications and posed no dangers to its
13 performance. *Id.*

14 The FTB's citations to cases applying negligent misrepresentation in commercial
15 transactions between private parties of equal power does not allow it to escape a fundamental
16 common law rule: "even if one has no duty to disclose a particular fact, if one chooses to
17 speak he must say enough to prevent the words from misleading the other party." *M.H. v.*
18 *Caritas Family Services*, 488 N.W.2d 282, 288 (Minn.1992). That rule has a corollary: "a
19 duty to disclose facts may exist 'when disclosure would be necessary to clarify information
20 already disclosed, which would otherwise be misleading,' particularly when a confidential or
21 fiduciary relationship exists between the parties." *Id.* (omitting cited cases). Fidelity to either
22 rule imposes no hardships on the FTB; it merely requires the agency "to use due care to
23 ensure" that its factual statements disclose "information fully and adequately." *Id.*

24 Hyatt's complaint fully pleads these precepts. The FTB made affirmative statements of
25 fact about its confidentiality practices. (FAC, ¶ 69.) Its representations occurred in the context
26 of a confidential, business-like relationship involving tens of millions of dollars. (FAC, ¶ 71.)
27 The FTB's conduct departed from its factual representations. (FAC, ¶ 70.) And the FTB owed
28 a duty to Hyatt to inform him that it "may not have been able to maintain, or otherwise would
not maintain, the strict confidentiality" it promised. (FAC, ¶ 69.) The FTB is any taxpayer's
only channel of information about its practices. Once it speaks, the FTB, or any party in a
confidential relationship, should not be misleading. Adherence to that duty, and the imposition

1 of liability for negligent misrepresentation when it is breached, promotes the FTB's accuracy
2 without lessening its efficiency. However the principles are arranged or voiced, they all say the
3 same thing: Truth should matter.

4 **V. CONCLUSION.**

5 Hyatt brought this suit to resolve the dispute about his eight year Nevada residency and
6 to be compensated for damages resulting from the FTB's tortious conduct over the past six
7 years. Because of the exceptional circumstances of this case, Hyatt pled more facts than
8 necessary at the pleading stage. It is remarkable that the FTB, after denying 90% of the facts
9 that Hyatt alleges, now contends that the extensive number of facts are insufficient.

10 The FTB's false mantra that this is a tax case is now giving way to the real issues of
11 declaratory relief and torts. Nevertheless, old habits die hard and the FTB continues to distort
12 the facts and the law only to create a motion that is fatally defective in view of the clear
13 statutory requirements and the case law. Because the law is so clear, the main effect of this
14 Motion will be to waste this Court's precious time and resources and to cause Hyatt significant
15 expense and effort.

16 Hyatt has been a Nevada resident since September 1991 and continues to be a Nevada
17 resident into the next Millennium. Hyatt's life in Nevada was both private and prosperous until
18 the FTB destroyed his licensing business and distracted him from his research and
19 development and patent work by investigating him, harassing him, and then trying to extort
20 him with a \$21.8 million demand. Now, eight years after he left California, unable to find
21 Hyatt in California, the FTB continues to investigate Hyatt in Nevada and to threaten him in
22 Nevada with impunity. This Court is Hyatt's only remedy against the FTB's invasive and
23 never ending vendetta, carried out only because Hyatt chose to leave California and then
24 succeeded in Nevada. This matter can only be resolved by an award of compensatory damages
25 to Hyatt for the FTB's tortious acts and a declaratory judgment as to Hyatt's residency for the
26
27
28

1 entire period in dispute up to the present time, not just the few months from almost a decade
2 ago upon which the FTB has focused its investigation.

3 The motion should be denied.

4
5 DATED this 15th day of March, 1999.

6 HUTCHISON & STEFFEN

7
8 By: 

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Hyatt's Request for
Judicial Notice – In Opposition to
the FTB's Motion for
Judgment on the Pleadings

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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,
Defendant.

) Case No. A382999
) Dept No. XVIII

) **HYATT'S REQUEST FOR
JUDICIAL NOTICE -- IN
OPPOSITION TO THE FTB'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

) **FILED UNDER SEAL PURSUANT
TO DISCOVERY COMMISSIONER
RULING OF FEBRUARY 22, 1999**

) **Hearing Date: April 5, 1999
Hearing Time: 3:00 p.m.**

Hyatt requests that this Court take judicial notice as authorized by Nevada law of certain
Constitutional provisions, statutes, case law, and Nevada Attorney General opinions relating to
privacy.

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Shirley B. R...

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1 Nevada law authorizes this Court to take judicial notice of both facts¹ and law.² Case
2 law extends this to such matters as the decisional law of California and sister states.³ Judicial
3 notice is mandatory under Nev. Rev. Stat. § 47.150, if requested to do so by counsel and if
4 provided the necessary information.⁴ Here and in the Appendix of Authorities, Hyatt provides
5 this Court with the necessary information.

6 The Nevada Supreme Court has declared that formal requests for judicial notice are "the
7 better procedure" although not absolutely necessary.⁵ Nevada law allows judicial notice of
8 opinions of the executive branch such as opinions of the Attorney General.⁶

9 Here Hyatt requests judicial notice of the following six matters of law and fact:
10

11 ¹Nev. Rev. Stat. § 47.130 makes facts in issue subject to judicial notice if they are "(a)
12 Generally known within the territorial jurisdiction of the trial court; or "(b) Capable of accurate and
13 ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that
the fact is not subject to reasonable dispute."

14 ²Nev. Rev. Stat. § 47.140 makes certain laws subject to judicial notice, including:
15 "1. The Constitution and statutes of the United States,
16 2. The constitution of this state and Nevada Revised Statutes, and . . .
17 8. The constitution, statutes or other written law of any other state . . . as contained in a book or
pamphlet published by its authority or proved to be commonly recognized in its courts."

18 ³*Andolino v. State*, 99 Nev. 346, 662 P.2d 631, 633 (1983) (collecting cases); *Kraemer v.*
19 *Kraemer*, 79 Nev. 287, 290, 382 P.2d 394, 395 (1963) (taking judicial notice of California law as
20 expressed in reported court opinions of that state); *Choate v. Ransom*, 74 Nev. 100, 107, 323 P.2d
700, 703-704 (1958) ("[T]he statutes and reported court opinions of our sister states are a proper
subject for judicial notice.").

21 ⁴Nev. Rev. Stat. § 47.150 distinguishes between permissive and mandatory judicial notice:
22 "1. A judge or court *may* take judicial notice, whether requested or not.
23 "2. A judge or court *shall* take judicial notice if requested by a party and supplied with the
24 necessary information." (emphasis added.); *Andolino v. State*, *supra*, 99 Nev. at 351, 662 P.2d at
633 (1983) (reversing judgment where court failed to take mandatory judicial notice).

25 ⁵*Choate v. Ransom*, 74 Nev. 100, 107, 323 P.2d 700, 703-704 (1958) (finding it was proper
to take judicial notice of Idaho law).

26 ⁶*Peardon v. Peardon*, 65 Nev. 717, 737, 201 P. 2d 309, 319 (1948) ("We believe we have
27 the right to take judicial notice of the official acts of the head of an executive department or agency
28 of the government, of general public interest. [Citation.] The foregoing conclusion as to
disqualification is in accord with the opinion of Attorney General Biddle rendered April 23, 1942.
..."))

1
2 1. **The Constitutions of the United States, Nevada, California, and many other**
3 **states prohibit unreasonable searches and seizures of an individual's**
4 **"papers."**

5 In support of this request, Hyatt refers to the Constitutions of the many states
6 (including, Nevada and California) that forbid unreasonable searches and seizures, and enshrine
7 privacy as a fundamental right. The Fourth Amendment to the United States Constitution
8 protects against unreasonable searches and seizures. The State Constitutions of Alaska,
9 Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, Nevada, New York,
10 Pennsylvania, South Carolina, and Washington enshrine privacy as a Constitutional right.
11 Hyatt attaches hereto as Exhibits A, B, and C the Constitutional provisions of Nevada, the
12 United States, and California forbidding unreasonable searches and seizures.

13 2. **The Constitutions forbid intrusion into personal records in such detail as to**
14 **obtain a "virtual current biography" of individuals which is exactly what**
15 **Hyatt contends the FTB did — with no warrant, no disinterested judge or**
16 **magistrate —conduct a limitless "fishing expedition," involving "unbridled**
17 **discretion" and the sort of "general search" that the Constitutions of**
18 **Nevada, California, and the United States forbid.**

19 In support of this request, Hyatt refers this Court to the following cases:

- 20 • *Burrows v. Superior Court*, 13 Cal. 3d 238, 118 Cal. Rptr. 166, 529 P.2d 590,
21 (1974) (The reason the Constitution requires legal process is distrust of
22 **"unbridled discretion"** exercised by government law enforcers.) (emphasis
23 added);
- 24 • *People v. Tarantino*, 45 Cal. 2d 590, 594, 290 P.2d 505 (1955) ("The right of
25 privacy was deemed too precious to entrust to the discretion of those whose job
26 is the detection of crime and the arrest of criminals.");
- 27 • *People v. Chapman*, 36 Cal. 3d 98, 109, 111, 201 Cal. Rptr. 628, 679 P.2d 62
28 (1984) (a holder of an unlisted telephone number had a constitutional privacy
 interest in maintaining her anonymity);
- *People v. Blair*, 25 Cal. 3d 640, 651, 159 Cal. Rptr. 818, 602 P.2d 738 (1979)
 ("As with bank statements, a person who uses a credit card may reveal his habits,
 his opinions, his tastes, and political views, as well as his movements and
 financial affairs. No less than a bank statement, the charges made on a credit
 card may provide a **'virtual current biography'** of an individual.") (emphasis
 added).

1 Hyatt contends that the FTB engaged in an unreasonable search of records intended to
2 create a "virtual current biography" of Hyatt. He points out that the FTB auditor considered
3 relevant and asked from Gil Hyatt and others the papers evidencing his every:

- 4 • move for three years
- purchase
- 5 • haircut
- check
- 6 • credit card charge
- subscription
- 7 • motel rental
- car rental
- 8 • apartment rental
- video rental
- 9 • home purchase
- home sale
- 10 • dues payment
- gift to his adult children
- 11 • gift to his grandchildren
- gift to foreign relatives
- 12 • gift to his alma mater
- contribution to politician
- 13 • gift to charity
- deposit
- 14 • withdrawal
- doctor visit
- 15 • lawyer visit
- accountant visit
- 16 • rabbi visit
- application for drivers' license
- 17 • application to vote
- tax return
- 18 • cash receipt
- cash payment
- 19 • telephone call

20 A more far reaching search for three entire years could not be imagined. The FTB lead
21 auditor could not think of any area of Hyatt's life that was "out of bounds."

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1 3. **The Nevada Attorney General stated in his Opinion 80 (October 18, 1963),**
2 **found that "Perhaps no right of the individual in America is more**
 fundamental than that of being secure against the invasion of privacy."

3 In support of this request Hyatt attaches Opinion 80 as Exhibit D, in which the Attorney
4 General concluded that the Nevada Constitution, Article I, Section 18 forbade any Nevada
5 government agency from inspecting private papers without a warrant: "And the prohibition
6 there imposed likewise applies to investigations, examinations, or any other procedure whereby
7 the contents of a private paper may become revealed. The content of any such papers may be
8 made available for investigative or informational purposes only by voluntary consent of the
9 owner or pursuant to proper legal process."

10 4. **California affords its Constitutional privacy protections to all "people," not**
11 **just all California citizens, and its statutory privacy protections also protect**
12 **all individuals and persons submitting tax information, not just California**
 residents.

13 In support of this Request, Hyatt attaches as Exhibit C the relevant portion of the
14 California Constitution, i.e.:

15 Article 1, Section 1, of the California Constitution, adopted by the people by popular
16 vote in 1972, which provides [as reworded by Constitutional amendment in 1974] that:

17 "All *people* are by nature free and independent, and have certain inalienable rights.
18 Among these are enjoying and defending life and liberty, acquiring, possessing, and
 protecting property, and pursuing and obtaining safety, happiness, and *privacy*."

19 (Emphasis added.) The language of the Constitution, by its terms, protects Nevada residents
20 touched by California government as well as California citizens.

21 *White v. Davis*, 13 Cal. 3d 757, 775, 120 Cal. Rptr. 94, 533 P.2d 222 (1975),
22 enumerated the principal evils to which California's Constitutional on privacy amendment was
23 directed: "(1) '*government snooping*' and the secret gathering of personal information; (2) the
24 overbroad collection and retention of unnecessary personal information by government and
25 business interests; (3) the improper use of information properly obtained for a specific purpose,
26 for example, the use of it for another purpose *or the disclosure of it to some third party*; and (4)
27 the lack of a reasonable check on the accuracy of existing records." *Id.*, 13 Cal. 3d at 775
28 (emphasis added).

1 5. **The California legislature made a finding that privacy is a personal and**
2 **fundamental right protected by Section 1 of Article I of the Constitution of**
3 **California and by the United States Constitution and that all individuals**
4 **have a right of privacy to information pertaining to them.**

5 In support of this request Hyatt attaches as Exhibit E, Cal. Civ. Code § 1798.1. Hyatt
6 also requests the Court to take notice that the California Legislature did not limit its protection
7 to Californians, but rather make it available to all "individuals." The Legislature further found
8 several facts that are of particular applicability to Gil Hyatt, among them:

9 "(a) The right to privacy is being threatened by the indiscriminate
10 collection, maintenance, and dissemination of personal information and the lack
11 of effective laws and legal remedies."

12 "(b) The increasing use of computers and other sophisticated technology
13 has greatly magnified the potential risk to individual privacy that can occur from
14 the maintenance of personal information."

15 "(c) In order to protect the privacy of individuals, it is necessary that the
16 maintenance and dissemination of personal information be subject to strict
17 limits."

18 *Id.* (emphasis added).

19 6. **The Nevada Attorney General, interpreting Nevada's Constitutional**
20 **provision on privacy, has defined a search warrant to be "essentially an ex**
21 **parte order issued in the name of the state."**

22 In support of this request, Hyatt submits as Exhibit F, Nevada Attorney General
23 Opinion No. 79-2, 1979 Nev AG LEXIS 67, 1979 Op. Atty. Gen. Nev. 5 (Feb. 6, 1979). In it,
24 the Attorney General opined that the Nevada Constitution requires the government, acting
25 civilly in investigating suspected violations of civil law, to nevertheless protect the privacy of
26 Nevada citizens by obtaining search warrants from disinterested magistrates and serving them
27 by the sheriff:

- 28 • "[A] search authorized by state law may be an unreasonable one under the
 Fourth Amendment. . . ."
- "Generally, the only constitutional requirement is that the issuing court be a
 disinterested magistrate."
- The district court is the proper issuing court having jurisdiction of the matter.
- "All warrants, whether civil or criminal in nature, must be directed to and
 executed by the sheriff, or other peace officer having like authority."

1 *Id.* In short, Nevada protects its citizens' privacy zealously, and Nevada citizens have
2 legitimate expectation that their personal privacy will not lawfully be invaded, even by its giant
3 sister State's tax auditors coming into Nevada, flashing their "badges," conducting their secret
4 surveillance, and sending out dozens of unconstitutional search warrants termed "Demands for
5 Information."

6 Hyatt respectfully requests that this Court take judicial notice of these matters.

7
8 DATED this 15th day of March, 1999.

9
10 HUTCHISON & STEFFEN

11
12 By: 

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EXHIBIT 8

1 **REP**
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Nevada State Bar # 1568
3 MATTHEW C. ADDISON, ESQ.
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9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 *****

13 GILBERT P. HYATT,
14 Plaintiff,

15 vs.

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

19 Defendants.

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

**DEFENDANT'S REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION
FOR JUDGMENT ON THE PLEADINGS**

**FILED UNDER SEAL PURSUANT TO
DISCOVERY COMMISSIONER'S
FEBRUARY 22, 1990 RULING**

21
22 COMES NOW, Defendant, the Franchise Tax Board of the State of California (the
23 "FTB" or the "Board") and replies to Plaintiff's Opposition to Defendant's Motion for
24 Judgment on the Pleadings (the "Motion"). The Plaintiff's Opposition raises issues not in
25 the pleadings, such as interference with Plaintiffs "licensing business." Pursuant to NRCP
26 15(b), the FTB objects to trial of issues not pled.

27 At the outset, it should be noted that Mr. Hyatt does not allege that he has ever
28 actually paid California income tax. The actual income tax assessment is a small fraction

1 of the current potential liability which include accruing interest and penalties that might be
2 applied if Mr. Hyatt is not successful in his agency protest and subsequent administrative
3 appeal or judicial review. His reference to a multi-million dollar levy is not an allegation of
4 actual tax assessment under threat of collection. The risk of interest and penalties is
5 assumed by a taxpayer who elects not to pay the amount noticed. This risk is avoided by
6 simply paying the tax and applying for a refund. Mr. Hyatt elected to pay no tax, instead
7 protesting the FTB's determination. This stays collection of the tax, but interest and
8 penalties may continue to accrue.

9 The Nevada contacts alleged by Mr. Hyatt are largely matters which are easy for
10 a wealthy taxpayer to establish, whether or not actual domicile in the state is intended.
11 Even purchase of a middle-class neighborhood home in a rapidly growing and appreciating
12 market may evidence mere pretext or investment rather than change in residency.
13 Although Mr. Hyatt has a self-serving explanation for his significant California contacts
14 which continued well after he supposedly moved to Nevada, he does not deny that such
15 contacts existed in the tax years audited.

16 The Plaintiff has filed two briefs in opposition to Defendant's Motion for Judgment
17 on the Pleadings. In addition to a 45 page document captioned as his opposition, Plaintiff
18 also filed a 7 page brief captioned: "HYATT'S REQUEST FOR JUDICIAL NOTICE - IN
19 OPPOSITION TO THE FTB'S MOTION FOR JUDGMENT ON THE PLEADINGS" (the
20 "supplemental brief"). This is really an expanded brief regarding invasion of privacy,
21 presumably filed separately to draw special attention to the privacy torts. Rather than
22 responding separately to this additional brief, the FTB will address these and other issues
23 relating to invasion of privacy where captioned below.

24 The Opposition and supplemental brief argue many more facts than are actually
25 alleged in the Complaint. Although there are references to Complaint paragraphs, in many
26 instances these do not actually quote or even paraphrase Complaint allegations. Many
27 facts argued have no support in the record. The FTB objects to the unsupported facts as
28

1 hearsay and lacking in authentication or foundation. Some facts argued to the court are
2 obviously calculated to gain the Court's sympathy or bias the Court in deciding the Motion.
3 Matters such as Mr. Hyatt's cancer or his brother's felony background are not alleged to
4 have been known by the FTB. The FTB requests that the Court disregard the embellished
5 version of the "facts" and consider only the limited facts actually pled as stated in the
6 Motion.

7 The tort causes of action are really secondary to the salient issue of California
8 income tax liability which is determined by deciding the residency issue. The tort causes
9 of action are an obvious attempt to bootstrap the California income tax issues into Nevada
10 tort litigation. This is clear from the face of the Complaint. Determination of Mr. Hyatt's
11 residency in 1991 and 1992 is irrelevant to every tort cause of action purportedly pled.

12 **A. AN NRCP 12(C) MOTION IS APPROPRIATE AT ANY TIME**
13 **AS LONG AS TRIAL IS NOT DELAYED.**

14 Plaintiff's Opposition devotes considerable argument to the effect that an NRCP
15 12(c) motion for judgment on the pleadings is inappropriate or has somehow been waived
16 by the FTB filing its Answer, attempting to remove to federal court or engaging in prior
17 motion practice. There has been no prior motion by the FTB under NRCP 12(c). The
18 withdrawn Motion to Quash Service of Summons related to personal jurisdiction.
19 Withdrawal of the Motion to Quash only resolved the issue of personal jurisdiction. The
20 instant Motion tests subject matter jurisdiction which cannot be waived (See , NRCP
21 12(h)(3)) and raises the issue of failure to state claims upon which relief can be granted
22 which is appropriate either before answering or in a motion for judgment on the pleadings
23 (See, NRCP 12(h)(2)). Plaintiff's references case law regarding waiver which preceded the
24 amendment of NRCP 12. The amended NRCP 12 (h) makes it clear that failure to make
25 a motion to dismiss for failure to state a claim upon which relief can be granted prior to
26 answering does not result in a waiver. The court simply accepts the complaint fact
27 allegations as true in deciding the motion. See, Nevada Civil Practice Manual, 4th Edition,
28

1 Sec. 1212.

2 NRCP 12(c) provides that any party may move for judgment on the pleadings after
3 the pleadings are closed, provided that trial is not delayed by the motion. The pleadings
4 are closed. The FTB is a party. This case does not come to trial until the Court's October
5 4, 1999 stack. Thus, the time is ripe for an NRCP 12(c) motion. Even accepting the fact
6 allegations of the Complaint as true, no claim against defendant upon which relief can be
7 granted is stated, Thus, judgment on the pleadings is appropriate.

8 **B. NEVADA'S COURTS LACK SUBJECT MATTER JURISDICTION OVER**
9 **CALIFORNIA INCOME TAX MATTERS.**

10 Although Plaintiff's Opposition and supplemental briefs attempt to focus the Court
11 on this matter as a tort case, Plaintiff's first and foremost cause of action is for declaratory
12 relief as to his California income tax liability for 1991 and 1992. The First Amended
13 Complaint (the "Complaint") purports to state facts in paragraphs 1 through 27 consisting
14 almost entirely of references to California income tax matters. These allegations include
15 the Plaintiff's slanted description of the FTB's audit and tax assessment. Immediately
16 following are the Complaint allegations purporting to state the First Cause of Action.
17 Complaint paragraph 29 purports to state the California tax law regarding determination
18 of California domicile and residence. Paragraph 30 purports to criticize and disagree with
19 the FTB's determination of Mr. Hyatt's tax liability for 1991 and 1992. Paragraph 31 informs
20 us that there is a controversy as to Plaintiff's residency for 1991-1992. Paragraph 32 prays
21 for the Nevada Court's judgment declaring that Plaintiff was a resident of Nevada from
22 September 26, 1991 and that the FTB's audit activities in Nevada were therefore without
23 lawful authority. This, of course, is a request for the Nevada Court to determine Mr. Hyatt's
24 California income tax liability.

25 In essence, the Plaintiff contends that it is tortious to audit a California taxpayer's
26 claim of change of residency from California to Nevada. However, as shown below, the
27 law is clear that the state of California has the authority to perform such an audit, including
28

1 inquiry in and directed to Nevada. Further, Mr. Hyatt had the burden of proof in the FTB's
2 audit as well as the obligation to cooperate with the FTB by providing information
3 substantiating his residency. Finally, as shown below, the FTB was absolutely privileged
4 to use information provided by Mr. Hyatt to verify his claim of residency and sources of
5 income, including the use of his identity, address and social security number.

6 Plaintiff argues that the Court has no choice but to declare him as a Nevada
7 resident from September 26, 1991 through the present time. Otherwise, it is argued that
8 Mr. Hyatt would have no standing to bring his tort causes of action and the FTB's
9 investigation might continue. A review of the elements of the tort causes of action fails to
10 reveal any requirement that a plaintiff be a resident of any particular state or even of this
11 country. A tort cause of action may be brought by any injured person. Even a tourist or
12 alien can sue for torts committed against him in Nevada. If the tort occurs in Nevada and
13 is committed by a Nevada resident, personal jurisdiction may lie only in Nevada. Venue
14 may be appropriate in the county where the injury occurred or where the plaintiff or
15 defendant reside. However, these are issues of personal jurisdiction rather than subject
16 matter jurisdiction. Mr. Hyatt's residency is relevant only to his first cause of action for
17 declaratory relief.

18 The Nevada statute cited by Hyatt, NRS 10.115, relates only to matters where a
19 person's rights depend on the place of his legal residence. None of the tort causes of
20 action pled by Hyatt depend on or relate to his legal residence. This case is not a divorce
21 action, nor are there naturalization, out-of-state tuition or voting rights at issue. Mr. Hyatt's
22 right to maintain this lawsuit does not depend on his residency, nor does the FTB's right
23 to defend require determination of Hyatt's residency. This is simply Hyatt's attempt to
24 obtain a Nevada Court's declaration which he will later argue in California tax proceedings
25 is res judicata or collateral estoppel. He has already attempted to argue in the FTB's
26 California administrative proceedings that his ex-wife's California court proceedings
27 (contesting the Hyatt's divorce decree) occurring after the period in question for 1991 and
28

1 1992 taxes should be determinative of his Nevada residency. In that California divorce
2 action, Mr. Hyatt was apparently able to convince a California Superior Court that by late
3 1992 he was a Nevada resident requiring his deposition to be taken in Nevada or his
4 expenses paid to go to California. He was actually served with process by his ex-wife in
5 December, 1992 at his home in La Palma, California which he had supposedly already
6 "sold" to his "associate", Grace Jeng on October 1, 1991. Of course, Mr. Hyatt's story is
7 that he was just passing through on his way to host a contingency of Russian scientists.
8 However, this illustrates Mr. Hyatt's true purpose in seeking a Nevada Court's
9 determination of his California income tax liability.

10
11 1.
12 **THE FRANCHISE TAX BOARD HAS THE STATUTORY DUTY AND**
13 **BROAD POWER TO AUDIT A CALIFORNIA NON-RESIDENCY CLAIM**
14 **INCLUDING INTERVIEWING WITNESSES, DEMANDING**
15 **DOCUMENTATION AND CONDUCTING INSPECTIONS BOTH**
16 **WITHIN AND WITHOUT THE STATE OF CALIFORNIA**

17 Defendant Franchise Tax Board ("FTB") has the statutory duty to administer
18 California's Personal Income Tax Law and Bank and Corporation Tax Law, which are
19 elements of the California Revenue and Taxation Code (R&TC). (Rev. & Tax. Code §
20 19501.) To accomplish its duty under California law, FTB has the power to examine
21 records, require attendance, take testimony, and issue subpoenas. These powers are set
22 forth in R&TC § 19504, set forth in its entirety here:

23 (a) The Franchise Tax Board, for the purpose of administering
24 its duties under this part, including ascertaining the
25 correctness of any return; making a return where none has
26 been made; determining or collecting the liability of any person
27 in respect of any liability imposed by Part 10 (commencing with
28 Section 17001), Part 11 (commencing with Section 23001), or
this part (or the liability at law or in equity of any transferee in
respect of that liability); shall have the power to require by
demand, that an entity of any kind including, but not limited to,
employers, persons or financial institutions provide information
or make available for examination or copying at a specified
time and place, or both, any book, papers, or other data which
may be relevant to that purpose. Any demand to a financial

1 institution shall comply with the California Right to Financial
2 Privacy Act set forth in Chapter 20 (commencing with Section
3 7460) of Division 7 of Title 1 of the Government Code.
4 Information which may be required upon demand includes, but
5 is not limited to, any of the following:

6 (1) Address and telephone numbers of persons designated by
7 the Franchise Tax Board.

8 (2) Information contained on Federal Form W-2 (Wage and
9 Tax Statement), Federal Form W-4 (Employee's Withholding
10 Allowance Certificate), or State Form DE-4 (Employee's
11 Withholding Allowance Certificate).

12 (b) The Franchise Tax Board may require the attendance of
13 the taxpayer or of any other person having knowledge in the
14 premises and may take testimony and require material proof
15 for its information and administer oaths to carry out this part.

16 (c) The Franchise Tax Board may issue subpoenas or
17 subpoenas duces tecum, which subpoenas must be signed by
18 any member of the Franchise Tax Board and may be served
19 on any person for any purpose

20 (d) Obedience to subpoenas or subpoenas duces tecum
21 issued in accordance with this section may be enforced by
22 application to the superior court as set forth in Article 2
23 (commencing with Section 11180) of Chapter 2 of Part 1 of
24 Division 3 of Title 2 of the Government Code.

25 In Franchise Tax Board v. Superior Court, 164 Cal.App.3d 526, 536-37, 210
26 Cal.Rptr. 695 (1985) the Court of Appeal commented at length on the legislature's grant
27 of investigatory power under R&TC § 19504 (then R&TC § 19254) and the mechanisms
28 for enforcing administrative process under California Government Code §§ 11180-11191:

The Franchise Tax Board is charged with the duties of
administering and enforcing the Personal Income Tax Law.
(Rev & Tax Code §§ 17001, 19251.) For the purpose of
administering those duties, including determining or collecting
the liability of any person imposed by the Personal Income Tax
Law, the FTB has been given broad statutory powers. Those
powers include the power to examine any data relevant to that
purpose, to require the attendance of any person having
knowledge in the premises, to take testimony, administer oaths
and to require material proof for its information. The FTB
may also issue subpoenas duces tecum which may be served
on any person for any purpose. (Rev & Tax Code § 19254, fn.
1, ante.) (Emphasis added)

1 The court further explained at 537:

2 Sections 11180-11191 statutorily authorize investigations by
3 each department of the executive branch of our state
4 government of all matters under the jurisdiction of the
5 department. As a part of those investigations, section 11181
6 authorizes the department to inspect books and records and
7 to "[i]ssue subpoenas for the attendance of witnesses and the
8 production of papers, books, accounts, documents and
9 testimony in any inquiry, investigation, hearing or proceeding
10 pertinent or material thereto..." This authority is substantially
11 the same as that granted specifically to the FTB by Revenue
12 and Taxation Code section 19254, ante (fn. 1). 5(6) These
13 investigations are not judicial proceedings, they are
14 administrative inquiries. "[S]ections 11180-11191 relate not to
15 judicial proceedings but instead to statutorily permitted
16 investigations in which the court ordinarily plays no part."
17 (Emphasis in original.) (People v. West Coast Shows, Inc.
18 (1970) 10 Cal.App.3d 462, 470, 89 Cal.Rptr. 290.

19 California Government Code § 11186, 11187 and 11188 relating to investigations
20 and hearings by an executive department provide:

21 Section 11186: The Superior Court ... has jurisdiction to
22 compel the attendance of witnesses, the giving of testimony
23 and the production of papers, books, accounts and documents
24 as required by any subpoena..."

25 Section 11187: If any witness refuses to attend or testify or
26 produce any papers required by such subpoena, the head of
27 the department may petition the superior court in the county in
28 which the hearing is pending for an order compelling the
person to attend and testify or produce the papers required by
the subpoena before the officer named in the subpoena.

Section 11188: Upon the filing of the petition, the court shall
enter an order directing the person to appear before the court
at a specific time and place and then and there show cause
why he has not attended or testified or produced the papers as
required. A copy of the order shall be served upon him. If it
appears to the court that the subpoena was regularly issued
by the head of the department, the court shall enter an order
that the person appear before the officer named in the
subpoena at the time and place fixed in the order and testify or
produce the required papers. Upon failure to obey the order,

the person shall be dealt with as for contempt of court.”

California Government Code § 11189 specifically provides for the enforcement of R&TC 19504 demands for documentation outside the state of California:

In any matter pending before a department head, the department head may cause the deposition of persons residing within or without the state to be taken by causing a petition to be filed in the Superior Court in the County of Sacramento reciting the nature of the matter pending, the name and residence of the person whose testimony is desired and asking that an order be made requiring the person to appear and testify before an officer named in the petition for that purpose. Upon the filing of the petition, the court may make an order requiring the person to appear and testify in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. In the same manner the superior courts may compel the attendance of persons as witnesses, and the production of papers, books, accounts, and documents under Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure, and may punish for contempt. (Emphasis added)

Nevada process is also available to enforce the California requests for information through issuance of subpoenas. See, NRCP 45(d)(3) and NRS 53.050 et seq. (Uniform Foreign Deposition Act).

In the Hyatt residency audit, the FTB used its standard FTB Form 4973, which Mr. Hyatt describes as the “deceptive and outrageous” “quasi-subpoenas”. These information request forms were used to obtain basic information such as gas, water and disposal service utilization at Plaintiffs’ alleged new residence in Nevada. (FAC 22:22 and 24:16). The FTB’s reference to R&TC § 19504 on the letterhead of FTB Form 4973, to gather material proof of Mr. Hyatt’s assertion that he abandoned his California domicile and residence and established a new domicile and residence in Nevada was not, as Plaintiff states, “unlawfully used.” This was an appropriate and, as it turned out, necessary tool for establishing the facts of the audit. The Plaintiff’s many arguments that rely on the theory

1 that Defendant was without authority to verify Plaintiff's assertions of fact regarding his
2 residency are without merit.

3
4 **2.**
5 **THE FTB PROPERLY USED PLAINTIFF'S TAX RETURN INFORMATION**
6 **DURING THE COURSE OF THE RESIDENCY AUDIT**

7 The audit of Mr. Hyatt was conducted by the FTB in conjunction with the FTB's
8 administration of California tax laws. R&TC § 19545 provides:

9 A return or return information may be disclosed in a judicial or
10 administrative proceeding pertaining to tax administration, if
11 any of the following apply:

12 (a) The taxpayer is a party to the proceeding, or the
13 proceeding arose out of, or in connection with, determining the
14 taxpayer's civil or criminal liability, or the collection of the
15 taxpayer's civil liability with respect to any tax imposed under
16 this part.

17 (b) The treatment of an item reflected on the return is directly
18 related to the resolution of an issue in the proceeding.

19 (c) The return or return information directly relates to a
20 transactional relationship between a person who is a party to
21 the proceeding and the taxpayer which directly affects the
22 resolution of an issue in the proceeding." (Emphasis added).

23 California law provides for the disclosure of return information for tax administration.
24 The FTB auditor was only verifying the truthfulness of the Plaintiff's allegations and any
25 disclosures made were authorized under California law for the administration of income
26 taxes.

27 **3.**
28 **THE FTB AND ITS EMPLOYEES ARE NOT LIABLE IN TORT**

All public employees have discretionary immunity pursuant to California
Government Code § 820.2 which provides:

Except as otherwise provided by statute, a public employee is
not liable for an injury resulting from his act or omission where
the act or omission was the result of the exercise of the
discretion vested in him, whether or not such discretion be

1 abused.

2 The FTB and its employees are afforded additional immunity in instituting any action
3 incidental to the assessment or collection of a tax. California Government Code section
4 860.2 provides:

5 Neither a public entity nor a public employee is liable for an
6 injury caused by:

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

9 (b) An act or omission in the interpretation or application of
any law relating to a tax.

10 The California Court of Appeal, in an action where the plaintiff sued the FTB for
11 negligence, slander of title, interference with credit relations and the taking of property
12 without due process, affirmed the trial court's dismissal of the complaint by holding that the
13 FTB cannot be held liable because it was afforded governmental immunity from such
14 actions. (Mitchell v. Franchise Tax Board, 183 Cal.App.3d 1133, 1136, 228 Cal.Rptr. 750
15 (1986).) Mr. Hyatt's actions premised on contrived allegations for tort causes of action are
16 equally barred under the governmental immunity as actions for or incidental to the
17 assessment or collection of taxes. The FTB and its employees are immune from tort
18 liability arising from governmental activities, both discretionary and ministerial duties.
19 (Ibid.)

20 **4.**

21 **BY PROTEST OF THE FTB'S PROPOSED ASSESSMENT MR. HYATT
22 AVAILED HIMSELF OF CALIFORNIA'S ADMINISTRATIVE REMEDIES**

23 Mr. Hyatt's allegation that his protest action does not constitute the administrative
24 process is without merit. The California Administrative Procedure Act (California
25 Government Code § 11400 et seq.) is not applicable to the FTB administrative remedies.
26 R&TC § 19044 provides for the protest, reconsideration of assessment and hearing as
follows:

27 (a) If a protest is filed, the Franchise Tax Board shall
28 reconsider the assessment of the deficiency and, if the

1 taxpayer has so requested in his or her protest, shall grant the
2 taxpayer or his or her authorized representatives an oral
3 hearing. Chapter 4.5 (commencing with Section 11400) of
4 Part 1 of Division 3 of Title 2 of the Government Code does
not apply to a hearing under this subdivision.

5 California Government Code § 11501 provides as follows:

6 (a) This chapter applies to any agency as determined by the
statutes relating to that agency.

7 (b) This chapter applies to an adjudicative proceeding of an
8 agency created on or after July 1, 1997, unless the statute
relating to the proceeding provide otherwise.

9 (c) Chapter 4.5 (commencing with Section 11400) applies to
10 an adjudicative proceeding required to be conducted under
this chapter, unless the statutes relating to the proceeding
11 provide otherwise.

12 The FTB administrative remedies are governed by the California Revenue and
13 Taxation Code which was explained by the California Supreme Court in Dupuy v. Superior
14 Court, 15 Cal.3d 410, 415-16, 541 P.2d 540 (1970) as follows:

15 Under the Revenue and Taxation Code, the administrative
16 remedies afforded a taxpayer differ widely according to
whether the board makes a 'deficiency assessment' under
17 section 18583 or, as here, a 'jeopardy assessment' under
section 18641. In the former case, the taxpayer, by filing a
18 written protest with the board within 60 days after the mailing
of the notice of deficiency (s. 18590), becomes entitled to a
19 hearing before the board to contest the validity of the
proposed assessment (s 18592). If the board determines the
20 matter adversely to the taxpayer, he may appeal to the Board
of Equalization (s 18593), in which event he becomes entitled
21 to a hearing before that body (s 18595). If the Board of
Equalization finds in favor of the board, the taxpayer may
22 petition for a rehearing. If such a petition is denied, the
deficiency assessment becomes final upon the expiration of 30
23 days from the time the Board of Equalization issues its opinion
(s 18596), and the amount assessed is then due and payable.
24 Thus, simply by availing himself of the administrative remedies
outlined above, a taxpayer against whom a deficiency tax
25 assessment has been made is able to stay collection of the tax
26
27
28

for a substantial period of time.¹

See, also Schatz v. FTB, 69 Cal.App.4th 595, 81 Cal.Rptr.2d 719, 720-721 (1999).

In California v. Grace Brethren Church, 457 U.S. 393, 407-411, 102 S.Ct. 2498, 73 L.Ed.2d 1982 (1982), the United States Supreme Court upheld the state remedy provided by the California Unemployment Insurance Code procedures of administrative remedies as "plain, speedy and efficient" in invoking the restraints of Tax Injunction Act, 28 U.S.C. § 1341. The Ninth Circuit Court of Appeals made the same determination for the administrative remedy provided by the California Revenue and Taxation Code by restating the court holding of Aronoff v. Franchise Tax Board, 348 F.2d 9, 11 (9th Cir. 1965) as follows:

It has consistently been held, without a single instance of deviation, that the refund action provided by California Personal Income Tax Law is a 'plain, speedy and efficient remedy' such as to invoke the restraints of 28 U.S.C. § 1341.

Randall v. Franchise Tax Board, 453 F.2d 381, 382 (9th Cir. 1971).

The FTB has not assessed a tax against Mr. Hyatt, but issued a Notice of Proposed Assessment. The Ninth Circuit Court of Appeals stated:

"If a protest is filed, the Franchise Tax Board shall reconsider the assessment of the deficiency. Further appeal to the State Board of Equalization is permitted, with finality dependent upon the extent to which a taxpayer pursues the appellate process afforded."

King v. Franchise Tax Board, 961 F.2d 1423, 1425 (9th Cir. 1992).

Mr. Hyatt's protest of the FTB's Notice of Proposed Assessment availed him of the administrative remedies and placed the proposed assessment in suspension. Mr. Hyatt's failure to exhaust his administrative remedies bars his action from going forward.

The Plaintiff argues that declaratory relief is appropriate because the California administrative proceedings are taking too long or, that there is no "administrative

¹ Revenue and Taxation Code §§ 18583, 18641, 18590, 18592, 18593, 18595 and 18596 have been renumbered to §§ 19033, 19081, 19041, 19044, 19045 and 19048 respectively.

1 proceeding" in California (Opposition pgs. 15-20). However, Plaintiff admits that his protest
2 is pending before the FTB. He wants to cut off the FTB's ability to audit tax years
3 subsequent to 1992 through this Court's declaration that he has been a resident of Nevada
4 since September 26, 1991.

5 Plaintiff argues that because he does not have adjudicative rights at the protest
6 phase of the California tax proceedings, that Nevada declaratory relief is appropriate.
7 Whether or not the California tax proceedings have entered the "adjudicative" phase is
8 irrelevant in determining a right to declaratory relief. The fact is that the tax issue (Mr.
9 Hyatt's residency) is in the California FTB's hands as a result of Mr. Hyatt's protest filing.
10 This precludes declaratory relief.

11 Nevada law is clear, declaratory relief is not available to review interlocutory
12 decisions of state agencies. Mr. Hyatt is a party to an administrative agency's action which
13 may result in adjudication of his California 1991-1992 residency status and income tax
14 liability. Even if Plaintiff is correct that the matter is only in the investigation stage, it is still
15 in the agency's purview as the California legislature has mandated and may result in
16 adjudication of Mr. Hyatt's residency. The matter could proceed from the investigation
17 phase through hearing before the California State Board of Equalization and then to the
18 California Superior Court for judicial review. Nevada's declaratory relief law does not
19 require that the issue be at any particular level of agency review to preclude the Court's
20 subject matter jurisdiction for declaratory relief. The case law cited by the FTB in its
21 Motion determines the issue:

22 We have recognized that interlocutory review of agency
23 determinations in any form could completely frustrate the legislative
24 purpose of relegating certain matters to an agency for speedy
25 resolution by experts. [citation omitted]. . . The legislature has not
26 authorized review of interlocutory decisions of the Commission in the
guise of a complaint for declaratory relief. [emphasis added].

27 It is well-settled that courts will not entertain a declaratory judgment
28 action if there is pending, at the time of the commencement of the

1 action for declaratory relief, another action or proceeding to which the
2 same persons are parties and in which the same issues may be
3 adjudicated. [citation omitted]. Further, a court will refuse to consider
4 a complaint for declaratory relief if a special statutory remedy has
5 been provided. [citation omitted]. A separate action for declaratory
6 judgment is not an appropriate method of testing defenses in a
7 pending action, [citation omitted], nor is it a substitute for statutory
8 avenues of judgment and appellate review. [emphasis added].

9 Public Serv. Comm. v. Eighth Judicial District Court, 107 Nev. 680, 683-85, 818 P.2d 396
10 (1991). Mr. Hyatt must wait for the FTB's final decision on his 1991-1992 residency and
11 only then may he proceed with his rights of agency and judicial review in California.
12 There is no right of judicial review of a California tax assessment in Nevada's Courts.

13 Plaintiff cites the case of Scotsman Mfg. v. State, Dep't of Taxation, 107 Nev. 127,
14 128, 808 P.2d 517 (1991), *cert. denied*, 502 U.S. 100 (1992) for the proposition that
15 declaratory relief is appropriate even before an audit and investigation is conducted to
16 determine the amount of the alleged tax. Opposition pg. 15. This Nevada sales tax case
17 has no application to the instant case involving California income tax administration.
18 Scotsman Mfg. involved application of Nevada's sales tax to a federal government
19 contractor which had been forced to actually pay sales tax under circumstances which
20 were unconstitutional. After an adverse Department of Taxation decision, the federal
21 contractor appealed to the Nevada Tax Commission which refused its request for relief.
22 Thus, a final agency determination was made as to applicability of the tax. That final
23 decision was the subject of the declaratory relief action. Only the amount of the sales
24 taxes, penalties and interest due was to be determined by a subsequent audit. The federal
25 contractor sued for declaratory relief in District Court on the issue of the tax exemption
26 available to the federal government and its contractors under the Supremacy Clause of the
27 United States Constitution. Nevada's Supreme Court reversed and remanded to the
28 District Court which had erred by failing to recognize the federal contractor's exemption
as a purchasing agent of the United States. Id. at 133-134. On appeal after remand, the
Nevada Supreme Court confirmed that, as a general rule, a taxpayer must exhaust his

1 administrative remedies before seeking judicial relief. Failure to do so deprives the
2 District Court of subject matter jurisdiction. See, Scotsman Mfg. v. State, Dep't of Taxation,
3 109 Nev. 252, 254-5, 849 P.2d 317 (1993). Unlike Mr. Hyatt's situation, the issue in
4 Scotsman Mfg. subject to judicial relief related only to the interpretation or constitutionality
5 of the sales tax statute as applied to a federal government contractor acting as a
6 purchasing agent for the federal government.

7 By his own admission, Mr. Hyatt's tax matter is still under review by the FTB
8 and no final decision or order has been made. When the responsible agency has not
9 yet made a final decision or order, the matter is not ripe for judicial review. Resnick
10 v. Nevada Gaming Comm., 104 Nev. 60, 62-3, 752 P.2d 229 (1988). Mr. Hyatt is
11 seeking a Nevada judicial resolution of a California income tax matter before the
12 responsible tax authority decision is even rendered and before Mr. Hyatt has followed
13 any of his California statutory rights of administrative appeal or judicial review. There
14 is no right of declaratory relief under these circumstances. Nevada's Courts lack
15 subject matter jurisdiction to determine Mr. Hyatt's California income tax liability,
16 including the pivotal issue of residency.

17
18 **5.**
19 **NEVADA HAS NO LAWS FOR THE ADMINISTRATION OF STATE**
20 **INCOME TAXES THEREFORE CALIFORNIA LAW SHOULD APPLY**

21 Mr. Hyatt relies on the holding of Nevada v. Hall, 440 U.S. 410, 99 S.Ct. 1182, 59
22 L.Ed.2d 416 (1979), rehg denied 441 US 917, for his contention that Nevada may
23 disregard the statutory immunity of the FTB under California law from his tort lawsuit. In
24 this action, the FTB and its employees' actions in the administration of its income tax laws
25 are immune from suit in California as a matter of law. (Calif. Gov. Code §§ 820.2 & 860.2.)
26 The holding in Nevada v. Hall, is clearly distinguished from this action because in Nevada
27 v. Hall, the state of Nevada had unequivocally waived its own immunity from liability for a
28 car accident committed by its agent. (Id. at 412.) Nevada statute (Nev Rev Stat § 41.031

1 (1977)) had waived Nevada's sovereign immunity for the suit to go forward in Nevada.
2 Nevada, by statute, had waived its immunity from suit and therefore the suit was permitted
3 to go forward in California.

4 Far from waiving its sovereign immunity, California is not only immune from this
5 action by its sovereign immunity but furthermore, its legislature enacted laws which
6 specifically grant immunity to the FTB and its employees from this lawsuit under California
7 laws. (Calif. Rev. & Tax. Code §§ 19504 & 19545; Calif. Gov. Code §§ 820.2 & 860.2.)
8 This lawsuit cannot go forward in California, yet Mr. Hyatt brings the lawsuit in Nevada
9 where there are no income tax laws and no laws for the administration income taxes.
10 Because Nevada has no laws for the administration of income taxes there is no conflict
11 between non-existent Nevada laws and California laws for the administration of income
12 taxes, only California law can apply to the FTB's actions in administering California's
13 income tax laws.

14 Although Mr. Hyatt attempts to portray FTB's contact with Nevada as substantial
15 with numerous references and averments (FAC passim), the FTB auditor only made one
16 short trip to Nevada and sent correspondence to verify the truth of Mr. Hyatt's allegations.
17 This audit contact in Nevada constitutes insignificant contacts with Nevada in comparison
18 of the hundreds of hours auditing Mr. Hyatt in California. Contrary to Nevada v. Hall where
19 the totality of the contact (traffic accident in California) was in California, FTB's
20 insignificant contact in Nevada, would make the application of Nevada tort law obnoxious.
21 The Supreme Court in Allstate Ins. Co. v. Hague, 449 U.S. 302, 311, 101 S.Ct. 633, 66
22 L.Ed.2d. 521, (1981) reh'g den 450 US 971, recited a proposition that if a State had only
23 an insignificant contact with the parties and the occurrence or transaction, application of
24 its laws is unconstitutional. Clearly, based upon the FTB minimal contacts during this
25 audit, the applicable law for this Court to apply in this case would be California law.

26 In Bradford Elec. Co. v. Clapper, 286 U.S. 145, 151, 52 S.Ct. 571, 76 L.Ed. 1026
27 (1932), the United States Supreme Court required the federal court in New Hampshire to
28

1 respect a Vermont statute which precluded a worker from bringing a common-law action
2 against his employer for job-related injuries where the employment relation was formed in
3 Vermont, even though the injury occurred in New Hampshire. The majority opinion in
4 Nevada v. Hall, *supra*, 440 U.S. 410 at 426-427 had to distinguish the holding of Bradford
5 Elec. to be assured that the application of the Vermont statute would not be obnoxious to
6 New Hampshire. Here, the application of California law cannot be obnoxious to the
7 policies of Nevada which has no comparable statutes to the California statutes.
8 Application of Nevada tort laws on California administration of its income tax laws would,
9 however, be obnoxious to California and its fiscal stability.

10 The United States government has recognized that the autonomy and fiscal stability
11 of the States survive best when state tax systems are not subject to scrutiny in federal
12 courts by enacting the 28 U.S.C. § 1341. (Fair Assessment in Real Estate Assoc., Inc. v.
13 McNary, 454 U.S. 100, 102-103, 102 S.Ct. 177, 70 L.Ed.2d 271 (1981).) The Supreme
14 Court has upheld the dismissal of a plaintiff's action pursuant to the Tax Injunction Act (28
15 U.S.C. §1341) on the grounds that tax collection constitutes an important local concern of
16 the state and the state provides a plain, speedy and efficient remedy. (California v. Grace
17 Brethren Church, *supra*, 457 U.S. at 408-411.) California income tax laws and the laws
18 for the administration of income taxes are fundamental to its fiscal integrity and these laws
19 should be respected by the state of Nevada which has no conflicting laws of its own.

20 Nevada courts must consider the requirements of the full faith and credit clause of
21 the United States Constitution and apply California laws which were enacted to protect its
22 fiscal integrity. These California laws present a clear and precise bar from this action on
23 the principle of the exhaustion of administrative remedies and by the statutory immunity
24 provided the FTB and its employees from liability from this action.

25 **C. NEVADA DOES NOT RECOGNIZE A CAUSE OF ACTION FOR**
26 **ADMINISTRATIVE ABUSE OF PROCESS.**

27 The Plaintiff cites several cases purporting to support his Sixth Cause of Action for
28

1 abuse of process. Admittedly, this cause of action is not based on any court action or
2 actual issuance of subpoenas. Plaintiff cites foreign authority for the proposition that there
3 is a cause of action for "administrative" abuse of process. Nevada law is contrary, probably
4 for the same reasons that Nevada Courts do not give declaratory relief as to matters
5 pending before an administrative agency. That is, the Nevada legislature has vested the
6 agency with jurisdiction over the matter and provided for judicial review only following
7 exhaustion of the administrative process and remedies.

8 In its Motion, the FTB cited the appropriate Nevada and Ninth Circuit (applying
9 Nevada law) case law holding that no tort cause of action lies for abuse of process absent
10 misuse of court process. See, Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 606,
11 503 P.2d 9 (1972) and Laxalt v. McClatchy Newspapers, 622 F. Supp. 737, 750-51 (Nev.
12 1985).

13 The Complaint alleges that Demands to Furnish Information or "quasi subpoenas"
14 were sent by the FTB to persons and entities in Nevada. The requests are not alleged to
15 be actual administrative subpoenas issued by the FTB or a court of law. The information
16 requests are authorized by California law. These requests are a necessary and usual
17 means of gathering information for administration of California income tax. Under the
18 circumstances, there is no need to create a new tort cause of action.

19 **D. THE FACTS PLED PRECLUDE CAUSES OF ACTION FOR FRAUD.**

20 The Complaint purports to plead and Plaintiff's Opposition argues a purported
21 cause of action for fraud (Seventh Cause of Action). Although Plaintiff recites the correct
22 elements of these causes of action, the very facts alleged by Plaintiff defeat this claim.

23 There was no transaction as contemplated by the fraud tort between Mr. Hyatt, a
24 taxpayer under audit, and the Board, a government taxing agency performing an audit. The
25 gravamen of the Plaintiff's misrepresentation allegations is that he provided information
26 to the Board which the Board was obligated to keep confidential. The contention is that the
27 Board fraudulently concealed its intent not to maintain the confidentiality of Mr. Hyatt's
28

1 information. The confidential information as alleged in the Complaint or as argued in
2 Hyatt's Opposition (with maximum indignation) is said to consist of Mr. Hyatt's name,
3 "secret" address and social security number. The Board used this information in requesting
4 information from third parties about Mr. Hyatt in its residency audit. These persons and
5 entities include utilities, neighbors, Nevada contacts identified by Mr. Hyatt's
6 representatives as proof of his Nevada contacts and other organizations identified by Mr.
7 Hyatt's representatives which might have information regarding his residency contacts.

8
9 The applicable California tax law shows that Mr. Hyatt was required by law to
10 cooperate in the Board's residency audit and that the Board was privileged to use the
11 information Hyatt provided in administering California's income tax. The FTB purposes
12 authorized by law include not only verifying Mr. Hyatt's claim of change of residency, but
13 also determination of the source of his income. Either or both determinations are
14 dispositive of Mr. Hyatt's California income tax liability.

15 The FTB already had Mr. Hyatt's social security number, so this was obviously not
16 extracted from him by fraud. The use of a person's social security number for identification
17 in verifying Mr. Hyatt's residency is a standard means of taxpayer identification which
18 prevents confusion or mistake as to identity.

19 Mr. Hyatt was obligated by law to provide information verifying his claim of change
20 of residency, including his residential address, so that the FTB could verify the information.
21 It is not enough that Mr. Hyatt's CPA or attorney showed the FTB that Hyatt purchased a
22 house held in trust by his accountant. This could evidence investment or rental property
23 or a sham transaction. Given Mr. Hyatt's vast wealth, it would be a small thing to invest in
24 purchase of a middle class home to save millions in income tax liability. Verification of
25 residential use through occupancy, utility service and presence in Nevada was reasonable
26 and necessary. Although Mr. Hyatt argues that this activity is fraudulent, outrageous and
27 an invasion of privacy (and that the FTB should simply take the word of his paid
28 advocates), these activities are simply a reasonable and necessary part of conducting a

1 residential audit. Verification of Hyatt's residence would not be possible without reference
2 to the address of the home Hyatt claims to occupy.

3 Since Mr. Hyatt was obligated to provide the information and it was used for a lawful
4 purpose, no cause of action for fraud can lie.

5 **E. THE NEGLIGENT MISREPRESENTATION COUNT ALSO FAILS.**

6 Mr. Hyatt also purports to plead a cause of action for negligent misrepresentation
7 (Eighth Cause of Action). This count fails for the same reasons as the fraud cause of
8 action. There is simply no transaction between Hyatt and the FTB which is actionable
9 under this tort. Mr. Hyatt was obligated to provide his address. The FTB already had his
10 name and social security number. Use of this information for purposes of the residency
11 audit was reasonable, necessary and allowed by law. It was obvious to Mr. Hyatt's
12 attorney and CPA, and therefore to Mr. Hyatt, that a residency audit was in progress and
13 the information gathered was for that purpose. Thus, it cannot be actionable negligence
14 for the FTB to fail to disclose the obvious, that is, that the information being provided or
15 already known to the FTB was part of audit proceedings.

16 **F. PLAINTIFF'S CAUSES OF ACTION FOR INVASION OF PRIVACY FAIL**
17 **TO STATE CLAIMS FOR RELIEF GIVEN THE FACTS PLED.**

18 Much of Plaintiff's Opposition and Request for Judicial Notice concerns argument
19 and citation of authorities for the proposition that there is a general right of privacy and
20 right to be free from oppressive government intrusion into one's private life. This cannot
21 be disputed. However, a tax audit is not a tort. Although Plaintiff may not agree with the
22 scope, duration or determination resulting from the audit, audit activities are not
23 actionable. There has been no use of search warrants, no unlawful search and seizure
24 and no false imprisonment. There is not even any allegation that there was any direct
25 contact between Mr. Hyatt and the FTB agents performing the audit.

26 As with many activities performed by the State or federal governments, a tax audit
27 is a lawful and necessary exercise of government function. A police officer acts with lawful
28

1 authority when he stops a drunk driver and arrests and incarcerates the suspect. If a
2 private citizen engaged in the same activity as to an innocent person, a number of torts are
3 committed. If a person gathered an individual's private financial information and stalked
4 the individual, and such activities were performed by an unauthorized person without the
5 individual's consent, there could result a number of tort causes of action. However, when
6 these same activities are authorized by statute and performed by an authorized
7 government employee in the course of their employment, a discharge of lawful duty rather
8 than tortious activity results. The matters inquired into by the FTB are bitterly criticized by
9 Plaintiff as excessive and invasive. Nevertheless, an objective review of the matters
10 requested and reviewed by the FTB reveals that each item or topic would logically reveal
11 Mr. Hyatt's residential contact with either California or Nevada.

12 Plaintiff begins his argument in opposition to the FTB's motion for judgment on the
13 pleadings as to his privacy claims by admitting that the Court has the threshold duty to
14 determine if his privacy claims are actionable. Opposition at page 25, line 21 - page 26,
15 line 5, citing People for the Ethical Treatment of Animals (PETA) v. Bobby Berosini, Ltd.,
16 111 Nev. 615, 895 P.2d 1269 (1995), modified on other grounds 113 Nev. 632, 940 P.2d
17 134 (1997): "... courts should and do consider the degree of intrusion, the intruder's
18 objectives, and the expectations of those whose privacy is invaded."

19 Plaintiff then cites Alward v. State, 112 Nev. 141, 151, 912 P.2d 243, 250 (1996) for
20 the general principle that "searches conducted outside the judicial process, without prior
21 approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment."
22 Opposition at page 26, lines 6-12. Alward was a criminal case involving a warrantless
23 search of a tent in which the defendant and the victim had been camping when the victim
24 was shot and died. The officers had unzipped the tent, entered and searched, obtaining
25 incriminating evidence. The issue before the court was whether the officers had the
26 authority to search the tent once they determined that the victim was dead.

27 Alward has nothing to do with the dispute between Plaintiff and FTB. The language
28

1 “searches conducted outside the judicial process, without prior approval by judge or
2 magistrate” refers to just that, “searches.” There is no allegation that FTB entered
3 Plaintiff’s home, or anywhere else, to conduct an illegal search. Plaintiff is simply taking
4 language completely out of context in order to generate as much confusion and distraction
5 as possible to hide his true theory of this case: the FTB violated his privacy rights because
6 it investigated his claim of a change of residency instead of blindly accepting his story.

7 At Opposition page 26, line 13 - page 28, line 1, Plaintiff makes the general
8 argument that “actions for invasion of privacy against a taxing body are increasingly
9 frequent.” That is all fine and dandy, but totally irrelevant to whether Plaintiff’s purported
10 privacy claims in this case are valid.

11 For example, at page 26, lines 14-23, Plaintiff cites to a treatise as authority for a
12 case (unreported) in which the IRS was held liable. Since that case involved the IRS, it
13 had to be a federal question case that involved federal statutes not pertinent to this case.
14 Moreover, the Plaintiff did not bother to inform the Court of the true facts upon which
15 liability was imposed:

- 16 1. armed IRS agents raided the family business four weeks after
17 the woman insulted one agent;
- 18 2. the agents asserted the woman owed \$324,000 in income
19 taxes, when she actually owed only \$3,485;
- 20 3. the armed agents padlocked all three family stores;
- 21 4. the agents posted unjustified notices that some customers
22 interpreted as evidence that the woman was a drug dealer;
23 and
- 24 5. one agent was found to be “grossly negligent” and to have
25 acted with “reckless disregard” for the law after he made three
false statements to the court.

26 See Plaintiff’s Appendix of Non-Nevada Authorities at Tab No. 67. Instead, Plaintiff twists
27 the report of that case to argue the IRS was grossly negligent and reckless in placing the
28

1 woman in a false light by claiming she owed more money than she actually owed.
2 Opposition at page 26, lines 18-20.

3 Plaintiff's improper tactics of twisting authorities and taking them out of context
4 permeate his argument. As a further example, at Opposition page 26, line 24 - page 27,
5 line 10, Plaintiff cites Jones v. United States, 9 F. Supp.2d 1119 (D. Neb. 1998), as
6 "[a]nother recent large verdict against tax authorities for invasion of privacy rights and
7 abuse of authority." Contrary to Plaintiff's "spin," liability was imposed against the United
8 States in that case for an IRS criminal investigator's violation of specific federal statutes
9 when he unlawfully told a confidential informant that the government intended to execute
10 a search warrant at the plaintiffs' place of business. The court had concluded the
11 "disclosure amounted to notification that the tax returns of [plaintiffs] were 'subject to other
12 investigation or processing' as defined by 26 U.S.C. § 6103(b)(2)." Id. at 1123.

13 No such misconduct is alleged in this case, nor are any federal statutes involving
14 the IRS involved.

15 At Opposition page 28, lines 9-20, Plaintiff cites three U.S. Supreme Court
16 decisions as support for his claim that the FTB violated his privacy rights by disclosing his
17 name and home address when it attempted to verify his change of residency. All of those
18 cases deal with particular federal statutes and factual situations not involved in this case.

19 In United States Department of Defense v. Federal Labor Relations Authority, 510
20 U.S. 487 (1994), the issue was whether disclosure of the home addresses of federal civil
21 service employees by their employing agency, pursuant to a request made by the
22 employees' collective-bargaining representatives under the Federal Service Labor
23 Management Relations Statute (5 U.S.C. §§ 7101-7135), would violate the employees'
24 personal privacy within the meaning of the Freedom of Information Act (5 U.S.C. § 552).
25 The phrase "clearly unwarranted invasion of privacy", which Plaintiff emphasizes at
26 Opposition, page 28, line 12, is from Exemption 6 of the Freedom of Information Act, which
27 provides that FOIA's disclosure requirements do not apply to "personnel and medical files
28

1 and similar files the disclosure of which would constitute a clearly unwarranted invasion
2 of personal privacy." 5 U.S.C. § 552 (b)(6).

3 United States Dept. of Justice v. Reporters Committee for Freedom of Press, 489
4 U.S. 749 (1989) also involved the FOIA. In that case, a news correspondent and an
5 association of journalists requested, under FOIA, that the Department of Justice and the
6 FBI disclose any criminal records in their possession concerning four brothers whose
7 family company allegedly had obtained defense contracts as a result of an improper
8 arrangement with a corrupt congressman. Id. at 757. The Court held that disclosure of
9 an FBI rap sheet to a third party would constitute an unwarranted invasion of personal
10 privacy under Exemption 7 of FOIA, Title 5, U.S.C. § 552(b)(7)(c), and was therefore
11 prohibited. Id. at 780.

12 United States Department of State v. Ray, 502 U.S. 164 (1991) also involved
13 Exemption 6 of FOIA. In that case, a private attorney sought the names of certain Haitian
14 nationals who had been involuntarily returned to Haiti after attempting to emigrate illegally
15 to the United States. Id. at 168. The attorney claimed he needed their names in order to
16 ensure the United States was properly monitoring the Haitian Government's agreement not
17 to harass Haitians returned to Haiti after being caught trying to enter the United States
18 illegally. Id.

19 After taking those three Supreme Court cases completely out of context, Plaintiff
20 then string cites seventeen cases at Opposition pages 28-31 for the general proposition
21 that state and federal courts protect social security numbers and home addresses. All of
22 those cases arose under varying facts and involve different state and federal statutes. For
23 example, in State ex rel. Beacon Journal Publishing Co. v. City of Akron, 640 N.E. 2d
24 164, 165 (Ohio 1994), recon denied, 642 N.E.2d 388, a newspaper sought the social
25 security numbers of 2,500 city employees pursuant to the Ohio Public Records statute.
26 In Progressive Animal Welfare Society v. University of Washington, 884 P.2d 592, 595
27 (Wash. 1995), recon denied, an animal rights group requested a copy of an unfunded
28

1 grant proposal from the University of Washington pursuant to the Washington Public
2 Disclosure Act. The court held that, in that situation, disclosure of the researchers' social
3 security numbers would be highly offensive to a reasonable person and not of legitimate
4 concern to the public pursuant to the state statute, RCW 42.17.255. Id. at 598.

5 A union representative sought the names and social security numbers of all
6 employees who worked in a city library pursuant to Washington's Public Disclosure Act in
7 Tacoma Public Library v. Woessner, 951 P.2d 357, 359 (Wash. App. 1998), amended
8 1999 WL 126948. Exemption 6 of FOIA was again at issue in National Association of
9 Retired Federal Employees v. Horner, 879 F.2d 873, 874 (D.C. App. 1989), cert denied,
10 494 US 1078, when a union sought the names and addresses of retired or disabled federal
11 employees. The same statute was involved in American Federation of Government
12 Employees, AFL-CIO, Local 1923 v. United States, 712 F.2d 931, 932 (4th Cir. 1983)
13 when a union sought the addresses of some 15,000 employees.

14 And so it goes with all the other cases Plaintiff string cites. Not a single case cited
15 by Plaintiff dealt with a governmental agency's use of a person's name, address and social
16 security number to verify the person's claimed change of residency as part of a tax audit.

17 As Plaintiff conceded at pages 25-26 of his Opposition, this Court should decide as
18 a threshold matter whether Plaintiff's invasion of privacy claims are valid given the facts
19 alleged, not Plaintiff's self-serving, legal conclusions and string citations to cases that have
20 nothing to do with the facts of this case.

21 Any person in Plaintiff's position; i.e., a long time resident of California who claims
22 to change his residency just before he receives millions of dollars in income, can
23 reasonably expect that FTB will closely examine his claimed change of residency. All of
24 the facts alleged by Plaintiff taken together do not add up to any actionable invasion of
25 privacy. The FTB's Motion for Judgment on the Pleadings as to all of Plaintiff's privacy
26 claims should be granted.

27
28 ///

G. NO VIABLE CAUSE OF ACTION FOR OUTRAGE IS PLED.

Mr. Hyatt does not allege that he had any personal contact with the FTB during the residency audit. He contends that he was not even aware of the Nevada audit activities until after the fact. Nevertheless, he argues that the tort of outrage has been perpetrated and he has suffered compensable emotional stress as a result of learning of the FTB's audit activities. The acts complained of are that the FTB identified Mr. Hyatt to third parties in the course of its residency audit. California law authorizes the alleged audit activities. All taxpayers would probably consider a tax audit to be "outrageous." The actions of a taxing authority may well be actionable absent the statutory authority. However, where the same acts are authorized by law, no tort case of action arises.

Plaintiff's Opposition cites several Nevada cases regarding the tort of intentional infliction of emotional distress. These cases all involved direct acts of abuse or intimidation. See, Branda v. Sanford, 97 Nev. 643, 648, 637 P.2d 1223 (1981)(Public slander and sexual harassment of minor child); Posadas v. City of Reno, 109 Nev. 448, 456, 851 P.2d 438 (1993)(Employer's public slander of public employee); Shoen v. Amerco, Inc. 111 Nev. 735, 747, 896 P.2d 469 (1995)(Public threats and physical assault). None of these cases involved government employees performing their official duties.

The circumstances pled by Mr. Hyatt do not involve any direct contact between Mr. Hyatt and the FTB. The relationship was filtered through Mr. Hyatt's tax attorney and CPA. By admission, Mr. Hyatt only learned of the audit activities after the fact. Thus, his emotional distress relates only to learning of the acts authorized by law to verify his Nevada residency and notice of the proposed assessment. Any taxpayer would have the same anxieties. The mere fact that one suffers emotional distress caused by another performing government functions is not actionable. As a matter of law, a California residential audit using information to identify a taxpayer and gather verifying information is not a tort.

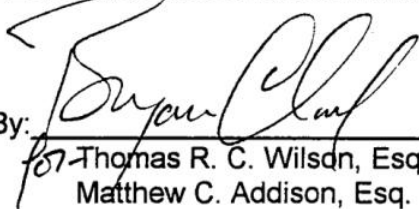
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CONCLUSION

The Plaintiff's action for declaratory relief cannot be maintained due to lack of subject matter jurisdiction over the pending California administrative tax proceedings. Plaintiff's tort claims regarding acts or omissions in California are barred by his failure to comply with the California Tort Claims Act and applicable immunities. Under Nevada law, the tort claims are not proper given the facts pled. There are no allegations which, if proven, would permit recovery by Plaintiff. Accordingly, the Franchise Tax Board of the State of California is entitled to judgment on the pleadings.

DATED this 29th day of March, 1999.

McDONALD CARANO WILSON McCUNE
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RECEIPT OF COPY

**RECEIPT OF A COPY of the foregoing DEFENDANT'S REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS**

is hereby acknowledged this 29th day of March, 1999.

HUTCHISON & STEFFEN

By: Thomas L. Steffen / K.L.
Thomas L. Steffen, Esq.
Mark A. Hutchison, Esq.
8831 W. Sahara Ave.
Las Vegas, NV 89117

and by depositing the same in the United States Mail, postage prepaid thereon to the
numbers noted below, upon the following:

Felix Leatherwood, Esq.
Deputy Attorney General
Attorney General's Office
300 South Spring Street
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EXHIBIT 9

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10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12
13 GILBERT P. HYATT,
14 Plaintiff,

15 vs.

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

) Case No. A382999
) Dept No. XVIII

) **PLAINTIFF'S MOTION FOR**
) **LEAVE TO FILE SURREPLY**

) **FILED UNDER SEAL BY**
) **STIPULATION AND ORDER**
) **DATED FEBRUARY 1, 1999**

) **Date of Hearing:**
) **Time of Hearing:**

5-6-99

20 Plaintiff Gil Hyatt ("Hyatt") respectfully moves this Court for leave to file a
21 surreply to Defendant Franchise Tax Board of the State of California's ("FTB") Reply to
22 Hyatt's Opposition to the FTB's Motion for Judgment on the Pleadings ("Reply"). This motion

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APR 2 11 21 AM '99

FILED

1 is based on LR 2.20 and the following points and authorities.

2 DATED this 27 day of April, 1999.

3 HUTCHISON & STEFFEN

4 By: 

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15 **NOTICE OF MOTION**

16 TO: ALL INTERESTED PARTIES

17 NOTICE IS HEREBY GIVEN that Hutchison & Steffen will bring the foregoing
18 PLAINTIFF'S MOTION FOR LEAVE TO FILE SURREPLY for hearing on the 10
19 day of May, 1999, in Department XVIII.

20 DATED this ____ day of April, 1999.

21 HUTCHISON & STEFFEN

22 By: 

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1 A. FACTS

2 On February 9, 1999, the FTB filed its Motion for Judgment on the Pleadings in
3 this case. Hyatt filed his Opposition on March 15, 1999. On March 26, 1999, the FTB filed its
4 Reply to Hyatt's Opposition to the FTB's Motion for Judgment on the Pleadings. The FTB's
5 Reply went beyond the scope of Hyatt's Opposition and raised new arguments not set forth in
6 the original moving papers. In so doing, the FTB also misstated the law in several respects.
7 Hyatt now moves for leave to file a surreply to the FTB's Reply brief. The proposed surreply is
8 attached hereto as Exhibit 1.

9 This motion is based on the following four issues improperly raised by the FTB
10 for the first time in its Reply.

11 First: the FTB improperly and unsuccessfully attempts to shift standards under
12 Rule 12(c) which were first asserted in its moving papers. It thereby concedes in its
13 reply the inappropriateness of its motion pursuant to legal authority cited in its own
14 moving papers; the FTB's reply also injects its version of the facts into the motion --
15 which contradict Hyatt's allegations -- thereby violating the most basic tenet of a Rule
16 12(c) motion that the facts alleged in Hyatt's First Amended Complaint (*i.e.*, Hyatt's
17 version of the facts), must be accepted as true.

18 Second: the FTB provides a new but equally flawed analysis concerning
19 declaratory relief and subject matter jurisdiction. Regardless of how many times the
20 FTB cries "tax case," this is not a tax case and declaratory relief is appropriate and
21 necessary in this action.

22 Third: the FTB spends four pages arguing its "Demands" were legal under
23 California law. If true, it is of no consequence. It is Nevada law that is relevant, and the
24 deceit, trickery, and fraud engaged in by the FTB in using such unauthorized
25 "Demands" in Nevada is unlawful under Nevada law.

26 Fourth: the FTB cites for the first time certain inapplicable California statutes in
27 making another but equally unsuccessful assertion that it has immunity to commit torts
28 in Nevada, against a Nevada resident, so long as its tortious conduct was in furtherance

1 of trying to collect taxes for California; but the holdings in *Nevada v. Hall*, 440 U.S.
2 410 (1979), and *Mianecki v. District Court*, 99 Nev. 93, 658 P.2d 422 (1983), do govern
3 this case and provide that the FTB can be held liable in Nevada for torts.

4 B. ANALYSIS

5 Because the FTB raises new facts and arguments in its Reply as summarized above,
6 Hyatt has not had an opportunity to address all of the FTB's arguments. Fairness and equity
7 dictate that Hyatt be given this opportunity by filing a surreply. Many courts have recognized
8 the importance and benefit of surreplies as an aid in assisting the court to address fully and
9 adequately the law and facts of individual cases. In *Newton v. N.B.C.*, 109 F.R.D. 522 (D. Nev.
10 1985), the court allowed defendants in a defamation case to file a surreply to a Motion to
11 Compel two television journalists to disclose sources used in preparing a nighttime news
12 broadcast regarding the plaintiff. Similarly, in *Seaman v. C.S.P.H., Inc.*, August 25, 1997 U.S.
13 Dist. N.D. Tex., Lexis 21177, (attached), the court allowed the plaintiff to file a surreply to the
14 defendant's motion for summary judgment because the defendant quoted the plaintiff's
15 deposition out of context.

16 Other court decisions have allowed or recognized that surreplies can be helpful in
17 analyzing a broad variety of issues. See, e.g., *Alaska Wildlife Alliance v. Jensen*, 108 F.3d 1065
18 (9th Cir. 1997) (reasoning in a case based on the Endangered Species Act that "If the Fisherman
19 wanted a chance to respond . . . [they] could have moved to file a surreply"); *Langlois v. Deja*
20 *Vu, Inc.*, 984 F. Supp. 1327 (D. Wash. 1997) (allowing surreply in a case regarding whether
21 court had personal jurisdiction over defendant); *Religious Tech. Ctr. v. Netcom On-line*
22 *Commun. Servs.*, 923 F. Supp. 1231 (N.D. Cal. 1995) (stating that filing of surreply was
23 justified by parties' mention of new instance of alleged contempt by opposing party); *Murrelet*
24 *v. Babbitt*, 918 F. Supp. 318 (D. Wash. 1996) (surreply allowed in case involving Endangered
25 Species Act); *accord Silver v. Babbitt*, 924 F. Supp. 972 (D. Ariz. 1995). *Kealoha v. E. I. Du*
26 *Pont De Nemours, Inc.*, 844 F. Supp. 590 (D. Haw. 1994) (allowing surreply in product liability
27 suit for allegedly defective oral implant device).

1 C. CONCLUSION

2 Hyatt requests that this Court grant leave to file the attached surreply so that he
3 may respond to the new facts and issues summarized above and which are addressed in more
4 detail in his attached surreply.

5 Respectfully submitted this 2^d day of April, 1999.

6 HUTCHISON & STEFFEN

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Exhibit 1

AA001011

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

12 GILBERT P. HYATT,
13 Plaintiff,

14 vs.

15 FRANCHISE TAX BOARD OF THE STATE
16 OF CALIFORNIA, and DOES 1-100,
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17 Defendants.

) Case No. A382999
) Dept No. XVIII

) **PLAINTIFF GIL HYATT'S**
) **SURREPLY**

) **FILED UNDER SEAL BY**
) **STIPULATION AND ORDER**
) **DATED FEBRUARY 1, 1999**

18
19 **I. INTRODUCTION.**

20 The FTB ignores most of the issues addressed by Gil Hyatt's opposition. It does so by
21 "supplementing" its motion with new issues and, incredibly, with its version of numerous
22 disputed facts. Hyatt therefore files this surreply to address the new issues and facts.¹

23 First, the FTB improperly and unsuccessfully attempts to shift standards under Rule
24 12(c) thereby conceding the inappropriateness of its motion pursuant to legal authority cited in
25 its own moving papers. The FTB also attempts to inject its version of contradictory facts into
26 the motion thereby violating the most basic tenet of a Rule 12(c) motion: the facts alleged in
27

28 ¹This surreply is not intended to nor does it address every issue raised in the FTB's Reply papers. The surreply is intended to address the new issues raised in the FTB's Reply for which Hyatt has had no opportunity to respond. Hyatt's opposition addressed and rebutted all of the "old" issues raised by the FTB in its Reply papers.

1 Hyatt's First Amended Complaint (*i.e.*, Hyatt's version of the facts), must be accepted as true.

2 Second, the FTB provides a new but equally flawed analysis concerning declaratory
3 relief and subject matter jurisdiction. Regardless of how many times the FTB cries "tax case,"
4 this is not a tax case. Declaratory relief is appropriate and necessary in this action.

5 Third, the FTB spends four pages arguing its "Demands" were legal under California
6 law. If true, it is of no consequence. The deceit, trickery, and fraud engaged in by the FTB in
7 using such unauthorized "Demands" in Nevada is not absolved by California law.

8 Fourth, the FTB cites for the first time certain inapplicable California statutes in making
9 another but equally unsuccessful assertion that its had immunity -- *i.e.* free reign -- under
10 California law to commit torts in Nevada, against a Nevada resident, so long as its tortious
11 conduct was in furtherance of trying to collect taxes for California. No matter how it tries, the
12 FTB can not avoid the holdings in *Nevada v. Hall*, 440 U.S. 410 (1979), and *Mianecki v.*
13 *District Court*, 99 Nev. 93, 658 P.2d 422 (1983).

14
15 **II. THE FTB'S MOTION FOR JUDGMENT ON THE PLEADINGS MUST BE**
16 **DENIED EVEN UNDER THE STANDARD OF 'FAILURE TO STATE A CLAIM**
UPON WHICH RELIEF CAN BE GRANTED' WHICH WAS RAISED BY THE
FTB FOR THE FIRST TIME IN ITS REPLY.

17 The FTB's treatment of the Rule 12(c) standards displays three themes: indecision,
18 sleight-of-hand and a mystifying urge for self destruction. The theme of indecision is most
19 easily visible; the FTB simply cannot stick with one standard of review for judgment on the
20 pleadings. It picked its first standard from *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 734
21 P.2d 1238 (1987). (Motion, at 4.) This standard provides that a motion for "judgment on the
22 pleadings has utility only when 'all material allegations of fact are admitted in the pleadings and
23 only questions of law remain. . . ." *Id.* citing *Bernard*, 103 Nev. at 135-36, 734 P.2d at 1241.

24 The FTB's fidelity to the *Bernard* standard was short-lived. Perhaps its disenchantment
25 sprang from Hyatt's opposition, which noted that the FTB's denial of the allegations in Hyatt's
26 Complaint precluded a viable motion for judgment on the pleadings. (Opposition, at 12,
27 quoting *Bernard*.) Because the FTB's answer denied 67 of the 72 paragraphs in the Complaint,
28 it naturally found the *Bernard* standard a bit daunting. Whatever the reasons for its fickleness,

1 the FTB's reply uses sleight-of-hand to replace the old standard with yet another: the defense of
2 failure to state a claim upon which relief can be granted. (Reply, at 3, citing Nev. R. Civ. P.
3 12(h)(2).)

4 While the FTB has swapped standards, it has not lessened its burden. Motions to
5 dismiss for failure to state a claim are "disfavored and rarely granted." 5A Wright & Miller,
6 *Federal Practice and Procedure* § 1357, at 321 (1990). The court reviews such a motion to
7 determine whether the complaint sets forth allegations sufficient to make out the elements of a
8 right to relief. *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 111 (Nev. 1985). All
9 factual allegations of Hyatt's Complaint must be accepted as true. *Vacation Village, Inc. v.*
10 *Hitachi America, Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). His Complaint will not be
11 dismissed for failure to state a claim "unless it appears beyond doubt that [he] could prove no
12 set of facts, which if accepted by the trier of fact, would entitle him . . . to relief." *Id.* In
13 Nevada, the question is whether in the light most favorable to Hyatt, taking every allegation as
14 true, and with every doubt resolved in his behalf, the Complaint states a claim for relief. *Id.*
15 Moreover, "[t]he test for determining whether the allegations of a complaint are sufficient to
16 assert a claim for relief is whether the allegations give fair notice of the nature and basis of a
17 legally sufficient claim and the relief requested. *Id.*

18 The FTB's motion self destructs under the weight of these principles. For example,
19 Hyatt alleges the FTB committed an abuse of process by issuing Demands for Information to
20 Nevada citizens. (FAC, ¶ 56.) The FTB initially sought judgment on the pleadings by
21 contending that a cause of action for abuse of process must involve judicial process. (Motion,
22 at 28.) Hyatt's opposition cited no fewer than eight court cases applying abuse of process to
23 administrative proceedings. (Opposition, at 38-40.) The FTB's reply dismisses this precedent
24 as mere "foreign authority" followed by the bald, unsupported assertion that "Nevada law is
25 contrary." (Reply, at 19.) Yet the FTB provides not a single Nevada case that even considers
26 abuse of process in agency proceedings; the cases it cites involve only private litigants who
27 must use judicial process to obtain subpoenas rather than administrative agencies with the
28 ability to abuse their native subpoena powers. Such an anemic showing hardly fulfills the

1 FTB's burden to show beyond a doubt that Hyatt could prove no set of facts, which if accepted
2 by the trier of fact, would entitle him to relief.

3 Without belaboring the point, Hyatt's 30 page Complaint is stocked with allegations
4 which, if true, easily entitles Hyatt to relief on each cause of action. Thus, even if the FTB is
5 permitted to circumvent the standard of review under the *Bernard* case (which the FTB cited in
6 its Motion as the proper standard), the result is the same -- its Motion must be denied.

7 **III. CONTRARY TO THE STRICT REQUIREMENTS OF A RULE 12(C) MOTION,**
8 **THE FTB REFUSES TO ADMIT HYATT'S ALLEGATIONS AND INSTEAD**
9 **ASSERTS ITS OWN VERSION OF THE "FACTS."**

10 The FTB makes the extraordinary statement in its reply that the Court should only
11 consider the facts "as stated in the Motion." (Moving papers, at 3.) The FTB's motion,
12 however, failed to state or acknowledge the vast majority of allegations in the Complaint.
13 Moreover, Hyatt's opposition merely added details to facts alleged in the Complaint, details
14 which have been developed through discovery and further investigation. The FTB cannot pick
15 and choose the facts on which this motion is based. As detailed below, it must assume Hyatt's
16 allegations in the Complaint are true.

17 The FTB first erroneously asserts that Hyatt "does not allege that he has ever actually
18 paid California income taxes." (Opposition, at 1.) In fact, just the opposite is true. Hyatt has
19 alleged that he paid California state income taxes through the date of his residency there,
20 September 26, 1991. (FAC, ¶ 10.)

21 The FTB then argues that Hyatt's purchase of a "middle class" home in Las Vegas may
22 have been for investment purposes given the rising Las Vegas real estate market,² and it is easy
23 for a wealthy person to establish contacts with Nevada in such manner and then claim residency.
24 (Reply, at 2.) The FTB's apparent implication is that a wealthy person must do more than the
25 average citizen to establish residency, *i.e.* because Hyatt obtained substantial wealth sometime
26 after moving to Nevada he must flaunt it. The assertion is absurd and it improperly attempts to

27 ²Even Sheila Cox, the FTB's key witness and lead auditor, acknowledged that the FTB did
28 not take into account the conditions of the Nevada real estate market in determining whether
Hyatt's Las Vegas home purchase was an indication of his residency.

1 contradict the facts pled by Hyatt. (FAC, ¶¶ 8-9.)

2 The FTB further argues facts such as Mr. Hyatt being "in his home" in La Palma,
3 California in 1992. The FTB questions whether such "home" was sold to his "associate," Grace
4 Jeng. (Reply, at 6.) These assertions by the FTB are contrary to the facts alleged in the
5 Complaint. (FAC, ¶¶ 8-9.)

6 The most significant factual assertion made by the FTB, contrary to the allegations in the
7 Complaint, is that the FTB's contact with Nevada in carrying out the torts alleged was minimal.
8 The FTB goes so far as to say that its lead auditor, Ms. Sheila Cox, had minimal contacts with
9 Nevada and visited, surveilled, spied on, etc. Hyatt on only one occasion in Las Vegas. Hyatt
10 has alleged to the contrary regarding the FTB's conduct in Nevada, and such allegations must be
11 accepted as true for this motion. (FAC, ¶¶ 11-14.)³

12 **IV. THIS NEVADA COURT DOES HAVE SUBJECT MATTER JURISDICTION**
13 **OVER HYATT'S DECLARATORY RELIEF CLAIM.**

14 The FTB continues to fret over Hyatt's declaratory relief claim despite its insistence that
15 "California would not give full faith and credit to a Nevada judgment purporting to determine
16 an action barred under California law." (Motion, at 10.) It also wrongfully characterizes
17 Hyatt's "first and foremost cause of action" as one for declaratory relief concerning "his
18 California income tax liability for 1991 and 1992." This is a tort case. The FTB is in Nevada
19 answering for its tortious conduct here, and Hyatt's tax representative is in California dealing
20 with the FTB's tax investigation of Hyatt.

21 Seeking any port in a storm, the FTB shouts the ultimate: this Court is without subject
22 matter jurisdiction to hear the declaratory relief claim. The ploy is clever but disingenuous.
23 The FTB belatedly notes that the first 27 paragraphs of Hyatt's Complaint "consist[s] almost
24 entirely of references to California income tax matters." However, these references are
25 necessary to provide understanding and context to all of Plaintiff's claims, and to lay the

26
27 ³The FTB's representation in its Reply of only one surveillance of Hyatt's Nevada home
28 is false. Sheila Cox has admitted to a second visit to view Hyatt's Nevada home. Hyatt has also
developed information from other sources establishing that there were more than two occasions on
which the FTB surveilled Hyatt's Nevada home.

1 foundation for refuting the FTB's mournful cry that it has simply, and lawfully, investigated
2 residency and income information given to it by a trusting but disgruntled Gil Hyatt.

3 The FTB contends that the residency issue in Hyatt's declaratory relief claim is relevant
4 only to the FTB's ongoing tax investigation against Hyatt in California, and thus (for
5 unsupported reasons) this Court is without subject matter jurisdiction to consider that issue. The
6 FTB is wrong for several reasons. In addition to Hyatt's Opposition to the FTB's Motion on
7 this issue, he submits the following:

8 In Hyatt's Seventh Cause of Action (for fraud), Hyatt alleges numerous
9 misrepresentations, including the fact that the FTB was using his information only to build a
10 basis for defrauding him into believing that he owed tremendous sums of money (like
11 \$21.8 million) to the FTB for taxes and fraud. In his Complaint, Hyatt alleges that:

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

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

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

28 (d) After declaring plaintiff's sale of his California home on
October 1, 1991 a "sham," the FTB later declined to compare the much less
expensive California home with the home plaintiff purchased in Las Vegas,
Nevada (a strong indication favoring Nevada residency) stating that: "Statistics
(size, cost, etc.) comparing the taxpayer's La Palma home to his Las Vegas home
will not be weighed in the determination [of residency], as the taxpayer sold the
La Palma house on 10/1/91 before he purchased the house in Las Vegas
during April of 1992." (Emphasis added.) (FAC, at 24-25.)

Then after alleging in paragraph 63 (d) that "[t]he FTB's gamesmanship, illustrated in
part, above, constituted an ongoing misrepresentation of a bona fide audit of plaintiff's 1991 tax
year," the Complaint further alleges, at paragraph 67, that "[t]he aforesaid misrepresentations by

1 the FTB and its agents were fraudulent, oppressive and malicious.”

2 In brief, Hyatt is claiming that the FTB’s proposed tax and fraud assessment against him
3 for the periods from September 26, 1991 through April 2, 1992, were part of the malicious,
4 intentional, oppressive scheme to defraud him into paying the FTB a large compromise
5 settlement. That residency period is part and parcel of Hyatt’s fraud claim against the FTB.
6 And it is but the tip of the iceberg! Ongoing discovery has revealed other express
7 misrepresentations that are part of the calculus to defraud and extort money from Hyatt.

8 The case of *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110 (1985) is instructive in
9 the resolution of this issue. In *Edgar*, the district attorney, Wagner, had assisted a wildlife agent
10 in the preparation of an affidavit supporting the issuance of an arrest warrant resulting in the
11 arrest and incarceration of the wrong man. In his civil action against Wagner, plaintiff alleged
12 that the district attorney participated in the preparation of the affidavit with malice, and a
13 deliberate effort to deprive the plaintiff of due process. The *Edgar* court noted that “[a]
14 prosecutor who functions primarily as an administrator or investigator is accorded qualified
15 immunity, that is, protection from liability depends upon a showing that the prosecutor
16 entertained a good faith, reasonable belief in actions taken in an administrative or investigative
17 capacity.” *Id.* Then, the court held: “Assuming, as we must at this juncture, respondent
18 participated in the preparation of the affidavit with malice, and in a deliberately structured effort
19 to deprive appellant of due process, the allegations of the complaint state a claim which, if
20 accepted by the trier of fact, could entitle appellant to relief.” *Id.*

21 The *Edgar* case resulted in a reversal of the district court’s judgment dismissing the
22 action on a Rule 12(b)(5) motion for failure to state a claim upon which relief could be granted.
23 In addressing the standard that applies to such a motion, the court noted that the task for the
24 court was to determine “whether or not the challenged pleading sets forth allegations sufficient
25 to make out the elements of a right to relief.” The court further observed that in reaching such a
26 determination “the allegations in the complaint must be taken at ‘face value, and must be
27 construed favorably in the plaintiff’s behalf.’” (Citation omitted.) The court then ruled: “The
28 complaint cannot be dismissed for failure to state a claim unless it appears beyond a doubt that

1 the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him
2 to relief." *Id.*

3 The *Edgar* case is of value to the instant issue because, interestingly, the district attorney
4 against whom the action was brought, was functioning in an "administrative" or "investigative"
5 capacity (like the FTB) as opposed to a prosecutorial capacity, and enjoyed a qualified
6 immunity based upon whether, in so functioning, he could prove that he "entertained a good
7 faith, reasonable belief" in the propriety of his actions.

8 The reasoning of *Edgar* applies here. The FTB, in its investigative capacity, came to
9 Nevada and committed acts Hyatt has alleged to be fraudulent, malicious, oppressive, and
10 violative of his privacy. These allegations, if believed by the trier of fact, would entitle Hyatt to
11 relief. They have compelling application to the FTB's fraudulent actions with respect to the
12 alleged pretense with which Hyatt sought to demonstrate his Nevada residency for the period
13 September 26, 1991 and beyond. It is unthinkable that this Court would be divested of subject
14 matter jurisdiction to decide whether Hyatt is entitled to the protection accorded all other
15 Nevada residents simply because the FTB contends that its investigative authority in tax matters
16 preempts the jurisdictional right of courts in other jurisdictions to hold it accountable for torts
17 committed in the course of its extraterritorial operations and investigations.

18 Additionally, the FTB cannot sustain its position, discussed in greater detail below, that
19 the doctrine of administrative remedies preempts the subject-matter jurisdiction of this Court
20 notwithstanding Hyatt's claim of fraud in the FTB's determination of residency. The Supreme
21 Court of Illinois grappled with an exhaustion claim in the context of nothing less than a
22 fraudulent tax case. In *Alerich v. Harding*, 172 N.E. 772, 775 (Ill. 1930), appellant contended
23 that the lower court judgment was faulty because of the failure to require the complainant to
24 exhaust his administrative remedies before the reviewing board. The court held that "[f]raud is
25 an independent ground for the exercise of equitable jurisdiction. In this case the bill alleges
26 facts which constitute fraud in the assessment of appellee's property, and of that subject the
27 court will take jurisdiction." *Id.* Moreover, the court stated that "[b]y their action the assessing
28 authorities defeated the remedy of appellee for pursuing his course of law. Under the facts

1 alleged in the bill appellee had the right to resort to a court of equity." *Id.*

2 As in the case of *Alerich*, the FTB, by its fraudulent actions, has prevented Hyatt from
3 obtaining any redress for the injuries inflicted on him.

4 The FTB also too quickly glosses over the effect of NRS 10.155 (which it erroneously
5 cited as NRS 10.115) on the instant action. In pertinent part, the statute provides that "the legal
6 residence of a person with reference to his . . . right to maintain . . . any suit at law or in equity,
7 or any other right dependent on residence, is that place where he has been physically present
8 within the state or county, as the case may be, during all of the period for which residence is
9 claimed by him." The FTB would have the Court believe that this statute is restricted to divorce
10 cases, out-of-state tuition, or voting rights even though it has not cited to any authority in
11 support of its restrictive interpretation.

12 Significantly, however, the FTB declared that this statute "relates only to matters where
13 a person's rights depend on the place of his legal residence." (Reply at 5.) Obviously, if Hyatt
14 was a Nevada resident as of September 26, 1991 and beyond, as he claims, he would have an
15 absolute right to invoke the jurisdiction of Nevada's civil justice system against an aggressive
16 out-of-state taxing agency who was tortiously and unconstitutionally attempting to extort taxes
17 from him for income earned in Nevada during the period of his Nevada residency. The statute
18 clearly applies, and Hyatt has every right to have his Nevada residency confirmed by this Court.

19 Casting aside all of the ornaments, the gist of Defendant's position is that Hyatt, by
20 protesting the FTB's notices of proposed assessment in California, has fallen into its clutches
21 from which there is no return until it finishes with him and thereafter releases him to the Board
22 of Equalization. Hyatt, according to the FTB, can move neither forward, backward, nor
23 sideways at least until the FTB concludes its six-plus year "audit/investigation" of him, and the
24 fact that he is a Nevada resident is not relevant because under some ethereal law, Hyatt has
25 become an FTB captive by virtue of his California protest, and cannot run to a Nevada court for
26 protection. "No subject matter jurisdiction in this Nevada court," protests the FTB. "Hyatt is
27 bound to exhaust his administrative remedies in California with the FTB and its parent, the
28 Board of Equalization, before he can pursue relief in Nevada concerning the issue of his

1 residency and his trumped-up tort claims." All of the foregoing is but symptomatic of the FTB's
2 complex that prevents it from contemplating limitations on its taxing powers. Since its taxing
3 powers are sacrosanct, so are its uses, thereby permitting the FTB to do anything, anywhere, to
4 anyone with impunity.

5 Case law does not support the FTB's claim of exclusivity of subject-matter jurisdiction.
6 In the first place, exhaustion of administrative remedies has no application to this tort case. In
7 the Nevada seminal case of *Hansen v. Harrah's*, 100 Nev. 60, 64-65, 675 P.2d 394, 397 (1984),
8 Hansen was discharged for filing a claim for workmen's compensation. In relevant part, the
9 Hansen court held that "[s]ince both the cause of action and the remedy are governed by the law
10 of torts, there is no basis for administrative relief within the framework of the state industrial
11 insurance system, and hence no need to exhaust purported administrative remedies as suggested
12 by employers." Again, in the case of *Ambassador Ins. Corp. v. Feldman*, 95 Nev. 538, 598 P.2d
13 630, 631 (1979), the court dispensed with the exhaustion of administrative remedies argument
14 in a defamation case and reversed the district court, ruling that "[s]ince the [insurance]
15 commissioner is powerless to grant the relief appellants seek in their suit, the doctrine of
16 exhaustion of administrative remedies is not applicable." This is a Nevada tort case, and there
17 are no administrative remedies in California which could provide Hyatt with redress for his
18 injuries.

19 Moreover, there is no law that supports the proposition that if an administrative agency
20 in California commences a tax investigation against a resident of Nevada which includes a
21 residency component, a Nevada court would be required to cede subject matter jurisdiction to
22 California. In fact, the law is to the contrary.

23 In the case of *Kaski v. First Federal*, 240 N.W.2d 367, 374 (Wis. 1974), the court
24 observed that "[i]n general . . . it can be said that, unless exclusive jurisdiction is given to the
25 administrative agency by statute, a court has subject-matter jurisdiction regardless of whether a
26 litigant ought to exhaust his administrative remedies before submitting his case to the courts."
27 There is no statute in Nevada that provides for an exclusive jurisdiction in an administrative
28 agency of another state, and in the event a Nevada court were to defer to the administrative

1 jurisdiction of the FTB in California, it would clearly be the result of a discretionary act of
2 comity -- dispensation that is unavailable to the FTB for reasons covered in Hyatt's Opposition
3 to the FTB's Motion. The *Kaski* court also noted, with respect to the doctrine of primary
4 jurisdiction that it is not a question of power but of comity. *Id.*

5 The court in *Glen Ridge v. Federal Savings & Loan Ins. Corp.*, 734 S.W.2d 374, 378
6 (Tex. App. 1987) rebuffed the argument asking for reversal based upon a failure to exhaust
7 administrative remedies, stating that "the doctrine of exhaustion of remedies is not a
8 jurisdictional rule but is a matter committed to judicial discretion and an exercise of comity
9 only." (Citing *Morrison-Knudsen Co., Inc. v. CHG International, Inc.*, 811 F.2d 1209, 1223
10 (9th Cir. 1987). See also, *Collins v. Elkay Mining Co.*, 371 S.E.2d 46, 51 (W.Va. 1988) ("the
11 doctrine of administrative exhaustion is not jurisdictional in nature: The general requirement of
12 the exhaustion of administrative remedies is not a jurisdictional doctrine, but is a matter of
13 comity, within the discretion of the trial court") (quoting *Wiggins v. Eastern Associated Coal*
14 *Corp.*, 357 S.E.2d 745 (W.Va. 1987). Moreover, the Supreme Court of New Jersey in *Abbott v.*
15 *Burke*, 495 A.2d 376, 391 (N.J. 1985), in the course of discussing exhaustion concepts, stated
16 "that the preference for exhaustion of administrative remedies is one of convenience, not an
17 indispensable pre-condition." (Quoting *Swede v. City of Clifton*, 125 A.2d 865 (N.J. 1956)).

18 Finally, the court in *Kramer v. Horton*, 383 N.W.2d 54, 59 (Wis. 1986), held that "[t]he
19 exhaustion doctrine applies only when administrative remedies are adequate and readily
20 available. If the administrative remedies are patently inadequate, or are adequate in theory but
21 not in practice due to bias or delay, then the basis for applying the exhaustion doctrine does not
22 exist, and one of the exceptions should allow the plaintiff to escape from the clutches of
23 bureaucratic tyranny." Suffice it to say, that in the FTB's six-plus year "investigation" of Hyatt,
24 there is an abundance of evidence of both bias and delay. This Court must enable Hyatt to
25 escape from the tortious tyranny of the FTB!

26 It should be clear as a matter of law that the FTB cannot invoke in Nevada a superior
27 right of subject matter jurisdiction regarding Hyatt's citizenship under any exhaustion doctrine
28 or other concept. Its only recourse would be to ask for comity, a plea akin to a house burglar

1 caught in the act who thereafter asks the court to grant him the right to have his case heard in his
2 home state where he has greater influence and is better known. As noted above, Hyatt has
3 previously addressed the issue of comity and will not burden the Court with further discussion
4 on the subject here.

5 Interestingly, the FTB accuses Hyatt of filing a "tax case" in Nevada in order to create a
6 barrier to its efforts to tax Hyatt in California by means of either res judicata or collateral
7 estoppel. The simple answer to this accusation is from the FTB's own mouth: "California would
8 not give full faith and credit to a Nevada judgment purporting to determine an action barred
9 under California law." (Motion, at 10.)

10 Finally, the FTB's premise that the Nevada declaratory relief claim is identical to that at
11 issue in the FTB protest proceeding pending in California is also wrong. There are different
12 issues pending in the different forums. The FTB does not have the authority to determine that
13 Hyatt is or is not a Nevada resident. It has authority only to make a preliminary determination
14 as to when Hyatt ceased to be a California resident. Only this Court can determine Hyatt's
15 Nevada residency. For example, the FTB is without authority to determine that Hyatt was and
16 is a Nevada resident after April 2, 1992. The California residency statute defines who is a
17 California resident and then states that all others are California non-residents. *See* California
18 Revenue & Tax Code § 17014 and 17015. A California non-residency determination is not
19 sufficient. Hyatt needs a Nevada residency determination, which the FTB is unable to provide.

20 **V. THE FTB CONTINUES TO ARROGANTLY ASSERT THAT IT CAN APPLY**
21 **AND ENFORCE CALIFORNIA LAW IN NEVADA, ON NEVADA RESIDENTS,**
22 **WITHOUT PERMISSION OR EVEN NOTICE TO NEVADA COURTS.**

23 The FTB's reply goes to great lengths to try to justify its fraudulent and abusive use of
24 its quasi-subpoena power. The FTB's Reply discusses California law and the authority the FTB
25 has under California law to seek information on taxpayers under investigation. (Reply, at 6-9.)

26 The FTB even makes reference to Nevada Rules of Civil Procedure relating to issuance
27 of a subpoena and the Uniform Foreign Deposition Act. (Reply, at 9.) The FTB, however,
28 ignored such statutes. Rather, as set forth in more detail in Hyatt's Opposition and Complaint,
the FTB abused its quasi-subpoena power by fraudulently demanding -- without authority to do

1 so -- that Nevada residents produce information concerning Hyatt. Moreover, this misuse of its
2 quasi-subpoena power is one of the means by which the FTB invaded Hyatt's privacy by
3 revealing very personal and private information about him to newspapers, utility companies,
4 government entities, etc. (FAC, ¶ 33, *et seq.*)

5 Whatever the FTB is empowered to do in California, it does not have such automatic
6 rights in Nevada. A government agency's misuse of its authority, or in this case apparent but
7 false authority, in furtherance of its attempt to collect taxes is tortious.

8 The FTB emphasizes that California law gives it the right to seek depositions within or
9 without the state of California. (Reply, at 9.) It is not the FTB's nor California's prerogative to
10 determine what the FTB can and cannot do in a sister state such as Nevada. Having cited to
11 Nevada's Rules on Civil Procedure and the Uniform Foreign Deposition Act, the FTB knew
12 what was required if it desired to subpoena Nevada residents or "demand" documents from
13 Nevada residents under the cover of official governmental authority. Nevertheless, it chose not
14 to follow such procedures.

15 The premise of the FTB's lengthy discussion of California law is that the FTB can do
16 what it wants to do, where it wants to do it, and when it wants to do it without the permission of
17 any other lawful authority. In other words, there are no limits on its investigative authority.
18 The FTB can and does use excessive force or other tortious conduct to obtain information from
19 Hyatt or any third-party witness, including the issuance of false and deceptive subpoenas in
20 furtherance of the collection of California taxes. Hyatt alleges the FTB cannot engage in such
21 conduct under Nevada law.⁴

22 **VI. CONTRARY TO THE FTB'S ASSERTION, IT IS BOUND BY *NEVADA V.***
23 ***HALL AND MLANECKI* AND IS LIABLE FOR TORTS COMMITTED IN**
24 **NEVADA.**

25 The FTB's liability for torts, and corresponding lack of sovereign immunity, in Nevada
26 based on *Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182, 59 L.Ed. 2d 416 (1979), reh'g denied,
27

28 ⁴Whether California law authorizing the FTB to conduct investigations immunizes it for
all torts while in California, as the FTB seemingly argues, is doubtful but irrelevant to this motion.

1 441 U.S. 917, and *Mianeki v. District Court*, 99 Nev. 93, 658 P.2d 422 (1983), was thoroughly
2 discussed in Hyatt's Opposition. (Opposition, at 20-23.) The FTB now attempts to put a new,
3 and baseless, twist on such precedents in an attempt to avoid their consequences.

4 The FTB cites Sections 820.2 and 860.2 of the California Government Code in asserting
5 that *Nevada v. Hall* has no application to this case. The FTB reasons that Nevada has no state
6 income tax law, and for that reason this Court must look to California law to determine whether
7 or not immunity in regards to the collection of taxes by a government agency.

8 First, as discussed below, the California Government Code sections cited by the FTB do
9 not give it immunity to commit torts under the protective guise of tax collecting. Secondly, the
10 FTB intentionally ignores the facts pled in Hyatt's Complaint which must be accepted as true
11 for the purposes of this motion; Namely, the FTB had substantial and significant tortious
12 contacts in and/or directed into Nevada.⁵

13 *Nevada v. Hall* unequivocally holds that one state may be held liable in the courts of
14 another state for torts. The FTB cites to other Supreme Court decisions mentioning
15 "insignificant contact" but such cases have no relevance to this analysis. Such cases do not
16 involve a state being sued in a sister state. Rather, the issue in such cases relates to choice of
17 law provisions.⁶ In short, the FTB cannot ignore *Nevada v. Hall* by simply asserting that
18 Nevada has no state income tax laws.⁷

19
20 ⁵The FTB also cites to §19504 and 19545 of the California Revenue and Taxation Code
21 in alleging that the FTB has immunity in carrying out its attempts to collect California state income
22 taxes. (Reply, at 17.) Such statutes merely set forth the framework under which the FTB may
23 pursue collection of California state income taxes. It gives no immunity to the FTB for tortious
24 conduct.

25 ⁶*Bradford Elec. Light Co. v. Clapper*, 286 U.S. 145 (1932), was a workers compensation
26 and employment contract case. Application of another state's law was required in part due to the
27 contract. *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1980), was a dispute of choice of law stemming
28 from an insurance coverage case. Neither implicates sovereign immunity nor rebuts, reverses, or
overrides *Nevada v. Hall*.

⁷In fact, Nevada has a taxpayer bill of rights (e.g., NRS 360.291) which is even more
stringent and provides the taxpayer more protections than California law. The FTB therefore again
shows its contempt for Nevada law and Nevada sovereignty by again pretending that it is not
important.

1 For *Mianecki*, the FTB has no answer so it simply ignores the holding of the Nevada
2 Supreme Court wherein it held that government agencies from sister states do not have
3 immunity for torts committed in Nevada. In *Mianecki*, the only conduct engaged in by the out
4 of state agency was the negligent placement of a parolee in Nevada. Because such conduct
5 caused damage in Nevada, the Nevada Supreme Court found that Wisconsin was liable for the
6 tortious conduct.

7 Here, the FTB has engaged in, according to Hyatt's Complaint, a series of significant
8 tortious acts in or directed into Nevada. These acts were part of the FTB's attempt to carry out
9 the FTB's decision to pursue collection of taxes from Hyatt. The FTB's decision to pursue
10 collection of taxes from Hyatt is not at issue, but its conduct in implementing its decision is at
11 issue. Hyatt alleges that such conduct was tortious for which the FTB must now answer in a
12 Nevada court. *Nevada v. Hall* and *Mianecki* give Hyatt this right.

13 **VII. THE FTB DOES NOT HAVE IMMUNITY FOR TORTIOUS CONDUCT.**

14 For the first time, the FTB cites to California Government Code Sections 820.2 and
15 860.2. The FTB declares that these code sections give it and its employees immunity. The
16 immunity, however, has no application to the current case.

17 **A. Section 820.2 has no application here because Hyatt has not sued an FTB**
18 **employee.**

19 Section 820.2 by the very terms quoted in the FTB's reply papers, applies only to public
20 employees, not governmental agencies such as the FTB. Hyatt has not sued any FTB
21 employees.

22 Moreover, such statute applies only to "discretionary" acts of public employees. Such
23 discretionary act immunity has been specifically limited by California courts to basic policy
24 decisions. Conduct engaged in by a government employee in carrying out policy decisions is
25 not immune. *Bell v. State of California*, 63 Cal.App. 4th 919, 929, 74 Cal.Rptr. 2d 541 (1998)
26 held that state investigators' conduct resulting in a false arrest and other tortious acts was not
27 immune as it did not amount to "basic policy decisions" and therefore fell outside the ambit of
28 discretionary acts. *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379 (9th Cir. 1998), held
that Section 820.2 protects basic policy decisions but does not protect operational or ministerial

1 decisions. There, the court explained that state investigators could be held liable for the manner
2 in which the investigation was carried, but not for the decision to pursue the investigation.

3 As this Court is well-aware, only discretionary acts are immune. *O'Neal v. Annapolis*
4 *Hospital*, 454 N.W.2d 148 (Mich. App. 1990). Specifically, there are limits on what the FTB
5 and its employees may do in furtherance of the collection of taxes once a policy decision has
6 been made to pursue collection from an individual such as Gil Hyatt. Such cases establish that
7 in implementing the policies of an agency such as the FTB, its employees may not engage in
8 tortious conduct.

9 **B. Section 860.2 has no application here because Hyatt's claims are not based**
10 **on the FTB implementing a procedure or action to collect taxes.**

11 In regard to Section 860.2, the literal language of the statute makes clear that an
12 individual cannot sue the FTB in tort for injury caused by the FTB as a result of its "instituting"
13 a proceeding or an action to collect taxes. The case cited by the FTB, *Mitchell v. Franchise Tax*
14 *Board*, 183 Cal.App. 3d 1133, 228 Cal.Rptr.750 (1986), held that the plaintiff's complaint for
15 negligence, slander of title, and interference with credit relations were all directly based on the
16 fact that the FTB had instituted an action or proceeding to collect taxes against such individual
17 and placed a tax lien on such individual's property. In other words, the plaintiff was trying to
18 sue merely because an action to collect taxes had been instituted allegedly causing damages.
19 The very fact that the FTB initiated an action against an individual cannot be the basis of a tort
20 claim.

21 However, in the instant case, as Hyatt stated first in his original complaint, then his
22 current First Amended Complaint, and now numerous times in motion practice, this lawsuit in
23 no way attempts to nor does it interfere with the FTB's proceeding in California relating to the
24 tax issues. The torts alleged are not based on the fact that the FTB instituted a proceeding or
25 action to collect taxes. It has a right to do so.⁸

26 Rather, in attempting to collect taxes from Mr. Hyatt, the FTB cannot do so by engaging

27 ⁸ The FTB has previously stated that this lawsuit in no way affects its ongoing proceeding
28 in California. (See Affidavit of Terry Collins, attached to the FTB Motion to Quash filed on
February 1999.)

1 in tortious conduct. Just as a peace officer cannot enforce an arrest warrant with the use of
2 excessive force or other undue means, the FTB cannot implement its policy decision to pursue
3 taxes from Hyatt through excessive force, intimidation, or other tortious means.

4 While there is little case law interpreting Section 860.2, analogous provisions of the
5 California Government Code giving immunity to government agencies and their employees for
6 "instituting judicial or administrative proceedings" have been interpreted as giving immunity for
7 the act of filing or instituting the action, but not for torts committed by employees while
8 implementing the decision to pursue such an action. In short, the decision to initiate the
9 proceeding or action cannot be challenged, but tortious conduct engaged in while the proceeding
10 or action is pending is actionable.

11 Here, [Plaintiff]'s allegations, go beyond the contention that the LAPD
12 officers acted improperly in deciding to seek his arrest. He alleges they
13 acted negligently in conducting the investigation . . . , and they caused his
14 arrest and imprisonment in Mexico.

15 *Martinez*, 141 F.3d at 1379. The plaintiff in *Martinez* therefore was entitled to pursue his tort
16 claims. *Id.*, see also *Bell*, 63 Cal.App. 4th at 929 (held no immunity under Cal. Govt. Code
17 § 821.6 to state investigators for conduct in executing a search warrant.)

18 As has been its practice, the FTB attempts to misconstrue the language of Section 860.2.
19 It asserts without explanation or citation to authority that the statute means any action taken is
20 immune, thereby ignoring the plain language stating that it is the "institution" of a proceeding or
21 action which is immune. In any event, whether the FTB can commit torts in California, under
22 California law, while collecting taxes is not germane to this case. As set forth above, under
23 *Nevada v. Hall* and *Mianecki*, the FTB can and will be held liable for torts directed at Nevada,
24 causing damage in Nevada, aimed at a resident of Nevada.

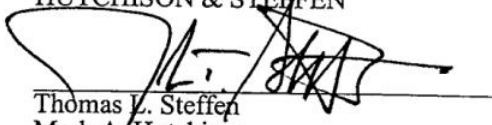
25 Try as it might by incessantly repeating its theme, the FTB cannot make this a tax case
26 or case of an individual attempting to interfere with tax collection. While the FTB cannot be
27 held liable for its decision to seek California state income taxes from Gil Hyatt, it can be held
28 liable for its excesses and intimidation in the form of fraud, invasion of privacy, abuse of
process, etc. as alleged by Hyatt. The FTB can collect its taxes, if any are owed, but it also must
pay for its torts if so ordered by a Nevada court.

1 **VIII. CONCLUSION.**

2 This Court has subject matter jurisdiction to hear and resolve all claims asserted by
3 Hyatt in this action, the FTB has no immunity in Nevada for the tortious conduct it commits in
4 or directs into Nevada. This case must be decided on its merits at trial.

5 Respectfully submitted this 22 day of April, 1999.

6
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EXHIBIT 10

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

16 * * * * *

17 GILBERT P. HYATT,
18 Plaintiff,

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

19 vs.

20 **DEFENDANT'S RESPONSE TO**
21 **PLAINTIFF'S SURREPLY**

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

25 **FILED UNDER SEAL**

26 Defendants.

Date of Hearing: 5/10/99

27 Plaintiff continues to obfuscate and makes new, incorrect statements in his proposed Surreply
28 brief. If the Court is inclined to consider that brief, Defendant respectfully requests the Court also
consider this response thereto.

29 **LACK OF SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME**

30 In its Motion for Judgment on the Pleadings, the FTB has challenged this Court's exercise of
31 subject matter jurisdiction. *See, e.g. Motion at lines 24-28:*

32 The Plaintiff is currently engaged in "scorched earth" discovery
33 against the FTB as to matters for which the Nevada Court has no
34 subject matter jurisdiction, claims which are not properly pled, issues

pending in an ongoing California administrative proceeding, and claims which are barred under Nevada and California law. (*Emphasis added*).

Plaintiff spends most of his proposed Surreply arguing over whether the FTB's motion is proper and what the standard is to decide the motion. Contrary to Plaintiff's arguments, lack of subject matter jurisdiction may be raised at any time.

Nev.R.Civ.Pro. Rule 12(b)(1) authorizes a motion to dismiss for lack of subject matter jurisdiction. Rule 12 (h)(3) further provides:

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

The Nevada Supreme Court has held that the absence of subject matter jurisdiction is never waived and generally may be brought to the court's attention at any time and in almost any manner. *Meinhold v. Clark County School District*, 89 Nev. 56, 59, 506 P.2d 420, 422 *cert. denied*, 414 U.S. 943 (1973). In fact, it is within the inherent powers of all courts to inquire into their own jurisdiction and to determine if jurisdiction over the subject matter exists. *In re: Estate of Singleton*, 26 Nev. 106, 111, 64 P. 513 (1901). Where a court believes a doubt exists as to its jurisdiction, the court has a duty to raise and decide the issue *sua sponte*. *Phillips v. Welch*, 11 Nev. 187 (1876).

Although the Nevada Supreme Court apparently has not addressed the precise issue, some federal courts have permitted a defending party to raise a lack of subject matter jurisdiction on a Rule 12(c) motion for judgment on the pleadings. *See Wright & Miller, Federal Practice and Procedure: Civil 2d* § 1350 at page 200 and § 1367 at page 515: "...Rule 12(h)(3) states that whenever it appears that the court lacks jurisdiction over the subject matter the action may be dismissed, which, of course, means that the defense may be raised on a motion under Rule 12(c)." The FTB's use of Rule 12(c) to bring its motion in this case is appropriate given the language in Nev.R.Civ.Pro. Rule

12(h)(3) allowing lack of subject matter jurisdiction to be raised by a mere "suggestion of the parties or otherwise."

There are two types of challenges to subject matter jurisdiction: facial and factual. A facial attack argues that the allegations in the complaint are insufficient to show that the court has jurisdiction over the subject matter of the case. If the complaint does not properly invoke the court's jurisdiction, then the complaint is defective, and, unless the deficiency is cured, a motion to dismiss must be granted regardless of the actual existence of subject matter jurisdiction. A factual attack challenges the court's actual lack of jurisdiction over the subject matter, a defect that may exist despite the formal sufficiency of the allegations in the complaint. *See generally, Wright & Miller, § 1350 at pages 211-212.*

Here, this Court's lack of subject matter jurisdiction appears on the face of the complaint.

See, e.g.

5: ... (1) This is an action for, inter alia, declaratory relief; (2) substantial issues of public policy are implicated concerning the sovereignty of the State of Nevada and the integrity of its territorial boundaries as opposed to governmental agencies of another state who enter Nevada in an effort to extraterritorially, arbitrarily and deceptively enforce their policies, rules and regulations on residents of Nevada in general, and Plaintiff Gilbert P. Hyatt in particular;...

7: Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 et seq. to confirm Plaintiff's status as a Nevada resident effective as of September 26, 1991 and continuing to the present and, correspondingly, his non-residency during said period in California.

The prayer for judgment on Plaintiff's First Cause of Action is:

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

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

These are not just facial pleading defects. The defects are factual defects that go to the essential substance of the complaint. This Court does not, in fact, have subject matter jurisdiction, notwithstanding Plaintiff's conclusory legal allegations and argument to the contrary.

The party asserting jurisdiction has the burden of proving that subject matter jurisdiction exists. *Wright & Miller*, § 1350 at page 226. While the complaint will be construed broadly and liberally, the Court accepts only the well-plead factual allegations as true for purposes of deciding the motion, not conclusory or legal allegations. Argumentative inferences favorable to the pleader "will not be drawn." *Id.* at pages 218-220.

Although the FTB's motion was labeled as a Rule 12(c) motion for judgment on the pleadings, its title could just as easily have included a motion to dismiss under Rule 12(h)(3). As the FTB pointed out at page 3 of its Reply:

The instant Motion tests subject matter jurisdiction which cannot be waived (*See, NRCP 12(h) (3)*) and raises the issue of failure to state claims upon which relief can be granted which is appropriate either before answering or in a motion for judgment on the pleadings. (*See, NRCP 12(h)(2)*). (*Emphasis in original*).

The failure to include a motion to dismiss for lack of subject matter jurisdiction under Rule 12(h)(3) in the title of the motion is a mere matter of label over substance.

Whatever the label, the inquiry is the same: assuming the truth of all of Plaintiff's factual allegations (not his self-serving conclusory and legal allegations which permeate the complaint), has Plaintiff stated claims over which this Court may grant relief? In this regard, a Rule 12(c) motion for judgment on the pleadings raises the same challenge as a motion to dismiss for failure to state a claim;

1 i.e., both assume the well-pleaded factual allegations in the complaint are true. *Federal Civil*
2 *Procedure Before Trial* 9:198 at page 9-45 (1998); *Wright & Miller* § 1367 at pages 514-517
3 (defendant may assert both a lack of subject matter jurisdiction and failure to state a claim upon which
4 relief can be granted under Rule 12(c) because under Rule 12(h) both defenses are preserved;
5 regardless of the form of the motion, the court applies the same standard). For all the reasons
6 previously stated by the FTB, when Plaintiff's factual allegations are examined (not his self-serving
7 conclusory assertions), it is clear that no claim against the FTB upon which this Court can grant relief
8 is stated. Judgment on the pleadings is therefore appropriate.

9
10 Plaintiff cites *Bernard v. Rockhill Development Co.*, 103 Nev. 132, 734 P.2d 1238 (1987) as
11 precluding the FTB's motion because it is labeled a Rule 12(c) motion and the FTB has not admitted
12 all of Plaintiff's allegations in its Answer. Contrary to Plaintiff's argument, *Bernard* does not
13 preclude the Court from considering the FTB's motion.

14
15 First, as previously shown, the FTB's motion challenges this Court's subject matter
16 jurisdiction, which was not at issue in *Bernard*. Also as previously shown, this Court has the inherent
17 duty to determine if it has subject matter jurisdiction. And, the FTB has the right to raise a lack of
18 subject matter jurisdiction "at any time" under Rule 12(h)(3).

19
20 The *Bernard* opinion cited to *Wright & Miller* § 1367 at page 510 for the proposition: "The
21 motion for a judgment on the pleadings only has utility when all material allegations of fact are
22 admitted in the pleadings and only questions of law remain." While that is a correct quotation from
23 *Wright & Miller*, the statement is not completely dispositive. *See e.g. Wright & Miller* § 1367 at
24 pages 514-517 cited above. In addition, the *Bernard* opinion also cited to Section 1368 of *Wright*
25 & *Miller*. That section states, in pertinent part at page 523:

26
27 Although a moving party, for purposes of the motion, concedes the
28 accuracy of the factual allegations in his adversary's pleading, he does

not admit other assertions that constitute conclusions of law, legally impossible facts, or matters that would not be admissible in evidence at trial. (*citations omitted*).

That is the posture of the FTB's motion: assuming the truth of Plaintiff's factual allegations, Plaintiff has failed to state claims over which this Court has subject matter jurisdiction. The FTB did not have to admit to all of Plaintiff's allegations in order to bring its motion. *See also Wright & Miller § 1370 at page 538*:

In considering motions under Rule 12(c), courts frequently indicate that a party moving for a judgment on the pleadings impliedly admits the truth of his adversary's allegations and the falsity of his own assertions that have been denied by his adversary. These implied admissions are effective only for purposes of the motion and do not in any way bind the moving party in other contexts or constitute a waiver of any of the material facts that will be in issue if the motion is denied. (*Citations omitted*).

PLAINTIFF'S SURREPLY MISSCITES NEVADA v. HALL

At page 14, lines 13-14 of his proposed Surreply, Plaintiff argues:

Nevada v. Hall unequivocally holds that one state may be held liable in the courts of another state for torts.

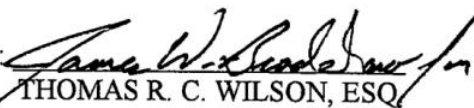
Contrary to what Plaintiff would have this Court think, Nevada v. Hall, 440 U.S. 410, *reh'g denied*, 441 U.S. 917 (1979), does not "unequivocally" hold any such thing. The majority opinion contains an important footnote that qualifies the entire decision. Plaintiff ignores that footnote:

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

1 For this Court to exercise subject matter jurisdiction in this case would constitute a substantial
2 threat to our constitutional system of cooperative federalism in that it would interfere with
3 California's capacity to fulfill its own sovereign responsibilities, namely to perform its administrative
4 responsibilities to determine whether or not Plaintiff was a permanent resident of California and
5 subject to California's tax on income. Accordingly, this Court must dismiss Plaintiff's complaint for
6 all the reasons previously stated by FTB.
7

8 Dated this 6 day of April, 1999.

9
10 Respectfully submitted,
11 McDonald Carano Wilson McCune
12 Bergin Frankovich & Hicks LLP

13
14 By: 
15 THOMAS R. C. WILSON, ESQ.
16 MATTHEW C. ADDISON, ESQ.
17 BRYAN R. CLARK, ESQ.

18 Attorneys for Defendants

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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 the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S SURREPLY** via Facsimile to (702) 385-2086 and by U.S. Mail on this 6th day of April 1999, upon the following:

Thomas L. Steffen, Esq.
Mark A. Hutchison, Esq.
Hutchison & Steffen
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Las Vegas, NV 89117

and by depositing the same in the United States Mail, postage prepaid thereon to the numbers noted below, upon the following:

Felix Leatherwood, Esq.
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Attorney General's Office
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Harold A. Shisuri
An Employee of McDonald Carano Wilson
McCune Bergin Frankovich & Hicks LLP

EXHIBIT 11

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1 CASE NO. 98-A382999
 2 DEPARTMENT XVIII
 3 DISTRICT COURT
 4 CLARK COUNTY, NEVADA
 5 -oOo-
 6
 7 GILBERT P. HYATT,)
 8 Plaintiff,)
 9 vs.) REPORTER'S TRANSCRIPT
 10) OF
 11 FRANCHISE TAX BOARD OF)
 12 THE STATE OF CALIFORNIA,) PROCEEDING
 13 Defendant.)
 14
 15 BEFORE THE HONORABLE NANCY SAIITA, DISTRICT JUDGE
 16
 17 WEDNESDAY, APRIL 07, 1999
 18 10:00 a.m.
 19 APPEARANCES:
 20 For the Plaintiff: THOMAS L. STEFFEN, ESQ.
 21 JOHN T. STEFFEN, ESQ.
 22 THOMAS K. BOURKE, ESQ.
 23 DONALD J. KULA, ESQ.
 24
 25 For the Defendant: THOMAS R. C. WILSON II, ESQ.
 26 JAMES W. BRADSHAW, ESQ.
 27 GEORGE M. TAKENOUCHI, ESQ.
 28 FELIX LEATHERWOOD, ESQ.
 29
 30 Reported by: Karen G. Mell, CCR No. 412
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1 MR. WILSON: Your Honor, if I may, I'm going
 2 to put this on the table for something to put my papers
 3 on. And I know that you have been inundated with a
 4 stack of papers, and I don't intend to revisit those.
 5 All I intend to do this morning is to try and provide
 6 some practical, if that's the word, context for the
 7 reasons why we're here and the history of this case,
 8 and I don't propose to revisit the cases or beat up on
 9 what already has been the subject of an awful lot of
 10 attention on paper.
 11 MR. T. STEFFEN: Counsel, while you're having
 12 a sip of water -- may I, Your Honor, ask if the
 13 plaintiff's request for the filing of the surreply and
 14 the defendant's request for response thereto will both
 15 be considered by the Court?
 16 THE COURT: Both are going to be considered.
 17 I'm prepared to go forward with that.
 18 MR. T. STEFFEN: Thank you.
 19 MR. WILSON: I'm glad we have water. Lawyers
 20 are like plants, Your Honor, and they have the same
 21 process of evapotranspiration. Instead of taking the
 22 water out of the ground and letting the sun take it,
 23 why, we talk a lot, and I apologize for that.
 24 THE COURT: Precisely the same concept. I
 25 believe you.

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1 LAS VEGAS, CLARK COUNTY, NV.; WED., APRIL 07, 1999
 2 10:00 a.m.
 3 -oOo-
 4 PROCEEDINGS
 5 THE COURT: This is Hyatt versus California
 6 State Franchise Tax Board. This is the defendant's
 7 motion for judgment pleadings.
 8 You may rest assured, all of you, that I have
 9 spent countless hours reading everything that you have
 10 prepared. And the emphasis was on purpose just then,
 11 so what I'm going to ask you to do, please keep your
 12 arguments brief. What I generally ask people to do in
 13 this type of situation, highlight or emphasize for me
 14 those matters that you feel are most important, and
 15 trust me when I say I have read all the pleadings as
 16 well as the case law, the voluminous case law that was
 17 submitted in support of your documents.
 18 So with that in mind, Defense, would you like
 19 to start, please.
 20 MR. WILSON: Thank you, Your Honor. My name
 21 is Thomas Wilson. I'm Nevada counsel for FTB. Let me
 22 introduce Jim Bradshaw, who also is; George Takenouchi,
 23 Deputy Attorney General from California; and Felix
 24 Leatherwood also.
 25 THE COURT: Good morning, and welcome.
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1 MR. WILSON: Your Honor, this matter, of
 2 course, as you observed a moment ago, arises on the
 3 defendant's motion for lack of -- to be dismissed for
 4 lack of subject matter jurisdiction, and I really want
 5 to address broadly the two parts to that. One is the
 6 first cause of action for which the plaintiff seeks
 7 certain declaratory relief; and the second part, on the
 8 tort causes of action.
 9 This case arose because a long-time
 10 California resident, Mr. Hyatt, moved to Nevada, which
 11 is a non-taxing state. And there's nothing wrong with
 12 that, and that's known as tax avoidance. And the
 13 issue, of course, is when he became domiciled here and
 14 whether he was here as a matter of permanent residence
 15 during the critical period of time, which seems to be
 16 September 26th of '91 to April the 3rd of '92. And
 17 when he was here in the permanent residence and whether
 18 his presence in California was merely transitory and
 19 temporary or whether it was the other way around, that
 20 really is the factual question which is the subject of
 21 the administrative process in California. And we have
 22 parts of two years which are in controversy, of course,
 23 the latter part of '91 and the earlier part of 1992.
 24 Mr. Hyatt filed two protests in the
 25 administrative process. He entered an appearance, if
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1 you will, and filed a protest on June the 20th of 1996
2 for that part of the residency audit, an assessment
3 that was levied for 1991. Then, on October 20 of '97,
4 he filed a protest for that portion of the year of 1992
5 which is in controversy. Those were filed with the
6 California FTB, or Franchise Tax Board, as it's
7 called.

8 Two-and-a-half months after his protest of
9 October 20 of '97, he filed on January the 6th of '98,
10 just last year, his Complaint in this Nevada Court
11 seeking relief. And I had second thoughts about
12 bringing boards this morning because, A, you've read
13 the briefs and, B, we're not arguing to a jury, but on
14 that board is simply the prayer that the plaintiff has
15 made asking for a declaratory judgment and asking for,
16 I guess, certain injunctive relief.

17 And, of course, by that, he seeks a judgment
18 confirming that he, Mr. Hyatt, is a bona fide resident
19 of this state effective as of September the 26th of 91
20 forward to this date. And he asks for judgment
21 declaring that the FTB has no lawful basis for
22 continuing to investigate him -- that is, the residency
23 audit in Nevada -- for the same period of time or any
24 other subsequent period and declaring that the FTB had
25 no right or authority to propound or otherwise issue a

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1 domicile is. One can have multiple residences, only
2 one can be a domicile, as the Court knows. You've seen
3 litigation among states, usually trying to share in the
4 state taxes where one domicile in one state is wealthy
5 and has a home in Florida and maybe a home in Montana,
6 and so all the states decide they want to get in and
7 participate in the largess at the taxpayer's death and
8 litigate where he was domiciled. That's not unusual,
9 but I suppose it's similar to this case.

10 What the defense is troubled by is the nexus
11 between the declaratory judgment with respect to
12 residency and it's relevancy to the tort issue. And we
13 are told in Plaintiff's opposition to our motion for
14 judgment that the tort issues are inextricably
15 intertwined, if I recall the word, with the tort
16 action. They're one and the same, and they really
17 can't be separated.

18 I've always been of the view that the law was
19 quite clear that even a tourist could sue for tortious
20 conduct in a different state. And certainly one who
21 has a home here who may not be domiciled here can sue.
22 I'm never thought that one had to be either a resident
23 to sue when suffering tortious conduct or, even more,
24 be domiciled here to sue for tortious conduct. Yet,
25 that seems to be what the plaintiff is saying in

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1 demand to furnish information or other what the
2 plaintiff calls quasi subpoenas to Nevada residents
3 seeking information concerning.

4 The first part of the prayer, of course,
5 raises a question about the significance of that kind
6 of declaratory judgment with California's
7 administrative process and whether, as a practical
8 matter, it becomes entitled to full faith and credit
9 under the U.S. Constitution and thereby would be
10 preemptive of the FTB or the State of California's
11 jurisdiction to determine and resolve the residency
12 issue which was the subject of the audit.

13 This would mean that they could not in the
14 administrative process or by the Board of Equalization,
15 which reviews those decisions by the FTB -- or even a
16 California Superior Court could not review and
17 adjudicate that question, given full faith and credit.

18 And, of course, he also addresses the court case.
19 Now, Mr. Hyatt, of course, indicates that
20 this is a tort case and a -- a tort case in Nevada and
21 a separate tax case in California. There's some
22 confusion, I think, between the tort causes of action
23 and the residency issue for which he seeks declaratory
24 judgment.

25 And we know that permanent residency is what
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1 arguing that there is some inextricable intertwining of
2 the two causes of action where you can't really have
3 one without the other.

4 I frankly don't understand that. If one has
5 suffered tortious conduct and is aggrieved by it, is
6 emotionally harmed by it, is embarrassed by it because
7 that conduct somehow affected the plaintiff's circle of
8 friends or acquaintances or others, business associates
9 whom he knows where he has a residence, whether he's
10 domiciled in the residence or not, the question of
11 residence would be relevant to damages, it seems to
12 me.

13 If one is not a resident, then I suppose you
14 question whether or not there really is a circle of
15 friends and business associates and the like who
16 becoming aware of an investigation, that it's been such
17 an egregious embarrassment, mental pain and suffering,
18 if you will, that you claim some consequence of the
19 egregious conduct which you claim is tortious. And so
20 you establish residency and thereby establishing an
21 environment of friends and acquaintances whose view of
22 you has been diminished and, therefore, you sue for
23 mental anguish.

24 I suppose you could argue that theory, but
25 that's not to say that it's jurisdiction. That's not
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1 to say that you have to be a resident to sue. It's not
 2 to say that you have to be a domicile to sue. It
 3 simply means that the plaintiff can take the witness
 4 stand if the Court has not dismissed the claims of
 5 tortious conduct and testify to why he was emotionally
 6 damaged or aggrieved or embarrassed or whatever the
 7 circumstances are for which he seeks monetary damages.
 8 Doesn't require declaratory judgment at all.
 9 It's a simple question of fact going to the
 10 question of whether or not he has been damaged by the
 11 egregious conduct. So I am perplexed, to say the
 12 least, that we have it argued that we have some
 13 inextricable combination of the two that defies their
 14 separation.

15 Hyatt's prayer in the first cause of action
 16 is indeed telling, it seems to me, because in the first
 17 claim for relief it would decree that California has no
 18 power of authority to inquire or investigate Nevada at
 19 all, which is to say that one state may not investigate
 20 in another without the other state's authority.

21 The 13th paragraph of the Complaint raises
 22 some interesting concepts that relate to California's
 23 power to investigate as a member of a union,
 24 constitutionally, of other states, all of whom have
 25 certain sovereign powers. In paragraph 13, why, the
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1 side resident of the State of Nevada effective from
 2 September 26, 1991 to the present. This, of course, is
 3 the -- I haven't gotten to the prayer yet, which is on
 4 the board, but this is a prelim to the prayer on what
 5 Plaintiff seeks. But then Plaintiff goes on to seek a
 6 judgment declaring that the FTB's extraterritorial
 7 investigatory excursions into Nevada -- that's rather
 8 colorful language, but the sense of it is clear -- and
 9 the position of quasi subpoenas -- those are documents
 10 seeking information -- to Nevada residents without
 11 approval from a Nevada court or governmental agency as
 12 alleged above to be without authority and violative of
 13 Nevada's sovereignty and territorial integrity.
 14 And you see the prayer of the Complaint which
 15 seeks judgment accordingly.

16 This is California's interstate inquiry. Of
 17 and by itself it is not a tort. It's necessary to the
 18 relationship among the states. It's necessary to
 19 California's exercise -- any state's exercise of its
 20 taxing authority, and that's the ability to audit and
 21 verify. States do that in other states without the
 22 need for obtaining governmental or Court permission to
 23 enter the adjoining state and make inquiry.

24 What California has sought to do is to verify
 25 Mr. Hyatt's permanent residency in this state. That
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1 plaintiff alleges that he is informed and believes and
 2 alleges that the FTB never sought permission from a
 3 Nevada Court or any Nevada governmental agency to send
 4 such, quote, "quasi subpoenas," close quote, into
 5 Nevada where, induced by the authoritative appearance
 6 of the inquisitions, many Nevada residents and business
 7 entities did respond with answers and information
 8 concerning Plaintiff.

9 Now, that's to say that if the State of
 10 California is going to seek information in this state
 11 in fulfillment of its taxing obligations to determine
 12 whether or not one is a resident and, if so, is subject
 13 for taxes and, if so, how much, the State of California
 14 has to seek approval from a Nevada Court or some Nevada
 15 governmental agency in order to do so. And I find that
 16 perplexing. I don't understand it, and that's really
 17 unique, it seems to me, in the relationship of
 18 sovereign states who enjoy a structure of cooperative
 19 federalism, I guess as it's called in the texts, which
 20 defines the relationship among states which indeed are
 21 separately sovereign but nevertheless are co-equal and
 22 coexistent in a federal union.

23 But Plaintiff goes on at paragraph 32 of his
 24 Complaint to request a judgment of this Court declaring
 25 and confirming Plaintiff's status as a full-time, bona
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1 is, whether he's domiciled in Nevada and his presence
 2 in California during the subject period of time,
 3 September 26, '91 to April 3, '92 -- whether his
 4 presence in California was simply for some transitory
 5 or temporary purpose or whether he really remained
 6 domiciled in California and his presence in Nevada was
 7 for some transitory or temporary purpose and
 8 notwithstanding that he had purchased a home here.
 9 I might say that the notion that one has to
 10 get governmental approval for a sovereign's activity in
 11 another state would have rather interesting
 12 implications for the State of Nevada because, as the
 13 Court knows and just about everybody in Nevada knows,
 14 is that gaming is legalized in this state, and for a
 15 long, long period of time now, for many, many years,
 16 it's been regulated by the Nevada Gaming Control Board
 17 and its senior body, the Gaming Commission.

18 Those two entities are governmental agencies.
 19 They exercise a sovereign power and responsibility of
 20 the State, and part of their job is to determine under
 21 the statutory mandate who is and who is not suitable to
 22 be awarded a gaming license. This involves inquiry out
 23 of state. Out-of-state investors invest in Nevada
 24 casinos. Whether one is a Nevada resident or one is a
 25 resident of another state, they have to appear for
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1 licensure. They are investigated. Their applications
2 are verified. All kinds of investigation goes on out
3 of state to determine suitability, financial
4 relationships, other relationships, the suitability of
5 the people with whom the proposed licensee does
6 business or associates with. And as the Court would
7 probably take judicial notice, sometimes gaming
8 licenses are denied and sometimes gaming licenses are
9 revoked because one is not suitable for licensure. Or
10 one is not suitable to retain a gaming license, and
11 it's revoked.
12 That inquiry and the exercise of that
13 sovereign power is based upon an inquiry. The FTB
14 calls theirs a residence audit to determine where
15 somebody really lives. The Gaming Board, I don't think
16 they call it an audit, I think they just call what it
17 is, an investigation. But I must say that's a
18 sovereign exercise of Nevada's power, and I've never
19 heard of either of those entities going to a foreign --
20 another state's courts or government agencies to make
21 application to conduct an investigation, which
22 oftentimes is done confidentially or in secret or
23 without any notoriety.
24 It's for this reason, the attempt to preempt,
25 if you will, by a declaratory judgment that the
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1 of California while he developed his computer chip
2 technology, and it was finally patented, and there's
3 nothing wrong with moving from California to a tax-free
4 state to avoid California taxes. It's a question of we
5 know he acquired a rental apartment, the auditor has
6 raised issues as to whether he's lived in it, how
7 frequently he's been there, or whether his trips to
8 California were only temporary or transitory or more
9 permanent. And the auditor conducted her audit, and
10 she reached the conclusions she reached.
11 They call those residence audits in
12 California, and their purpose is to determine, as I
13 say, where one's domicile is and whether one's presence
14 was transitory or temporary, and it's subject to review
15 by the FTB. It's also subject to review by the
16 California Board of Equalization, and it's subject to
17 appeal to the California Superior Court. As I
18 indicated, after protesting and entering the
19 administrative process, why, this Complaint was filed
20 two-and-a-half years after the protest that was filed
21 for the second year, and this Complaint was filed a
22 little over a year ago -- I say, two-and-a-half months;
23 I misspoke. The second audit was concluded, I think,
24 in October of 1997, and this action was filed in -- on
25 January the 6th of 1998.
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1 defendant raises the question of subject matter
2 jurisdiction. I know that its motion was captioned the
3 Motion for Judgment on the Pleadings, and I know there
4 was a reference to NRCP 12(c), but the motion is clear
5 under Section A on page 5, up front. And that is that
6 Plaintiff's declaratory action must be dismissed
7 because the Court lacks subject matter jurisdiction.
8 NRCP 12(b)(1), well, if you've read it, I
9 don't need to talk about it. But NRCP 12(h)(3) is very
10 clear, whatever it appears by suggestion of the parties
11 or otherwise. However informally that the Court lacks
12 jurisdiction of the subject matter, the Court shall
13 dismiss the action. That means the Court can do it sua
14 sponte without the benefit of motion or how the
15 question might otherwise be raised.
16 The FTB issue, California's issue, has to do
17 with whether there is income which should be taxable in
18 California, and as I said before, where one is
19 domiciled and where Mr. Hyatt is domiciled during the
20 period in question, and whether, as stated by the
21 plaintiff in its Complaint, if he was in California
22 only for temporary or transitory purposes while
23 domiciled in Nevada or whether it's the other way
24 around. It's a question of fact.
25 As I said, Mr. Hyatt was a long-time resident
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1 So we have an ongoing administrative process
2 requested by the taxpayer, the plaintiff, who has filed
3 protests to the audit conclusions for both years and
4 who, after filing a second protest two-and-a-half
5 months later, filed this action for declaratory
6 judgment and is seeking a judgment that California
7 can't investigate Hyatt's residency in Nevada at all
8 and can't inquire and seek information of Nevada
9 residents with respect to his residency in Nevada and
10 for the nature of a declaratory judgment with respect
11 to that residency for which Mr. Hyatt could then go to
12 California and say, "You've got to give this judgment
13 full faith and credit. It has the effect of
14 res judicata, and you can't disturb it under the
15 constitutional mandate of res judicata."
16 That administrative process is still
17 pending. As I say, it was initiated by his protests
18 when they were filed. He can pursue that process. He
19 can pursue his review to the State Board of
20 Equalization and judicial review in California, if he
21 likes.
22 I guess the question before this Court is
23 whether it has subject matter jurisdiction over the
24 administrative process of another sister sovereign
25 state which is really engaged in one of its most
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1 important sovereign responsibilities, and that is the
2 collection of revenue and to determine what, if any,
3 taxes are owing by a present or former California
4 resident of that state.
5 Mr. Hyatt in his surreply has stated that
6 recognizing that there is a matter pending in
7 California -- on page 5 in his surreply, Roman
8 Numeral IV, he states: The FTB is in Nevada answering
9 for its tortious conduct here, and Hyatt's tax
10 representative is in California dealing with the FTB's
11 tax investigation of Hyatt.
12 That's in the paper that was just filed. The
13 plaintiff apparently recognizes that his tax
14 representative is in California dealing with the FTB,
15 and that suggests, I guess, that the plaintiff intends
16 actively to pursue the administrative process in
17 California while at the same time he's seeking a
18 declaratory judgment in this state precluding that,
19 preempting that. That's a rather fundamental
20 inconsistency, and I think it reflects as a practical
21 matter what we're really talking about here, and that's
22 a judgment from this State's court which is preemptive
23 of California's activity administratively and
24 judicially as to whether or not there is a tax
25 liability.

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1 We're talking about injunction and declaratory relief
2 with respective fundamental basic sovereign rights of a
3 sister state belonging to the same union they all do
4 and in this generally defined relationship of
5 cooperative federalism.
6 As pled, Your Honor, there's been a lot of
7 hyperbole and colorful language in the Complaint with
8 respect to outrage and a lot of other things. But as
9 pled, the only conduct by the State which has been
10 pled -- and I'm separating it from its
11 characterization -- is that it has made an inquiry and
12 has talked to others in Nevada who may know or are
13 acquainted or are friends of Mr. Hyatt, about which he
14 is upset and outraged. And they have used his name and
15 his address and his Social Security number in making
16 that inquiry, I suppose, to make it accurately, to be
17 able to verify his presence and contacts in Nevada and
18 the larger question, whether the nature of his contacts
19 and residency in Nevada suggests that residency has
20 been permanent, and that it seemed to suggest a
21 domiciliary intent to live in Nevada and make it his
22 home permanently and that any transitory or temporary
23 presence in California were simply that and nothing
24 more. That really is all we're talking about here.
25 I understand there's been some comment made
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1 And I'm not prejudging whether there's a tax
2 liability. I'm not standing here before you saying
3 there is. The process hasn't run its course. There
4 has not been the review by the FTB or the Board of
5 Equalization or the California court. I'm simply
6 saying as a sovereign state California has the
7 obligation and the right to fulfill it's obligation and
8 do that.
9 Passing to the tort claims, I think there's a
10 basic question as to whether or not there's subject
11 matter jurisdiction over the tort claims as they're
12 pleaded. I know that Plaintiff has cited Nevada versus
13 Hall, and that, of course, is a case where Nevada had
14 waived its sovereign immunity with respect to actions
15 by some employees. And, in that case, the Nevada
16 employees, as you know, were driving down in California
17 and hit somebody, and the State was liable.
18 That's not to say in contrast with the
19 holding in that case that there's been a waiver of
20 sovereign immunity with respect to a State's right to
21 pursue and perform its obligations of a sovereign to
22 collect its tax revenues and, if necessary, to levy
23 them. And that's what we're talking about here. We're
24 not talking about a waiver of immunity over a traffic
25 accident by one State's employees in other state.

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1 in the pleadings with respect to demands for
2 information which are said to be outrageous. It's a
3 form that -- as discussed in the briefs, that a
4 California FTB employee will use to seek information
5 locally. Many of those were attached to letters, but
6 they were sent out of state and used to contact some
7 Nevada people to make inquiries.
8 Is that a tort? Is that contact tortious?
9 Plaintiff may indeed be outraged because his privacy
10 was compromised. He may indeed be understandably angry
11 because to ask a question about how long has he lived
12 here and, "I'm from the FTB, after all, and I'm a tax
13 collector from California, how long has Mr. Hyatt lived
14 here," that's an awkward situation for anybody to be
15 in, and I'm sure he was offended by it. But that does
16 not mean it was tortious because to ask the question, I
17 suppose, raises the question of whether it can
18 potentially be embarrassing. But how do you ask the
19 question? How do you ask the question without somebody
20 who knows Mr. Hyatt understanding by the question that
21 California is trying to determine whether or not he
22 owes California taxes and whether he's evading them?
23 I don't know how you ask the question, but
24 somehow the question has to be asked. The auditor
25 somehow has to make sufficient inquiry to be able to
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1 conclude one way or another. And, of course, if the
2 conclusion is adversary, as it has been, Mr. Hyatt is
3 free to follow the process available to him to present
4 additional evidence and to argue his case and perhaps
5 change the outcome.
6 The point of this discussion, I guess, is
7 simply to say that Hyatt's tort claims, as pled, really
8 are the subject of the California audit process. That
9 is, because they have audited, because they have
10 inquired, because they have attempted to verify,
11 because they have asked questions, the plaintiff has
12 said the conduct is tortious. It really comes down to
13 that, and they are, of course, the substance of
14 California process in Nevada.
15 It's our position that the Court does not
16 have subject matter jurisdiction over the alleged
17 tortious conduct because it's limited to those stark
18 realities, and it's really limited to how you conduct
19 an audit process. You ask a question. And these are
20 the facts which, as pled, he has pled his outrage and
21 his reaction to the fact that his privacies have been
22 invaded, that he has been embarrassed, that they've
23 used his name and address and Social Security number.
24 I suppose they do that to be sure they have the right
25 person when they talk to somebody.

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1 information to the FTB, including his residence
2 address, claimed to be an actual Nevada resident from
3 September 26, '91 on, and that the FTB thereafter set
4 out a few -- they used the circumlocution "requests"
5 rather than "demands," but a few requests to confirm
6 whether or not Mr. Hyatt was indeed a Nevada resident.
7 Thereby, I suppose, hopefully assisting him in not
8 having to pay California tax. They say surely making a
9 drive-by inquiry and sending a few letters to a few
10 people is in a sense innocuous; it's not tortious. He,
11 Mr. Wilson, suggests, in fact, that our position is
12 that California could not come to Nevada and make an
13 investigative inquiry as to Mr. Hyatt's residence.
14 And, of course, that's not the position at all.
15 Repeatedly they have said this is really a
16 tax case disguised as a tort case. They say Mr. Hyatt
17 wants to obtain a Nevada judgment on his residency that
18 will be res judicata entitled to full faith and credit
19 in California. And, yet, in their own papers, page 10
20 of their Motion for Judgment on the Pleadings, they
21 make the statement that any Nevada judgment will not be
22 given full faith and credit in California.
23 And that wouldn't be the first time. In
24 Nevada v. Hall -- and incidentally, Your Honor, Nevada
25 v. Hall is a very important case. And the FTB, in its
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1 But if these facts -- and I'm talking only
2 about the facts and not about the hyperbole that's used
3 to characterize them. If these are -- if these facts
4 amount to tortious conduct -- and we're looking at the
5 plea -- then simply having an inquiry and asking
6 questions, which is the FTB's responsibility, would be
7 tortious conduct in and of itself. I suggest that
8 can't be the law. And for that reason, I suggest that,
9 as pled, this Court does not have subject matter
10 jurisdiction over the tort causes of action in the
11 Complaint either.
12 Thank you, Your Honor. I talked a lot longer
13 than I had anticipated, and I appreciate your patience.
14 THE COURT: Plaintiff, please, in response.
15 MR. T. STEFFEN: Your Honor, my name is Tom
16 Steffen, and to my immediate right is Tom Bourke, who
17 has been admitted for purposes of this case. Next to
18 Mr. Bourke is Mr. Hyatt, plaintiff in the action. Don
19 Kula, a California attorney also admitted; and my son,
20 John, who is also representing Plaintiff.
21 THE COURT: Welcome.
22 MR. T. STEFFEN: Thank you. Your Honor, I
23 was commenting to our client yesterday that I felt I
24 could hear esteemed counsel's argument before he even
25 made it. And that was: Mr. Hyatt voluntarily supplied
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1 reply to Plaintiff's opposition, makes the statement on
2 page 17: Nevada by statute had waived its immunity
3 from suit, and, therefore, the suit was permitted to go
4 forward in California.
5 That is absolutely false. In fact, when the
6 State of Nevada was sued, the State walks in with a
7 placard saying sovereign immunity. The Superior Court
8 agreed, it went up to the California Supreme Court, and
9 the California Supreme Court said, whatever the law has
10 been in the past, hereafter there will be no sovereign
11 immunity given to the State of California on -- or
12 given to the State of Nevada on acts committed by
13 Nevada officials in the State of California. So it
14 goes back to Superior Court, and then the State of
15 Nevada walks in and says, well, we have a statute. We
16 would like you to give full faith and credit. That
17 statute limits the amount of damages to 25,000. We
18 have agreed within the State of Nevada to be sued up to
19 that limit, and that's only within the State.
20 So Nevada asked California to give full faith
21 and credit to the damage limitation. Of course, the
22 State of California said no. Said a lot more than
23 that. Said when Nevada agents cross the line, Nevada
24 sovereignty ends. It ends at the border.
25 And so that case made it very, very clear
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1 that hereafter Nevada would receive no comity from the
2 State of California, and we thereafter adopted the
3 California reasoning, the Nevada v. Hall reasoning, in
4 our Mianeki case, in effect.

5 Now, Your Honor, if this had been a simple
6 case of the FTB saying, "Look, we're going to have to
7 have some verification other than your own word and the
8 word of your tax professionals. We're going to have to
9 make some inquiry in the State of Nevada," there would
10 have been no problem. We wouldn't be here.

11 The problem is, Your Honor, we have a very
12 unique plaintiff in Mr. Hyatt. Mr. Hyatt is a
13 scientist, he's an engineer, and he's an extremely
14 successful inventor. Much of his technology exists to
15 enable us to have a personal computer at our desks.
16 And Mr. Hyatt was a closet inventor. He had worked on
17 his inventions in California for years, applied for
18 patents in approximately 1970, and they were not issued
19 until 1990, 20 years later. And at that point in time
20 it was recognized that this could be a source of great
21 wealth to Mr. Hyatt. Could be.

22 Thereafter, Mr. Hyatt started making plans to
23 move to the State of Nevada for a number of reasons.
24 And those plans reached fruition on September 26th,
25 1991, when he actually moved to Nevada. And thereafter,
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1 find out the names of residents in these areas, go back
2 to California, start with LEXIS, using cross references
3 in order to find out if they have formerly lived and
4 paid taxes in California.

5 Now, I suggest to Your Honor that this is
6 going to be a matter of great concern not only to this
7 Court but eventually possibly to other government
8 agencies in the State of Nevada. I think it's an
9 intolerable, outrageous condition. And that's what
10 prompted, by the way, the effort against Mr. Hyatt.
11 They didn't find a wealthy house to look at, but they
12 read of his success in a magazine almost two years
13 after he had already moved to Nevada and was residing
14 here and doing business here.

15 So, they contact Mr. Hyatt and ask for his
16 cooperation, and he, thinking that their intentions
17 were honorable, started voluntarily supplying them with
18 information with the hope that once having received the
19 information the matter would be ended.

20 Now, even, Your Honor, as the FTB admitted
21 that Mr. Hyatt was an extremely private person and even
22 as it admitted that he did not want to give them copies
23 of valuable documents, they promised confidentiality.
24 When Mr. Hyatt purchased his home in Las Vegas, he did
25 so through a trust, making his trusted CPA the only one
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1 the licensing negotiations continued on, and some
2 patent licensing arrangements were concluded with some
3 Japanese companies, and Mr. Hyatt became a very wealthy
4 citizen as a result. But the income was received in
5 Nevada by a Nevada resident, a Nevada citizen.

6 Now, before I get on to the investigation in
7 Nevada, Your Honor, I would like to reveal something to
8 the Court that I suggest places a great magnitude of
9 importance on this case. We have alleged, Your Honor,
10 in our Complaint -- excuse me, I'm hoarse, and I'm not
11 sure that it'll go away.

12 On page 9, paragraph 27 of our Complaint we
13 stated, and I quote, "Plaintiff is informed and
14 believes and thereafter alleges that the FTB has a
15 pattern and practice of entering into Nevada to
16 investigate Nevada residents who are formerly residents
17 of California and then assessing such residents
18 California State income taxes for time periods
19 subsequent to the date when such individuals moved to
20 and established residency in Nevada."

21 I would represent to the Court, Your Honor,
22 that we now have solid evidence that that indeed is
23 true, that the FTB is sending agents into Nevada as a
24 hunting ground. These agents will go to areas of
25 obvious wealth, gated communities, other communities,
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1 who appeared of record so that his name would nowhere
2 appear of record. He had an unlisted -- in fact, he
3 didn't even have an unlisted telephone number. He did
4 not have a telephone number. Mr. Hyatt had a post
5 office box. He had taken unusual measures to assure
6 that his actual residence would be confidential, would
7 be unknown to others, and this is where he maintains
8 his private, valuable documents.

9 So the FTB received the escrow papers on the
10 purchase of the Las Vegas residence on April 2nd,
11 1992. The address is redacted, and they're told why.
12 And they're told of the trust and why the trust was
13 formed, and the CPA would tell you that this is not an
14 unusual vehicle for maintaining confidentiality. So
15 this was done, the FTB acknowledged Mr. Hyatt's need
16 for privacy and made express commitments and promises
17 that these confidential matters would remain
18 confidential.

19 So what did they do even as they're in the
20 process of making these commitments?

21 May I approach the exhibit, Your Honor?

22 THE COURT: Certainly.

23 MR. T. STEFFEN: They send out these demands
24 to furnish information --

25 MR. WILSON: Your Honor, may I observe?

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1 THE COURT: Of course. And I will, at least
2 at this point, gentlemen, apologize for the logistics
3 of our courtroom. As you may or may not know, this is
4 a temporary courtroom, and it is so temporary we have
5 not yet been able to secure even a podium. So we do
6 apologize for the way in which you have to view these
7 items. Please feel free to jump in any place around
8 that you need to be so that you can view them.

9 MR. WILSON: Thank you, Your Honor.

10 MR. T. STEFFEN: This is fine. In fact, you
11 can come over here, Spike, if you want to.

12 These, of course, are blowups of documents
13 that are part of the record. They were attached to
14 Mr. Hyatt's affidavit in opposition to the motion to
15 quash.

16 Now, this particular demand goes to the
17 Las Vegas Valley Water District, and we know it is a
18 demand to furnish information. It's authorized by
19 California Revenue and Taxation Code, meaning the
20 obvious import is that it has extraterritorial
21 authority. It says: The People of the State of
22 California, To Las Vegas Valley Water District, in the
23 matter of Gilbert P Hyatt. They list his Social
24 Security number, and it says: "This demand
25 requires --" we highlight that because in many of
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1 California are investigating Mr. Hyatt or auditing or
2 trying to collect money from him, and the demand
3 requires you to furnish the following information.
4 They want to know if he's subscribed to the paper from
5 '91 to the present or from 1992 to the present and the
6 service at 7335 Tara, his actual home address. And
7 again they give out his Social Security number.

8 Your Honor, I have subscribed to I don't know
9 how many newspapers, and I have never yet been asked to
10 give a newspaper my Social Security number in order to
11 subscribe to a paper. Ordinarily, they'll take your
12 money and ask you where you want it delivered.

13 Mr. Hyatt never had, of course, newspapers
14 delivered to his actual residence, for obvious
15 purposes.

16 Here we have the same type of demand, this
17 going to the Association of Computing Machinery. And
18 here, Your Honor, I would like to candidly correct one
19 of our representations in our Opposition. We indicated
20 that the FTB had sent one of these demands to the
21 Licensing Executives Society, and they had, but it was
22 returned. The address was wrong. So the damage we
23 refer to in that aspect did not exist. But this one,
24 it did.

25 This went to the Association of Computing
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1 counsel's papers they refer to this as a request, but
2 it's definitely: This demand requires you to furnish
3 the Tax Board with information.

4 And then it indicates that: It will be used
5 by this department for investigation, audit, or
6 collection purposes pertaining to Mr. Hyatt.

7 They ask for copies of water bills with the
8 name of the person on whose account it was billed at
9 7335 Tara, Las Vegas, Nevada. There we have the actual
10 address that Mr. Hyatt had taken such painstaking steps
11 to prevent from becoming known. It now becomes part of
12 the database of the Las Vegas Valley Water District,
13 and it's common knowledge that private investigators
14 can gain access to this material constantly.

15 Now, notice we're also told that the period
16 of the audit is '91, the last part of '91 and up
17 through April 2nd of '92. But notice what they've
18 continued to ask for. January of '93 to December of
19 '93, January '94 to December of '94. January '95 to
20 the present. And this is dated March 24, '95. This
21 six-plus-year investigation, Your Honor, is still going
22 on, and it's still just an investigation.

23 We come now to the same demand. This time
24 it's to the newspaper, the Las Vegas Sun. They say the
25 same thing about this man: The people of the State of
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1 Machinery in New York. It was received and responded
2 to. Again, the Social Security number. This
3 association, Your Honor, is a worldwide association of
4 computer experts.

5 Now, the reason Mr. Hyatt is so concerned,
6 Your Honor, he's not someone who is just offended
7 because someone is asking a few questions. He has
8 turned over heaven and hell to provide himself with
9 absolute security. He said already in California
10 several of his intellectual properties have been leaked
11 and others have made billions of dollars of profit off
12 of it. So it's a very important matter to him.

13 Now, in the first place, the FTB promised not
14 to do this, and they did it. And Your Honor, although
15 I'm not authorized by my client to tell you exactly
16 what the result of this is, when all of a sudden he
17 finds out that his actual home address is now part of a
18 database, he has to take substantial costly efforts to
19 deal with that. In other words, his security had been
20 destroyed by the FTB, and Mr. Hyatt had to take other
21 measures in order to regain his security.

22 Now, another thing that the FTB did that it
23 promised it wouldn't do expressly, was it contacted
24 Mr. Hyatt's Japanese licensees with inquiries
25 pertaining to the tax audit and included segments of
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1 the agreement between Mr. Hyatt and the licensees. And
2 there was an obligation in each of those licenses that
3 they would be held in strict confidence, that they
4 would not be made available to third parties. Well,
5 what had become a burgeoning patent licensing business
6 for Mr. Hyatt ceased to exist. That has no longer been
7 the case.
8 And Your Honor, I'm confident, can appreciate
9 the fact that when you're talking in areas where the
10 stakes are so high, when you're talking about
11 microcomputers, and you're talking about rights to
12 microchip technology, when you're talking about digital
13 television, when you're talking about any number of
14 other things that this man has had so much to do with,
15 before someone commits to a license they look at any
16 number of things. And if they see that here's a patent
17 holder who is evidently under investigation by the
18 State of California auditing, investigating, maybe
19 wanting to collect taxes, there is a strong negative
20 implication there, Your Honor, I submit, that this man
21 is probably not what he purports to be.
22 This has been extremely embarrassing to
23 Mr. Hyatt who for 20 years suffered waiting for those
24 patents to be issued. He's been featured in any number
25 of magazines. I read a COMDEX account which referred
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1 In the first place, the FTB would have this
2 Court believe that since Mr. Hyatt filed the protest to
3 their proposed tax assessment, including fraud claims
4 now totaling up to about 21.8 million, they say that
5 since he's entered the protest, he is captive to them
6 and they have exclusive subject matter jurisdiction and
7 the administrative proceedings in California must be
8 exhausted before this Court could acquire subject
9 matter jurisdiction.
10 Well, Your Honor, in the first place, subject
11 matter jurisdiction over tort claims is -- I don't
12 think the Court needs much argument. I might cite the
13 Court to Hanson v. Harrah's, the seminal Nevada case on
14 retaliatory discharge for filing a Workman's
15 Compensation claim, and the employers stated you must
16 exhaust your administrative remedies. And the Court
17 said, sorry, there are no administrative remedies, and
18 this is governed by the law of torts.
19 Now, what Mr. Hyatt has alleged in his
20 Complaint is several torts which we feel under the
21 unique circumstances of this case can be demonstrated
22 to a trier of fact to be viable.
23 Now, with respect to otherwise exhausting
24 administrative remedies, even the FTB has indicated
25 that the exhaustion doctrine finds its roots in
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1 to Mr. Hyatt as indeed the founder of the personal
2 computer industry. So we have a man who has every
3 right and reason to want his absolute privacy, and the
4 FTB's own records acknowledge that. Sheila Cox, the
5 auditor, said, oh, we have even criminal -- even
6 referred to criminal statutes that would apply if they
7 revealed his confidential information.
8 So I would simply say, Your Honor, in that
9 regard, without going through the elements of each tort
10 unless the Court would want me to do so, we have seen
11 that the elements exist with respect to each tort, we
12 believe that the facts alleged cover the elements, and
13 that in this type of motion where all material
14 allegations of fact must be taken in favor of the
15 nonmoving party and all doubts also must be resolved in
16 favor of the nonmoving party, and even beyond that, if
17 there can be any hypothetical set of facts upon which a
18 proof might be adduced sufficient to enable the Court
19 to grant relief at trial, that would preclude the
20 granting of this type of motion.
21 Now, I think the main thrust of the FTB's
22 concerns, Your Honor, has to do with subject matter
23 jurisdiction. I don't share that concern. I think
24 this Court has subject matter jurisdiction for any
25 number of reasons.
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1 comity. The general rule would be as in Nevada,
2 however, that if you had a matter that was proceeding
3 before the Gaming Commission, that the courts, except
4 under the rarest of circumstances, could not intervene
5 because that's Nevada's statutory scheme. And the
6 Court could review the eventual outcome, but could not
7 intervene. At no place in Nevada law is there any
8 suggestion that Nevada courts are precluded from
9 exercising its primary function of protecting Nevada
10 citizens because an agency of another state has
11 commenced a proceeding.
12 Not only that, Your Honor, but even the FTB,
13 I think, admits there is no administrative proceeding
14 in California. There is an investigation. The FTB
15 went to the California legislature, and they said: We
16 don't want to be bothered with notions of due process
17 and a right to adjudication, so we just want our
18 investigative efforts to assess to be informal and an
19 investigative proceeding only. That's all it is.
20 There's nothing to exhaust in California.
21 Moreover, Your Honor, we have cited -- we
22 have cited cases. I think the Wisconsin case which
23 indicated that whenever the issue of exhaustion of
24 administrative remedies arises it's appropriate for a
25 Court to look into whether there is an adequate remedy,
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1 administrative remedy, and whether there is a speedy
2 remedy. That Court went on to say if there are
3 indications that the administrative proceeding exhibits
4 bias or delay, then this Court will not refuse
5 jurisdiction but will be willing to take it out of what
6 I think it calls bureaucratic tyranny and assume
7 jurisdiction.

8 I cannot think, Your Honor, of a case that
9 fits more squarely within that case. A six-plus-year
10 investigation, Mr. Hyatt has protested the first time
11 almost three years ago. There's never been anything
12 done there. There's never been a hearing scheduled.
13 Mr. Hyatt fully intends to run the course in
14 California, convinced that at least by the time he gets
15 to the Superior Courts there the FTB will be engaged in
16 a number of reforms and will not prevail because this
17 man is a Nevada resident. And we cited in our papers
18 involving the motion to quash earlier, there's a
19 federal case, a Barkley's case, a U.S. Supreme Court
20 case, Your Honor, that states that it's
21 unconstitutional for a State to impose an income-based
22 tax on a nonresident on income earned outside of that
23 taxing state.

24 So that brings us to a couple of other
25 points. Very quickly. The Nevada residency statute,
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1 seeking to require the exhaustion of administrative
2 remedies. The Court there held that the -- whenever
3 there are allegations of fraud, that is a ground for
4 removing it from the administrative proceedings. In
5 that case the assessor was accused of fraudulently
6 undervaluing or overvaluing the property, and the Court
7 took jurisdiction.

8 In this case, Your Honor, I would suggest to
9 the Court, because the question that might have
10 immediately come to mind is: Why would declaratory
11 relief be relevant during the period '91 and '92 when
12 the FTB just really found out about Mr. Hyatt in '93
13 and started doing most of their tortious activities in
14 '95? And the reason is set forth, one of the reasons,
15 in the fraud claim because Mr. Hyatt has alleged that
16 the FTB's obtaining of information from him and
17 disregarding all matters favorable to Mr. Hyatt and
18 using such devices as nonexistent affidavits. We have
19 evidence, Your Honor -- there are 3 affidavits. One
20 from a disgruntled former wife who had been divorced
21 from Mr. Hyatt for 17 years before the patents were
22 issued and then she sought to reopen the divorce. And
23 so they supposedly obtained an affidavit from her.
24 They don't have an affidavit. They supposedly obtained
25 an affidavit from a disgruntled brother that they don't
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1 10.155, Your Honor. The FTB glosses over that statute
2 and says it's basically only a handle for divorce
3 matters, out-of-state tuition, or voting rights, even
4 though it doesn't say that at all. However, the FTB
5 then goes on to declare that this statute, quote,
6 "relates only to matters where a person's rights
7 depend on the place of his legal residence."

8 Well, Your Honor, it seems very obvious that
9 Mr. Hyatt who has been here since September 26, '91, he
10 has a very prosperous, successful business here with
11 several patent lawyers and -- and, I mean, he's here in
12 Nevada, it can be so clearly demonstrated. This would
13 seem to indicate that he has a right to have his
14 residency here determined by our Court because if he is
15 a Nevada resident, as he claims, since September 26,
16 1991, the FTB has to go away anyway. It has no legal
17 right to try to tax Mr. Hyatt, and then it would appear
18 that the most plausible course for it to take in
19 California would be to do everything it could to make
20 peace and do away with that proceeding. That would not
21 affect, however, this case and this tort case.

22 Also, Your Honor, we cite to the case of
23 Aluowich (phonetic), if I can quickly find it. This
24 case, Your Honor, which seems to escape my immediate
25 observation, was a tax case where again they were
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1 have either, and the same with another family member.
2 So I could go on and on about that, Your
3 Honor, but the point I make with respect to fraud,
4 because I think it is critical to the declaratory
5 relief claim and precludes any grant of relief on that
6 claim as well, the relevant period to the FTB is the
7 latter quarter of '91 and the first quarter of '92, and
8 that focused on the '91 audit, at first. Mr. Hyatt was
9 cooperating, giving them information in return for
10 their assurances that they were doing an objective
11 audit and with his cooperation they could get through
12 the matter, hopefully, without a great deal of
13 additional effort.

14 Well, what happened was, as soon as the
15 information was given, they make the statement in our
16 Complaint -- starts on page 24, Your Honor, paragraph
17 63, where we talk about the representations were made
18 to Plaintiff that the audit would be an objective
19 inquiry, and then Plaintiff delivers copies of
20 documentary evidence of the sale of his California
21 residence on October 1, 1991 to a business colleague
22 and confidant, and the FTB contended that sale was a
23 sham and, therefore, evidence of Plaintiff's continued
24 California residency and his attempt to evade
25 California income tax by fraud.

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1 Plaintiff thereafter supplied evidence in the
2 form of his federal income tax which revealed on the
3 income tax form the sale of the home, the income
4 immediately generated, and the interest. This was
5 given to the FTB and was ignored, the FTB saying it was
6 a sham because the grant deed was not recorded until
7 June of 1993. Interestingly, then, in subparagraph D
8 on page 25, we say: After declaring Plaintiff's sale
9 of his California home on October 1, 1991 a sham, the
10 FTB later declined to compare the much less expensive
11 California home with the home Plaintiff purchased in
12 Las Vegas, Nevada, (a strong indication favoring Nevada
13 residency) stating that, quote, "From their records,
14 statistics, (size, cost, et cetera,) comparing the
15 taxpayer's La Palma home to his Las Vegas home will not
16 be weighed in the determination of residency, as the
17 taxpayer sold the La Palma house on October 1, 1991
18 before he purchased the house in Las Vegas during April
19 of 1992."

20 So on the one hand they say the sale was a
21 sham and charge him a 75 percent fraud assessment.
22 Then, on the other hand, they say, well, we're not
23 going to consider your larger home in California which
24 is -- I mean, in Nevada -- which is ordinarily an
25 indicia of a change of residence because you sold your
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1 Thank you, Your Honor.
2 THE COURT: Brief response, Mr. Wilson.
3 MR. WILSON: Briefly, Your Honor. I caught
4 the emphasis, and I will be brief. I feel a little
5 like I've been sitting through the saga of the Boston
6 tea party. I did not intend to try the facts and
7 circumstances of this case, and we have had a lot of
8 discussion this morning which hasn't had a thing to do
9 with the Complaint. And I can take up a lot of your
10 time talking about this audit, and I'm not going to do
11 that. I don't think that's part of why we're here.
12 We're not here to talk about the merits of the audit or
13 the findings, but I would like to make a couple of
14 comments in brief reply, Your Honor.
15 Counsel refers to NRS 10.155 which has to do
16 with legal residence, suggesting that demonstrating
17 legal evidence was in some way a predicate to one's
18 ability to sue for cause of action for tortious
19 conduct. And that's not what this says. I'll read
20 briefly: Unless otherwise provided by specific
21 statute, the legal residence of a person with reference
22 to his right of naturalization, right to maintain or
23 defend any suit at law or equity or any other right
24 dependent upon residence is where he's physically
25 present.

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1 smaller La Palma, California home on October 1, '91.
2 So they view it as a sham in one place, and they accept
3 the sale at another.
4 Well, Your Honor, I can only say that the
5 claim for declaratory relief, in my judgment, is
6 virtually mandated by Nevada law. This man who has
7 been here since September 26, '91 and has been
8 investigated for over six years and it's still going
9 on, who has his business here, who can bring forth all
10 kinds of evidence that he is actually a resident here
11 is the ongoing subject of harassment, intimidation.
12 And, in fact, the latest papers, they said: You could
13 have simply paid the tax and avoided the interest, and
14 then sought a refund.
15 So they're saying now: Your interest is
16 accruing at about \$5,000 a day. There's no relief in
17 sight, Your Honor.
18 We suggest to the Court that it has ample
19 subject matter jurisdiction to determine Mr. Hyatt's
20 Nevada residency and to enable him to move on and
21 demonstrate on the merits that these torts are not
22 simply contacting a person here and there, that the
23 torts are very real and the damages are enormous as
24 will be later explained to the Court in some type of in
25 camera hearing.

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1 That's not to say that you have to have an
2 element of your cause of action for tort to prove your
3 residence. If you sue for divorce, you have to prove
4 six weeks of residence, for example. That's what this
5 refers to.
6 Any other right dependent upon residence or
7 any right to maintain or defend any suit at law or
8 equity dependent upon residence.
9 An action in tort is not dependent upon
10 residence. A suit to divorce is. A suit with respect
11 to taxes may be, but we're not talking about any right
12 in Plaintiff's Complaint here, in his action here,
13 which is dependent upon residence.
14 Now, I indicated earlier that I was not going
15 to prejudice the FTB's review of this case, and I meant
16 that. We've had a lot of discussion which is trying
17 this lawsuit here today, and it's not relevant. What
18 we're here today to do is to look at what's pled in the
19 Complaint and nothing more. We've had a reference to a
20 loss of business which the plaintiff has suffered
21 because of this audit. That's not pled anywhere in the
22 Complaint, and it's prejudicial to this proceeding.
23 It's not relevant. If Plaintiff wants to amend his
24 Complaint, assert cause of action pursuant to
25 additional claims, why, it may, but that's not before
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1 us.
2 Counsel has commented that the administrative
3 process in California is only an investigation, and
4 that's all it is, and there is nothing further. It
5 involves nothing further. That also is not true. You
6 have an audit, that audit then is reviewed by the FTB
7 which is subject to participation by the taxpayer.
8 It's then reviewed by the State Board of Equalization
9 which is independent of the Tax Department or the FTB.
10 That board, I think, has some reputation for
11 modifying or reversing the decisions made by the FTB.
12 It's similar by analogy, I suppose, Your Honor, to the
13 relationship between the Nevada Tax Commission and the
14 Tax Department, where those two are frequently
15 adversary with respect to conclusions by the Department
16 of Taxation.
17 And after that, there's review by the
18 Superior Court. So California's process is not just
19 one of investigation and quick conclusion. This is
20 not -- this is not a shoot-out at the corral, Your
21 Honor. It's deliberative, and the plaintiff had been
22 participating in this until he filed his lawsuit.
23 two-and-a-half months after the second protest.
24 Let me make a comment about Nevada versus
25 Hall. I wasn't commenting on what the defense was that
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1 Water District.
2 Now, isn't it relevant, if you're going to be
3 fair in an inquiry in an audit to say, well, the period
4 in question is September 26 to April 3, 1992. He
5 bought a house and moved in. Sounds like he was a
6 resident, right? Did he live there? Was it real? You
7 check the water bills. If there's a reasonable
8 consumption of water during the period of time, doesn't
9 that suggest that somebody is living there? Probably
10 the owner, Mr. Hyatt. Was it temporary and
11 transitory? Was he just using the water on weekends?
12 I suppose you'd take a look at the balance of
13 '92, after he moved in to December of '92. That's
14 what the first entry is. How about the next year, in
15 '93? How about the next year, in '94, or '95 to the
16 present? That doesn't suggest that this audit is open-
17 ended. It suggests a fair and honest attempt to find
18 other corroborative evidence of water usage, the
19 inference of which would be: If he's using water after
20 April of '92 in reasonable levels and the use is
21 consistent, it suggests permanent residence, doesn't
22 it? And isn't that circumstantial evidence of an
23 attempt to make a state your domiciliary? And isn't
24 it, at least, indirectly corroborative of his residence
25 between September the 26th to April 3 of '92.
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1 the State may have raised in that case. It's the
2 legislature which has jurisdiction to waive immunity,
3 and the legislature did with respect to torts by its
4 employees. They placed a limit on it which was not
5 recognized by California, but that's not to say that
6 immunity was not waived. Indeed, it was. Subject to a
7 limitation, I'll grant you, which California properly
8 declined to recognize and found liability.
9 But as I said before, we're not talking
10 about -- we're not talking about a tortious action
11 here. We're talking about a subject matter involving
12 sovereign power of another State. Nevada hasn't
13 waived, if you will, it's sovereign power to
14 investigate with respect to gaming licenses. They're
15 simply not related.
16 Let me make a comment about these charts.
17 And again I guess I'm indulging in talking about this
18 case, but I must say that I don't want the Court to be
19 misled. The only period of time we're talking about is
20 between September 26 of 1991 and April 3 of 1992.
21 Now, my good friend, counsel for the
22 plaintiff, talks about all of these subsequent periods
23 here, April of '92, December of '92. January of '93,
24 December of '93. January of '94 to December, and
25 January of '95 to the present. This has to do with
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1 I suggest to you that that's not for the
2 purpose of extending the tax inquiry. I suggest to you
3 that those questions have to do with corroborating, if
4 you will, Plaintiff's claim of domiciliary intent
5 because if he's living there he's using water, and if
6 he's using water clear to the present time, he's been a
7 resident since then. It bears upon the period of time
8 in question. Same with these others.
9 I don't know about whether you need your
10 Social Security number to get a paper. Obviously, it's
11 on the form letter, but I must say until a couple of
12 years ago your Social Security number appeared on your
13 driver's license. I just looked at mine. It's there.
14 It's not any more. People have decided those numbers
15 are a little more sensitive and they don't want them
16 bounced around, but that's recent history, Your Honor.
17 So I suggest to you that we don't need to
18 find dark and sinister motive on the part of FTB with
19 respect to its inquiry. If anything, I would submit to
20 you that that's an attempt to be fair. If they can
21 demonstrate that Mr. Hyatt was a full-time permanent
22 resident and used a lot of water, it's certainly
23 corroborative and circumstantial evidence supporting
24 his claim. But if he had the intent to make Nevada his
25 home at April 3 of '92, he probably had that intent
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1 back in September of '91 because he's been here.
 2 Totally different twist on that, isn't it? I
 3 apologize for arguing the case, but I'm saying there's
 4 a bit more to the context of these circumstances than
 5 that.
 6 I need to say something else, then I'm going
 7 to sit down and be quiet. My good friend and counsel
 8 for the opposition made the comment that he wanted to
 9 represent to you that, "We have solid evidence of a
 10 practice by California of viewing Nevada as a hunting
 11 ground and chasing former residents over here." Now,
 12 not only was it not pled, I don't know what that
 13 evidence is, but it's improper, doesn't belong in this
 14 courtroom in this hearing. It's prejudicial, and it
 15 has no part in this argument.
 16 I meant it when I said I'm not prejudging
 17 what the outcome of the audit would be, whether by the
 18 FTB itself or the Board of Equalization or by the
 19 Superior Court. I'm not suggesting by inference or
 20 argument what that outcome might be. I don't think
 21 that's before this Court, and I don't think it's proper
 22 to argue the tax case because that's not what we're
 23 talking about.
 24 We're talking about what's in the Complaint
 25 and how it is pled, and is the Complaint sufficiently
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1 MR. WILSON: I think we need to talk to the
 2 Court, Counsel.
 3 MR. T. STEFFEN: I agree.
 4 THE COURT: In fact, I would suggest that you
 5 have about two minutes to wrap up your argument.
 6 MR. T. STEFFEN: All right. Thank you, Your
 7 Honor. I think, unfortunately, Mr. Hyatt has been the
 8 victim of a voracious agency that has willfully set out
 9 to extort money from him in various ways which we are
 10 confident can be proved. I can give you hypotheticals
 11 now. I don't think that's necessary. But it can be
 12 proved.
 13 The FTB has attempted at the very outset by
 14 disregarding his evidence -- again, this is
 15 demonstrable -- and developing, as we've stated in our
 16 pleadings, a colorful basis for going to him and saying
 17 you owe this enormous amount of money. And there was
 18 also in our pleadings an attorney by the name of Anna
 19 Jovanovich, who represented the FTB, told Mr. Cowen,
 20 Mr. Hyatt's tax representative in California: At this
 21 point in time wealthy taxpayers usually settle because
 22 they don't want to risk having their financial affairs
 23 made public.
 24 THE COURT: The issue before us now is the
 25 Motion for Judgment on the Pleadings.
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1 fatally flawed to demonstrate that this Court does not
 2 have subject matter jurisdiction. That's why we're
 3 here today. I can spend a lot of time talking about
 4 this tax case. It's not relevant.
 5 Thank you, Your Honor.
 6 THE COURT: Rebuttal, Mr. Steffen.
 7 MR. T. STEFFEN: Thank you, Your Honor.
 8 THE COURT: Briefly.
 9 MR. T. STEFFEN: I am very pleased to hear
 10 Mr. Wilson say this is not a tax case because time and
 11 time again they have said just the opposite, this is a
 12 tax case.
 13 Counsel, with respect to my statement about
 14 the hunting ground, you find that on the bottom of
 15 page 9 on the First Amended Complaint, and that's what
 16 you said you're interested in was the allegations of
 17 the Complaint, and that's precisely, in paragraph 27,
 18 what that refers to. And all I did was say we now have
 19 solid evidence that that's true. That was alleged on
 20 information and belief. So --
 21 MR. WILSON: I'm not going to reply unless
 22 you want me to.
 23 THE COURT: You needn't.
 24 MR. T. STEFFEN: I'm just telling you it's in
 25 the Complaint. Like Prego, it's in there.
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1 MR. T. STEFFEN: That's correct. And I would
 2 suggest, Your Honor, that based on the burdens of proof
 3 that apply to both judgment on the pleadings and the
 4 12(b)(5) motion which is now incorporated in the
 5 pleadings that all facts have to be resolved in favor
 6 of the plaintiff, they have to be accepted as true.
 7 All doubts have to be resolved in favor of the
 8 plaintiff. And I suggest, Your Honor, on that basis,
 9 that Defendant's motions should be denied.
 10 THE COURT: As I just indicated, this matter
 11 that we have now spent an hour-and-a-half nearly on, is
 12 brought to the Court on a Motion for Judgment on the
 13 Pleadings. Plaintiff in their Complaint seeks certain
 14 relief, a declaration, in fact, that he was a Nevada
 15 resident since September of 1991 pursuant to California
 16 law. He also prays for compensatory and punitive
 17 damages with respect to certain tort claims. Because
 18 this is a 12(c) motion for judgment on the pleadings,
 19 as I think everyone knows, this motion can be brought
 20 at any time after the pleadings are closed. It is most
 21 appropriate, however, gentlemen, when material facts
 22 are not in dispute and judgment on the merits is
 23 warranted based upon the content of the pleadings
 24 alone.
 25 Having said that, now, I think the defendant
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1 also argues the declaratory actions seeking
2 interlocutory review of the administrative decisions in
3 this case are inappropriate, and I believe the Defense
4 cites to some Nevada law. That is PSC versus Eighth
5 Judicial Court where our Court held that Courts should
6 not adjudicate when administrative decision is still
7 pending and where a statute exists to provide an
8 administrative remedy. Thereafter, there's some -- I
9 would say some guidance provided by the case of
10 Resnick.
11 But to get back to where I think we need to
12 be, the first matter that needs to be addressed is
13 subject matter of jurisdiction. This caused me to do
14 some research even beyond that which is contained in
15 the pleadings, and I might say that my initial comments
16 regarding the voluminous nature of the pleadings in
17 this case may have, at first blush, seemed to be
18 sarcastic. I can tell both sides of this dispute that
19 I have learned a lot just by preparing for this case,
20 and I think that is always something that I should
21 thank counsel for because the pleadings in this case
22 were very well prepared on both sides, very well
23 supported by law and, in fact, exhibits giving me the
24 law that counsel were referring to. And I want to make
25 sure before I render a decision in this case that you
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1 that, in fact, his residency was of Nevada, for
2 purposes of the tax case only. Which should mean,
3 gentlemen, that I am not ruling that we don't have
4 subject matter jurisdiction -- in fact, let me state
5 that in the affirmative. I am ruling that I believe
6 that we have subject matter jurisdiction with respect
7 to the tort claims. And for that reason, this case is
8 going to stay with me for a while.
9 Without going to the merits of the case,
10 which I don't think I should in this case, the
11 administrative actions still pending in California,
12 there is case law -- adequate case law that tells me I
13 should not be addressing that. Specifically, Resnick
14 and the PSC case, both Nevada cases, tell me that
15 declaratory relief is not available during pendency of
16 an action, are not an -- I will say this incorrectly,
17 A-b-e-l-l-e-i-r-a. California cases tell us about the
18 defective failure to exhaust administrative remedies is
19 jurisdictional, and on that basis alone, I could and
20 should deny jurisdiction.
21 Now, as you can tell, I have looked at the
22 factual bases of this claim. I think there was no way
23 for me as to get to a decision without doing so. Still
24 in all, as a 12(c), taking all the facts in favor of
25 the nonmoving party, I still believe that it is
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1 all realize that I appreciate that, and it makes for
2 easier work in many instances.
3 I think the matter of the subject matter
4 jurisdiction regarding Plaintiff's residency claim
5 under California tax code is of -- mostly the thing I
6 need to deal with first because it's going to take care
7 of certain other matters. Defendant argues a lot of
8 things. Among them, they argue that these actions
9 couldn't go forth in California until the FTB matter is
10 concluded and that, therefore, they should be barred in
11 Nevada. I think that goes one step beyond where we
12 need to go.
13 The question in this case that I really have
14 is: How do I go about determining whether or not
15 there's subject matter jurisdiction without looking
16 beyond the face of the pleadings, which in a 12(c)
17 that's the only thing I'm supposed to do. Certainly I
18 could treat this as a Rule 56 motion for summary
19 judgment, in which case, I could look at any number of
20 things.
21 However, in this case, I think that I am
22 going to do what I refer to as a bifurcation. I'm
23 going to tell you I do not believe Nevada has subject
24 matter jurisdiction over this narrow part of
25 Plaintiff's claim, and that is the request to declare
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1 appropriate for me to decline subject jurisdiction with
2 respect to a declaration that Plaintiff's residency was
3 here in the State of Nevada for purposes of the tax
4 case.
5 And I want to be sure that I'm getting the
6 language correctly. The request in the Complaint was:
7 A declaration that he was a Nevada resident since
8 September of 1991 pursuant to California law.
9 That is which I am denying -- or declining to
10 entertain based upon lack of subject matter
11 jurisdiction.
12 As to the tort claims, I believe we do have
13 subject matter jurisdiction. They will remain.
14 Furthermore, I think the case of Bernard would allow me
15 to continue with that just based upon the pleadings
16 themselves. So for that, I am going to ask you to
17 prepare an order.
18 There were several other housekeeping matters
19 that we took up the last time we were here with respect
20 to scheduling of depositions. Have there been any
21 problems? And I may later kick myself for asking this
22 question because I am, in fact, not going to entertain
23 discovery arguments. That's what a discovery
24 commissioner is for. I just want to be sure, since I
25 did make an order about how that was going to go
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1 forward, I want to be sure that we're still in sync
2 with that.
3 MR. BOUKE: Yes, there are problems, Your
4 Honor. We have asked for a scheduling order. We've
5 said we'll take whatever witness you have, starting a
6 week from -- starting basically next Tuesday, and they
7 have given us no names for any witnesses. So we said,
8 well, we will take Carol Ford in Sacramento for the
9 first four days, and there's another two witnesses in
10 Los Angeles for the next two days, but they have not
11 acquiesced or agreed to that. So as of now I'd say
12 we're heading for troubled waters.

13 THE COURT: Well, you're not in them yet. I
14 think the current is still calm at this point. In
15 fact, did I hear you talk about six day's worth of
16 depositions that I scheduled -- or six day's worth of
17 the discovery that is scheduled?

18 MR. BOUKE: Eight days.

19 THE COURT: Eight days.

20 MR. BOUKE: That we've scheduled, but they
21 haven't said that the witnesses are available or
22 anything. In other words, we've been trying for weeks
23 to say, "Tell us who is available. We'll take whoever
24 is available."

25 MR. WILSON: They are not scheduled. We need
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1 There's way too much discovery to take place
2 in this matter for anyone to drag their feet. My order
3 the last time we were here had to do with reasonable
4 requests, if I recall correctly, and they should be
5 scheduled in a reasonable time after this proceeding.
6 So we're there now. I would hope with this admonition
7 that we could move forward.

8 The meet and confer is appropriate. I would
9 allow you to use the courtroom for that purpose after
10 I'm gone. I think it should be -- something should be
11 done today. We should at least put the minds together
12 today and get some direction on where we're going to go
13 and I will wait for further matters to be placed on
14 calendar as I have no doubt they will be in this case.

15 MR. BRADSHAW: Your Honor.

16 THE COURT: Yes?

17 MR. BRADSHAW: Your Honor, as part of this
18 process, you've stayed discovery in part. Outstanding
19 at that time were Plaintiff's document requests and
20 requests to admit facts. Responses to those have not
21 been forward because of the stay. We would need a
22 reasonable amount of time to do that, perhaps a week or
23 so to make our formal response to those. We especially
24 don't want to get into a problem over admissions of
25 fact because it's unclear when discovery is back on and
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1 to meet and confer and agree on what witnesses and
2 when, and we didn't want to do that until the Court
3 rendered a decision on this matter. We didn't know
4 whether that was going to be rendered today or the
5 Court would take it under advisement and render it
6 later on.

7 Let us do the meet and confer. The Court's
8 ruling today obviously eliminates a rather broad area
9 of discovery.

10 THE COURT: I would think so.

11 MR. WILSON: And that will obviously have an
12 effect on what witnesses need to be deposed. So I
13 suggest we meet and confer. If we have trouble, we can
14 come back and ask for the Court's help.

15 THE COURT: I think that's appropriate. I
16 must emphasize again, however, this is -- even with the
17 decision that was made today, this remains a weighty
18 case, and I suspect that it is of the utmost importance
19 to Mr. Hyatt, and I don't want there to be any foot
20 dragging. We really cleared an awful lot of ground
21 today. This was a huge motion. It was something that
22 took time, was, once again, tremendously presented from
23 both sides. But now we're in the meat of it, and this
24 case should not be bogged down with discovery
25 disputes.

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1 how much time we would have to pick up discovery that
2 was pending.

3 We did get some depositions done, or
4 partially done, at least, during the interim here where
5 the parties have exchanged what they plan on doing for
6 about the next two months. That needs to be collated,
7 but the Attorney General's office has been working on
8 witness availability, and we're willing to meet and
9 confer with counsel and work that out over the next few
10 weeks.

11 THE COURT: Did I hear that a response to --
12 is it a request to admit that you say have you have --

13 MR. BRADSHAW: Request to admit facts and
14 document requests are outstanding. Some of the
15 documents have gone forward in the interim, but the
16 responses to request to admit facts are at a standstill
17 because of the stay, and we wondered how much time do
18 we have to actually respond.

19 THE COURT: You have represented you can have
20 them to Plaintiff within a week?

21 MR. BRADSHAW: I think a week.

22 MR. LEATHERWOOD: Yes, Your Honor. I think
23 we'll have them within seven to ten days.

24 THE COURT: Okay. I'll put a ten-day limit
25 on it. You have it over to plaintiff's within ten

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1 days.
2 MR. BRADSHAW: Thank you.
3 THE COURT: Anything else we need to take up?
4 MR. T. STEFFEN: Your Honor, I have a
5 lingering question about the declaratory relief claim.
6 You said that you were entering your judgment for
7 purposes of the tax case.
8 THE COURT: With respect to declaring
9 Plaintiff's residency under California law from or at
10 September 1991, yes.
11 MR. T. STEFFEN: All right, under California
12 law. Now, the thing that I'm wondering is if you're,
13 in effect, still keeping the declaratory relief action
14 alive but without prejudice to the proceedings in
15 California on the same issue of residency.
16 THE COURT: It can be a denial without
17 prejudice if that's what you would like it to be. I
18 want you to be real careful, though. I'm not going to
19 revisit this issue again.
20 MR. T. STEFFEN: That's what I want to make
21 clear. So do I understand that the declaratory relief
22 claim is still alive, but it will have to be made clear
23 that any judgment resulting from a declaratory judgment
24 will not be prejudicial to the California tax
25 proceeding involving Hyatt's residency?
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1 THE COURT: It is denied in its entirety for
2 lack of subject matter jurisdiction.
3 MR. T. STEFFEN: All right. Thank you, Your
4 Honor.
5 (Thereupon, the proceeding
6 concluded at 11:50 a.m.)
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8 -oOo-
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11 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
12 PROCEEDINGS
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16 Karen G. Mell, CCR No. 412
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1 THE COURT: I sense a need to respond.
2 Mr. Wilson.
3 MR. WILSON: Yes, thank you. I didn't
4 understand the Court to say that. I understood the
5 Court to say that the first cause of action was going
6 to be denied, but that had nothing to do with the
7 residency issues going forward in the administrative
8 process in California.
9 THE COURT: That is, in fact, part of the
10 basis of my decision.
11 MR. WILSON: Right. That's what I understood
12 it to be. So the first cause of action is no longer a
13 part of this case here.
14 THE COURT: That's correct.
15 MR. WILSON: Thank you.
16 MR. T. STEFFEN: So you're simply denying the
17 declaratory relief, then, cause of action altogether,
18 and not just for tax purposes.
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ALL-AMERICAN COURT REPORTERS (702)240-4394

EXHIBIT 12

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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. : F

**PARTIAL JUDGMENT
ON THE PLEADINGS**

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

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

AA001057

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

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

10 Dated this 16 day of April, 1999.

11
12
13 JAMES GRENNAN

14 DISTRICT COURT JUDGE

15
16
17
18
19 Submitted by:

20 McDonald Carano Wilson McCune
21 Bergin Frankovich & Hicks, LLP

22 

23 Thomas R. C. Wilson, Esq.

24 Matthew C. Addison, Esq.

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

GILBERT P. HYATT,
Plaintiff,

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

vs.

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

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

Defendants.

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD;

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

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

DATED this 20th day of April, 1999.

McDonald Carano Wilson McCune
Bergin Frankovich & Hicks LLP

By: 

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

2300 West Sahara Avenue, Suite 1000

Las Vegas, Nevada 89102


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 the foregoing **NOTICE OF ENTRY OF ORDER** by U.S. Mail on this 20th day of April 1999, upon the following:

Thomas L. Steffen, Esq.
Mark A. Hutchison, Esq.
Hutchison & Steffen
8831 W. Sahara Ave.
Las Vegas, NV 89117

Felix Leatherwood, Esq.
Deputy Attorney General
Attorney General's Office
300 South Spring Street
Los Angeles, CA 90013

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



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

EXHIBIT 13

FILED

JAN 27 4 48 PM '00

Shirley S. Langston
CLERK

1 **MOT**
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 Franchise Tax Board

DISTRICT COURT
CLARK COUNTY, NEVADA

11 GILBERT P. HYATT,
12 Plaintiff,

13 vs.

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

17 Defendants.

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

**EVIDENCE IN SUPPORT OF
FRANCHISE TAX BOARD'S MOTION
FOR SUMMARY JUDGMENT UNDER
NRCP 56(B), OR ALTERNATIVELY
FOR DISMISSAL UNDER NRCP
12(H)(3)**

Date of Hearing: _____
Time of Hearing: _____

(FILED UNDER SEAL)

20
21 Under Nevada Rules of Civil Procedure 56(b) and 12(h)(3), the Franchise Tax Board
22 ("FTB") submits the following evidence in support of its motion for summary judgment or
23 alternatively for dismissal:

24 **TABLE OF CONTENTS**

- 25 ♦ The Affidavit of Sheila Cox, the FTB's lead auditor for most of the Hyatt residency
26 audits, attaching the following exhibits:
27 1. Gilbert P. Hyatt's part-year (540NR) California Income Tax Return
28 2. FTB Form 4891-39 - Initial Contact letters dated 6/17/93 & 7/1/93

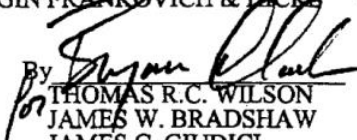
- 1 3. Letter from Michael W. Kern dated July 12, 1993, granting Powers of
- 2 Attorney to Michael Kern and Eugene Cowan
- 3 4. Letter from Marc Shayer dated July 15, 1993 to Michael W. Kern
- 4 5. Letter to Marc Shayer of FTB dated 8/4/93 - response letter from Michael W.
- 5 Kern including FTB Form 3805F
- 6 6. Response received by FTB from Dr. Edgar Hamer on 3/2/95
- 7 7. Letter from Sheila Cox of FTB dated 8/2/95 to Michael W. Kern
- 8 8. Letter to Sheila Cox of FTB dated 9/22/95 - response from Eugene Cowan
- 9 9. Letters from Sheila Cox of FTB to Michael W. Kern dated 12/5/94, 1/6/95,
- 10 and 3/1/95
- 11 10. Letter to Sheila Cox of FTB from Michael W. Kern dated 1/10/95
- 12 11. Letter to Sheila Cox dated 2/22/95 from Eugene Cowan provided at meeting
- 13 on 2/23/95
- 14 12. Schedule prepared of dining and hotel charges prepared from credit card
- 15 statements and copies of credit card statements for the applicable period
- 16 13. Letters from Sheila Cox of FTB to Michael W. Kern dated 1/6/95, 1/20/95,
- 17 3/1/95, 3/23/95, and 5/31/95
- 18 14. Letter to Marc Shayer of FTB dated 9/8/93 from Michael W. Kern, including
- 19 apartment rental agreement
- 20 15. Letters from Sheila Cox of FTB to Eugene Cowan dated 8/31/95 and 9/26/95
- 21 16. Field Notes of Sheila Cox on her visit to Las Vegas (3/6/95 - 3/8/95)
- 22 17. Copies of envelopes for letters returned by the Postmaster.
- 23 18. FTB letter and FTB Form 4793-39 (Demand to Furnish Information) sent to
- 24 Nevada Development Authority on 1/24/95
- 25 19. Response received by the FTB from the office of Nevada Governor Robert
- 26 Miller on 5/22/95
- 27 20. Response received by the FTB from the Clark County School District on
- 28 6/9/95 and portion of FTB Progress Report with notes of phone call with

- 1 School District representative
- 2 21. Letter from FTB to Orange County Recorder dated 8/10/94
- 3 22. Copy of Grant Deed for 7841 Jennifer Circle obtained from the Orange
- 4 County Recorder
- 5 23. Letter to FTB dated 7/11/94 from Eugene Cowan with portions of licensing
- 6 agreements
- 7 24. Copy of identification card of Sheila Cox, deposition exhibit 104
- 8 25. Retyped FTB Phone logs for calls made to third parties in Nevada
- 9 26. Copies of letters sent by FTB to third parties in Nevada
- 10 27. Copies of FTB letters and FTB Form 4793-39 (Demand to Furnish
- 11 Information) sent to third parties in Nevada
- 12 28. FTB letters sent to Michael W. Kern on 8/17/93, 5/24/94, and 6/22/95
- 13 29. Retyped FTB Phone logs for calls with Hyatt's Nevada Accountant
- 14 30. Narrative Report. Voter registration discussion and record of discussion
- 15 31. Lexis printout of residence address located at 5441 Sandpiper Lane, Las
- 16 Vegas
- 17 32. Letter to Eugene Cowan dated 1/19/96 formally opening 1992 audit
- 18 ♦ The Affidavit of Steve Illia, the Franchise Tax Board's Residency Program Manager
- 19 ♦ The Affidavit of Penelope Bauche, an FTB Supervisor, attaching the following
- 20 exhibits:
- 21 A. 1991 Notice of Proposed Assessment
- 22 B. NDF - NPA Selection
- 23 C. Notice of Proposed Assessment
- 24 ♦ The Affidavit of John E. Mayers, the real resident at the Nevada address where Hyatt
- 25 registered to vote with the Clark County Election Department
- 26 ♦ The Affidavit of Felix E. Leatherwood, attaching the following exhibits:
- 27 1. Excerpt from deposition of Mark Shayer
- 28 2. Excerpt from Discover Commissioner Hearing Transcript (Aug. 11, 1999)

- 1 3. Excerpts from notary log of Darlene Beer
2 4. Gilbert Hyatt voter registration form and Precinct Registers, Clark County
3 Election Department
4 5. Publicly available pleadings and papers in the California divorce case *Hyatt*
5 *v. Hyatt*, Case No. NWD 55911
6 6. A picture of Mr. Hyatt's claimed Nevada home that appears on a video of a
7 "Hard Copy" television segment that aired on June 14, 1993
8 7. Publicly available pleadings and papers in the California probate case of
9 *Anna Haber Hyatt*, Case No. A-145624

10
11 DATED this 21st day of January, 2000

12 McDONALD CARANO WILSON McCUNE
13 BERGIN FRANKOVICH & HICKS

14 By 
15 for THOMAS R.C. WILSON
16 JAMES W. BRADSHAW
17 JAMES C. GIUDICI
18 MATTHEW C. ADDISON
19 2300 West Sahara Avenue, Suite 1000
20 Las Vegas, Nevada 89102
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22 Attorneys for Defendant Franchise Tax Board
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28

1 **AFF**
2 THOMAS R. C. WILSON, ESQ.
3 Nevada State Bar # 1568
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5 Nevada State Bar # 4201
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11 Las Vegas, Nevada 89102
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13 Attorneys for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 *****

11 GILBERT P. HYATT,
12 Plaintiff,

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

13 vs.

AFFIDAVIT OF SHEILA COX

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

16 Defendants.

17 STATE OF CALIFORNIA)
18 COUNTY OF LOS ANGELES) ss.

19 SHEILA COX being first duly sworn upon oath deposes and says as follows:

20 1. I am a certified public accountant licensed in the State of California and employed by the
21 California Franchise Tax Board (the "FTB") as an Associate Tax Auditor.

22 2. I was hired by the FTB in June 1991 as a Tax Auditor, and served in that capacity until July
23 1995, when I became an Associate Tax Auditor. Between June 1996 and December 1996, I served as
24 a Special Investigator. From December 1996, to the present, I have worked in the capacity of an
25 Associate Tax Auditor. I make this affidavit in my official capacity and no other. This Affidavit is made
26 of my own personal knowledge and, if called as a witness, I would competently testify thereto.

27 3. In November 1994, the FTB assigned me to work on the residency audit of Gilbert P. Hyatt's
28 1991 California Income Tax Return, which had been in progress since June 1993. The first thing that

1 I did was thoroughly review and analyze the audit records and workpapers, which I was charged to
2 maintain and control.

3 4. The Hyatt audit file contains Mr. Hyatt's California Nonresident Part-Year Income Tax Return
4 for 1991. A true and correct copy of Mr. Hyatt's 1991 return is attached as Exhibit 1.

5 5. The Hyatt audit file indicates that to initiate the FTB's 1991 audit of Mr. Hyatt, the FTB sent
6 two notice letters (FTB form 4891-39) to Hyatt's claimed Nevada address on June 17, 1993 and July 1,
7 1993. True and correct copies of the notice letters are attached hereto as Exhibit 2.

8 6. True and correct copies of the Powers of Attorney from Mr. Hyatt that are in the audit file are
9 attached as Exhibit 3.

10 7. The Hyatt audit file indicates that the FTB mailed a cover letter and one of its standard forms
11 ("FTB 3805F"), requesting basic information about residence status, to Hyatt's Las Vegas accountant,
12 Michael W. Kern on July 15, 1993. A true and correct copy of this letter from the audit file is attached
13 as Exhibit 4.

14 8. A true and correct copy of Mr. Hyatt's August 4, 1993 response to the FTB's July 15, 1993
15 letter is attached as Exhibit 5.

16 9. During the 1991 Hyatt audit, I learned that Mr. Hyatt had a California doctor's appointment
17 on September 26, 1991, and told this to Hyatt's accountant. A true and correct copy of the letter from
18 the doctor that I received conveying this information is attached as Exhibit 6; a true and correct copy of
19 my letter conveying this information to Mr. Hyatt's accountant is attached as Exhibit 7. In response, Mr.
20 Hyatt changed his claimed move date from September 25, 1991 to September 26, 1991, and alleged that
21 on September 26, 1991, after he visited his doctor in California, he left for Nevada to begin establishing
22 his residence and business there. A true and correct copy of the September 22, 1995 letter changing Mr.
23 Hyatt's claimed move date is attached as Exhibit 8.

24 10. Despite my repeated requests and the promise of Mr. Hyatt's accountant to do so, Mr. Hyatt
25 failed to provide any substantiation and corroborative documentation that he either moved his personal
26 effects from his La Palma, California home to Nevada or acquired furnishings for his alleged Nevada
27 residence. True and correct copies of my multiple request letters on this subject are attached as Exhibit
28 9. A true and correct copy of the letter from Mr. Hyatt's accountant promising to provide such

1 information is attached as Exhibit 10.

2 11. During the audit, Mr. Hyatt ultimately claimed that he had no moving receipts and that he
3 moved himself using his family's trailer, providing a Nevada motor vehicle registration statement dated
4 June 1992, for a trailer issued in the name of his son. A true and correct copy of the February 22, 1995
5 letter from Mr. Hyatt's lawyer conveying this information is attached as Exhibit 11.

6 12. Credit card statements that Mr. Hyatt's representatives provided me during the 1991 Hyatt
7 audit showed evidence of dining charges in California on several of Hyatt's credit cards from September
8 1991 through March 1992, including a charge at a California restaurant on October 2, 1991, and Nevada
9 dining charges on only one day from January 2, 1991 through March 16, 1992. Attached as Exhibit 12
10 is a list of dining charges compiled from these credit card statements.

11 13. I had to send five separate request letters to Mr. Hyatt's accountant to get the credit card
12 statements that showed the dining charges described in the previous paragraph. True and correct copies
13 of my request letters are attached as Exhibit 13.

14 14. The Hyatt audit file contains a September 8, 1993 letter from Mr. Hyatt's accountant
15 enclosing a lease agreement for a Las Vegas apartment that began on October 20, 1991. A true and
16 correct copy of this letter from the audit file is attached as Exhibit 14.

17 15. I asked Mr. Hyatt's attorney in writing on two occasions where Hyatt stayed during the time
18 between the earliest date he claimed he changed residency (September 25, 1991) and the start date of
19 his rental agreement (October 20, 1991). True and correct copies of my request letters dated August 31,
20 1995 and September 26, 1995 are attached as Exhibit 15.

21 16. During the Hyatt audits, I never received any explanation or documentation from Mr. Hyatt's
22 accountant or attorney of where Mr. Hyatt stayed in Nevada between September 25, 1991 and October
23 20, 1991.

24 17. In the September 22, 1995 letter from Mr. Hyatt's attorney that is attached as Exhibit 8, Mr.
25 Hyatt's attorney informed me that Mr. Hyatt was in Washington, Texas, and New York from October
26 14, 1991 to October 22, 1991.

27 18. When I and another FTB auditor interviewed the manager of the Wagon Trails Apartment
28 complex, the Las Vegas complex where Mr. Hyatt claimed to have rented an apartment, she informed

1 us that the complex served many tenants receiving federal HUD subsidies. The apartment manager also
2 informed us that she did not remember seeing Hyatt often, and that he paid the rent ahead of time with
3 a post dated check. The manager showed us Hyatt's rental file, which contained one envelope that had
4 Hyatt's Las Vegas post office box as a return address, but was postmarked from Long Beach, California.
5 My narrative notes of the March 1995 Las Vegas, Nevada field visit that included this interview,
6 attached as Exhibit 16, show that the postmark was dated December 8, 1991.

7 19. I could never verify Mr. Hyatt's claimed Nevada civic and social affiliations that began
8 earlier than April 1992. My letters to the computer hobby group and Jewish temple addresses that Mr.
9 Hyatt gave were returned as undeliverable. True and correct copies of the returned envelopes are attached
10 as Exhibit 17. Mr. Hyatt's accountant later told me that Mr. Hyatt provided the wrong temple in the
11 initial response, and gave the name of another temple, but this second temple did not respond to my
12 inquiry. The Nevada Development Authority that Hyatt identified in his response had no record of his
13 membership. A true and correct copy of the response from the Nevada Development Authority stating
14 this is attached as Exhibit 18. The Nevada Governor's office had no record of any contact with Mr.
15 Hyatt. Exhibit 19 is a true and correct copy of the letter from the Nevada Governor's office stating this.
16 The Nevada Senator's office did not respond to my inquiry.

17 20. The Nevada school tutoring program that Mr. Hyatt claimed to have assisted beginning in
18 April 1992 could not verify his alleged volunteer activity. True and correct copies of my relevant
19 telephone notes and school district letter stating this are attached as Exhibit 20.

20 21. The Hyatt audit file indicates that when the FTB asked for escrow documentation for the sale
21 of Mr. Hyatt's California home, Mr. Hyatt provided copies of three non-notarized, unrecorded
22 documents: a grant deed, a promissory note, and a trust deed. Exhibit 14. The audit file reflects that the
23 FTB then asked the Recorder's Office in the appropriate California county for recorded documents
24 concerning the property transfer, and that the Recorder's office provided what appeared to be the same
25 grant deed, notarized, and recorded on June 16, 1993. True and correct copies of the FTB's request letter
26 to the Recorder's Office and the recorded grant deed in the audit file are attached as Exhibits 21 and 22,
27 respectively.

28 22. Excerpts from two licensing agreements between Mr. Hyatt and electronics companies in the

1 Hyatt audit file that are dated after Hyatt's claimed move to Nevada list a California mailing address for
2 Mr. Hyatt. True and correct copies of these licensing agreement excerpts in the audit file are attached
3 as Exhibit 23.

4 23. In March 1995, I went to Las Vegas, Nevada to make a field visit on the 1991 Hyatt audit.
5 I was accompanied by another FTB auditor who was visiting Las Vegas on her own cases, and who
6 served as a witness to my work on the Hyatt audit during the field visit. The field visit took place over
7 three consecutive business days. Only part of each day was spent working on the Hyatt audit.

8 24. My narrative notes of the March 1995 Las Vegas field visit, attached as Exhibit 16, accurately
9 describe the actions that I and the other FTB auditor took on the Hyatt audit during the visit. I prepared
10 these narrative notes the day after returning to California from the Las Vegas trip. They are included as
11 a part of the FTB's audit file concerning Mr. Hyatt.

12 25. During the March 1995 field visit, when a contact with a Nevada citizen required it, I
13 identified myself as a California Franchise Tax Board employee and showed my Franchise Tax Board
14 identification card. A true and correct copy of my identification card is attached as Exhibit 24. If any
15 person contacted requested information about the reason for the inquiry, I stated that it was regarding a
16 tax matter. Neither I nor the auditor accompanying me revealed Mr. Hyatt's name during any such
17 contact unless necessary, and we never disclosed Mr. Hyatt's social security number or comparable
18 specifics about Mr. Hyatt to anyone during the field visit.

19 26. During the end of November 1995, I accompanied another FTB auditor to Las Vegas to
20 assist on the other auditor's cases. During the trip, because the other auditor's case work was in the
21 vicinity of Mr. Hyatt's claimed residence, I made a brief observation of it. I made no inquiries with
22 other persons during this trip concerning the residency of Mr. Hyatt.

23 27. The FTB's audit file for Mr. Hyatt reflects that the Hyatt audit involved phone contacts
24 with Nevada third parties between July 15, 1993 and September 27, 1995. Attached as Exhibit 25 is a
25 schedule containing all of the notes of phone contacts with Nevada third parties during the audit that
26 are contained in the Hyatt audit file.

27 28. The FTB's audit file reflects that the Hyatt audit involved mail contacts with Nevada
28 third parties between July 15, 1993 and September 27, 1995. The audit file reflects that these mail

1 contacts were either by letter alone, or by a letter accompanied by a "Demand to Furnish
2 Information," a standard FTB form.

3 29. The audit file reflects that the FTB's mail correspondence by letter alone involved twenty
4 letters to fifteen Nevada recipients: the Department of Motor Vehicles (two letters), the Las Vegas
5 Postmaster (three letters), five Clark County Government agencies (seven letters), Nevada Governor
6 Robert Miller, Nevada Senator Richard Bryan, Dr. Steven Hall (Mr. Hyatt's dentist), University
7 Medical Center, KB Plumbing, Mr. Pryor (a resident in Mr. Hyatt's claimed Las Vegas
8 neighborhood), Mr. Eggers (another resident), and Allstate Sand and Gravel. True and correct copies
9 of all of these letters from the Hyatt audit file are attached as Exhibit 26.

10 30. The audit file reflects that the FTB's mail correspondence by cover letter enclosing an
11 FTB "Demand to Furnish Information" involved fifteen letters to twelve Nevada recipients,
12 including: Temple Beth Am (two letters), the Sports Authority (two letters), Nevada Development
13 Authority, Personal Computer Users Group, Bizmart, Sam's Club, Congregation Ner Tamid, Las
14 Vegas Valley Water District, Silver State Disposal Service, Southwest Gas Corp., Las Vegas Sun
15 (two letters) and the Wagon Trails Apartments. True and correct copies of all of this correspondence
16 from the Hyatt audit file is attached as Exhibit 27.

17 31. 78% of the FTB's third party contacts in Nevada by mail or phone described above were
18 to persons or entities that Mr. Hyatt identified on his initial response to the FTB's request for
19 residency information.

20 32. Certain FTB correspondence from California to Mr. Hyatt or his representatives in
21 Nevada that occurred during the Hyatt audits has previously been identified in this affidavit as
22 Exhibits 2, 4, 7, 9, & 13. The remaining FTB correspondence from California that occurred during
23 the Hyatt audits where a representative of Mr. Hyatt's in Nevada is the recipient is attached as Exhibit
24 28.

25 33. Attached as Exhibit 29 is a schedule containing all of the notes of phone contacts with
26 Hyatt's Nevada accountant during the audit that are contained in the FTB's audit files for Mr. Hyatt.

27 34. I spent less than three business days physically in Nevada and nominal hours on phone
28 and mail contacts from California to Nevada to verify Mr. Hyatt's claims as compared to the total 624

1 hours the FTB spent on the 1991 audit.

2 35. The audit file shows that the FTB contacted the Clark County Department of Election
3 Records and was informed that on July 5, 1994, Mr. Hyatt filed a voter registration affidavit to
4 change his claimed voter registration address to 5441 Sandpiper Lane, Las Vegas, Nevada 89102. A
5 true and correct copy of the 1991 narrative report discussion of "Voter Registration" and record of
6 this discussion is attached as Exhibit 30. I verified through a "Lexis" search that the above property
7 was owned by Michael and La Dawn Kern, Mr. Hyatt's accountant, and that the Kerns had sold the
8 property on October 27, 1994 and had purchased another property on June 3, 1994. A true and
9 correct copy of the Lexis printout is attached as Exhibit 31.

10 36. All of the actions that I took involving Mr. Hyatt were for the purpose of determining
11 whether Mr. Hyatt had established significant ties with Nevada and had severed significant ties with
12 California at the time that he claimed.

13 37. I determined that Mr. Hyatt had not established significant ties with Nevada and had not
14 severed significant ties with California during 1991.

15 38. I was assigned to work the residency audit of Mr. Hyatt for 1992 which was initiated
16 based upon facts developed during the audit of 1991, which showed that Mr. Hyatt had not
17 established significant ties to Nevada during 1991 and continued to have significant California ties
18 beyond 1991. A true and correct copy of a letter dated January 19, 1996 to Eugene Cowan is
19 attached as Exhibit 32.

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

21 DATED this 21st day of January, 2000.

22

23

24

25 SUBSCRIBED and SWORN to before me

26 this 21st day of January, 2000.

27

28 Linda Richardson
Notary Public

Sheila Cox
Sheila Cox



California Nonresident Part-Year Resident Income Tax Return 1991

8113001

540NR

Step 1 Use the California mailing label. Otherwise, please print or type.

Fiscal year beginning 1991, ending 19

Name and Address: GILBERT HYATT
P.O. BOX 60028
LAS VEGAS, NV 89160

Your social security number: 069-30-9999
Spouse's social security number:

Do Not Use These Spaces:
P
M
A
R
E

Step 2 Filing Status

1 ☒ Single
2 ☐ Married filing joint return (even if only one had income)
3 ☐ Married filing separate return. Enter spouse's SSN above and full name here.
4 ☐ Head of household (with qualifying person). If the qualifying person is your child but not your dependent, enter child's name here.
5 ☐ Qualifying widow(er) with dependent child. Enter year spouse died 19

Step 3 Exemptions

6 If someone (such as your parent) can claim you as a dependent on his or her tax return, check here, skip lines 7 through 10 and enter -0- on line 11. 6 ☐

7 Personal: If you checked box 1, 3 or 4 above, enter 1. If you checked box 2 or 5, enter 2. 7 1.
8 Blind: If you or your spouse is visually impaired, enter 1. If both are visually impaired, enter 2. 8
9 Senior: If you or your spouse is 65 or older, enter 1. If both are 65 or older, enter 2. 9
10 Dependents: Enter name and relationship. Do not include yourself or your spouse. Enter the total number of dependents 10 1.

11 Total number of exemptions. Add lines 7 through 10. 11 1.

Step 4 Taxable Income

12 Total state wages from all your Form(s) W-2, box 25, including wages earned outside California. 12

13 Federal adjusted gross income from line 31 of your Form 1040, line 16 of your Form 1040A, line 3 of your Form 1040EZ or line 30 of your Form 1040NR. 13 17,103,327

14 California adjustments - subtractions. Enter amount from Schedule CA, line 2. 14 117,136.
15 Subtract line 14 from line 13. If less than zero, enter -0-. 15 16,986,191
16 California adjustments - additions. Enter amount from Schedule CA, line 3. 16 747,910
17 Adjusted gross income from all sources. Combine line 15 and line 16. 17 17734,101.
18 Enter the [• Your standard deduction (see instructions), OR
larger of: • Your itemized deductions (from Schedule CA, line 29).] 18 6,358.
19 Total taxable income. Subtract line 18 from line 17. If less than zero, enter -0-. 19 17727,743.

Step 5 Tax

20 California adjusted gross income from Schedule SI, line 22. 20 633,228.
21 Ratio. Divide line 20 by line 17. Enter the percentage. 21 0.0357
22 Tax on the amount shown on line 19. Check if from:
☒ Tax Table or Tax Rate Schedule ☐ FTB 3800 or ☐ FTB 3803 22 1945,940.
Caution: If under age 14 and you have more than \$1,100 of investment income, read line 22 instructions to see if you must attach form FTB 3800.
23 Exemption credits.
Caution: See the instructions for line 23 and the worksheet and instructions in "Step 6" before entering an amount on line 23. Check if from:
☐ line 23 instructions ☒ line 23 worksheet or ☐ Schedule P (540NR). 23 0.
24 Subtract line 23 from line 22. If less than zero, enter -0-. 24 1945,940.
25 Multiply line 24 by the percentage on line 21. 25 69,470.
26 Tax from ☐ Schedule G-1 and ☐ form FTB 5870A. 26
27 Add line 25 and line 26. Continue to Side 2. 27 69,470.

0000012

AA001073

ENTER HERE GILBERT HYATT

069-30-9999

Step 6
Credits

28 Amount from Side 1, line 47 28 69,470.
29 Credit for child and dependent care expenses. See instructions. 29
30 Credit for taxpayers with military income. See instructions. 30
31 Credit for joint custody head of household. See instructions. 31
32 Credit for dependent parent. See instructions. 32
33 Credit for senior head of household. See instructions. 33
34 Credit for head of household with a nondependent relative. See instructions. 34
35 Credit for political contributions. See instructions. 25.
36 Add lines 29 through 35 and multiply the total by the percentage on Side 1, line 21. 1.
37 Enter credit name code no. and amount 37
38 Enter credit name code no. and amount 38
39 Enter credit name code no. and amount 39
40 To claim more than three credits, see instructions. 40
41 Credit for taxpayers with income under \$22,841. See instructions. 41
42 Total credits. Add lines 36 through 41 1.
43 Subtract line 42 from line 28. If less than zero, enter - 69,469.

Step 7
Other Taxes

44 Alternative minimum tax. Attach Schedule P (540NR) 44
45 Other taxes. See instructions. 45
46 Total tax. Add lines 43 through 45 69,469.

Step 8
Payments

47 California income tax withheld. Enter total from your 1991 Forms W-2, W-2G, 1099-R, 591, 594, 597 and 598-B 47
48 1991 estimated tax and amount applied from 1990 return. Include amount paid with extension payment voucher (form FTB 3519) 48
49 Renter's credit. Enter amount from Schedule H (540NR), line 9. 49
50 Excess California SDI withheld. See instructions. 50
51 Total payments. Add lines 47 through 50. 0.

Step 9
Overpaid Tax or Tax Due

52 Overpaid tax. If line 51 is larger than line 46, subtract line 46 from line 51 52
53 Amount of line 52 to be applied to your 1992 estimated tax. 53
54 Amount of overpaid tax available this year. Subtract line 53 from line 52. 54
55 Tax due. If line 46 is larger than line 51, subtract line 51 from line 46. 69,469.

Step 10
Contributions

56 Contribution to California Seniors Special Fund. See instructions. 56
You may make a contribution of \$1 or more to:
57 Alzheimer's Disease/Related Disorders Fund 57
58 California Fund for Senior Citizens. 58
59 Rare and Endangered Species Preservation Program. 59
60 State Children's Trust Fund for the Prevention of Child Abuse. 60
61 Veterans Memorial Account 61
California Election } 62 Your political party amount (\$25 max) > 62
Campaign Fund } 63 Spouse's political party amount (\$25 max) > 63
64 Total voluntary contributions. Add lines 57 through 63 64
65 Total contributions. Add lines 56 and 64. 65

Step 11
Refund or Amount You Owe

66 REFUND OR NO AMOUNT DUE. Subtract line 65 from line 54. Mail your return to: Franchise Tax Board, P.O. Box 942840, Sacramento, CA 94240-0000 0.
67 AMOUNT YOU OWE. Add line 55 and line 65. Attach check or money order for full amount payable to "Franchise Tax Board." Write your social security number and "1991 Form 540NR" on it. Mail it with your return to: Franchise Tax Board, P.O. Box 942867, Sacramento, CA 94267-0001 69,469.

Step 12
Interest and Penalties

68 Interest and late return and late payment penalties. 68
69 Underpayment of estimated tax. If form FTB 5805 or 5805F is attached, check box at right ☐ 69
70 If you do not need California income tax forms mailed to you next year, check box at right. 70 ☐

Sign Here

IMPORTANT: You must attach a copy of your federal income tax return and federal schedules.
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.
Your signature X Gilbert P. Hyatt X Spouse's signature (if filing jointly, both must sign) _____ Date 4/13/92
Signature of paid preparer (preparation of a return is based on all information of which preparer has any knowledge.) Mukul K. Jain Preparer's SSN/FEIN 573-72-5768
Firm's Name (or yours if self-employed) Piercy, Bowler, Taylor & Kern 6600 W. Charleston, Suite 118
and address Las Vegas, NV 89102 88-0265237

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AA001074

FT
TAXABLE YEAR
1991**Nonresident or Part-Year Resident
California Adjusted Gross Income**

CALIFORNIA SCHEDULE

SIUse this schedule if you were a full-year nonresident or part-year resident of California in 1991. Attach to Form 540NR. See Schedule SI instructions.
Name(s) as shown on your return Your social security number

GILBERT HYATT

069-30-9999

STEP 1 - California Income - Enter all of your income earned while you were a California resident and your income received from sources within California while you were a nonresident.

1	Wages, salaries, tips, etc.	1	
2	Taxable interest income	2	14,872.
3	Dividend income	3	4,750.
4	Alimony received	4	
5	Business income or (loss)	5	613,806.
6	Capital gain or (loss)	6	
7	Capital gain distributions not reported on line 6	7	
8	Other gains or (losses)	8	
9	a Total IRA distributions	9a	
	b Taxable amount	9b	
10	a Total pensions and annuities	10a	
	b Taxable amount	10b	
11	Rents, royalties, partnerships, S corporations, estates, trusts, etc.	11	
12	Farm income or (loss)	12	
13	Other income (list type and amount)	13	
14	California Income. Add lines 1 through 13 in the far right column	14	633,228.



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STEP 2 - California Adjusted Gross Income - Enter adjustments that are directly related to income reported above.

15	IRA deduction: You	Spouse	15	
16	Deduction for self-employment tax		16	
17	Self-employed health insurance deduction		17	
18	Keogh retirement plan and self-employed SEP deduction		18	
19	Penalty on early withdrawal of savings		19	
20	Alimony paid. Recipient's last name:	Recipient's social security number	20	
21	Total adjustments. Add lines 15 through 20.		21	
22	California adjusted gross income. Subtract line 21 from line 14. Enter the amount here and on Form 540NR, line 20		22	633,228.

Note: Be sure to complete Step 3.

STEP 3 - Important: Check the appropriate boxes below and enter the appropriate information that applies to you and your spouse.

		You		Spouse	
		Yes	No	Yes	No
1	I changed my legal residence from California during 1991 and have not moved back to California	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	I changed my legal residence from California during or before 1991 and moved back to California during 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	I changed my legal residence to California during 1991. I was not previously a California resident	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	I was a nonresident of California for all of 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	I was a resident of NEVADA				
	My spouse was a resident of				
5	I was a military nonresident stationed in California in 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	I was a California military resident stationed outside California in 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	I owned a home in California while not living in California	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If yes, enter the address of the home				
8	I lived in California during 1991 for (enter the number of days)	273		Spouse	
9	I left California on (enter date)	10/01/91			
10	I returned to California on (enter date)				
11	I became a California resident during 1991 on (enter date)	01/01/91			

ATTACH THIS SCHEDULE TO FORM 540NR

0000014

FT
TAXABLE YEAR**1991****California Adjustments**

SCHEDULE

CA

Important: Attach this schedule directly behind Form 540NR.

Name(s) as shown on return

Social security number

GILBERT HYATT

069-30-9999

PART I ADJUSTMENTS TO FEDERAL ADJUSTED GROSS INCOME**Step 1****Subtractions**

- | | | | |
|----|---|-----|----------|
| 1 | State income tax refund from federal Form 1040, line 10, or Form 1040NR, line 11 | 1 | |
| 2 | Unemployment compensation from federal Form 1040, line 20, or Form 1040A, line 12, or Form 1040NR, line 21 | 2 | |
| 3 | Social security benefits from federal Form 1040, line 21b, or Form 1040A, line 13b, or Form 1040NR, page 4, line 73 | 3 | |
| 4 | California nontaxable interest or dividend income. See instructions | 4 | 117,136. |
| 5 | Railroad retirement benefits and sick pay. See instructions | 5 | |
| 6 | California Lottery winnings. See instructions | 6 | |
| 7 | Difference between state and federal wages. See instructions | 7 | |
| 8 | IRA distributions. See instructions | 8 | |
| 9 | Pensions and annuities. See instructions | 9 | |
| 10 | Passive activity. See instructions | 10 | |
| 11 | Depreciation and amortization from form FTB 3885A, line 6a and line 10a | 11 | |
| 12 | Capital gains or (losses) from California Schedule D, line 11a | 12 | |
| 13 | Other gains or (losses) from California Schedule D-1, line 21a and line 38 | 13 | |
| 14 | Other subtractions: | | |
| | a. California disaster loss deduction from your 1991 form FTB 3805V | 14a | |
| | b. Other. See instructions. Specify | 14b | |
| 15 | Total subtractions. Add lines 1 through 14b. Enter here and on Form 540NR, line 14 | 15 | 117,136. |



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Step 2**Additions**

- | | | | |
|----|--|-----|----------|
| 16 | Interest on state and municipal bonds from a state other than California. See instructions | 16 | 4,608. |
| 17 | Difference between state and federal wages. See instructions | 17 | |
| 18 | Passive activity. See instructions | 18 | |
| 19 | Depreciation and amortization from form FTB 3885A, line 6b and line 10b | 19 | |
| 20 | Capital gains or (losses) from California Schedule D, line 11b | 20 | |
| 21 | Other gains or (losses) from California Schedule D-1, line 21b and line 38 | 21 | |
| 22 | Other additions: | | |
| | a. Federal net operating loss deduction from your 1991 federal Form 1040, line 22, or Form 1040NR, line 22 | 22a | 743,302. |
| | b. Other. See instructions. Specify | 22b | |
| 23 | Total additions. Add lines 16 through 22b. Enter here and on Form 540NR, line 16 | 23 | 747,910. |

PART II ADJUSTMENTS TO FEDERAL ITEMIZED DEDUCTIONS

- | | | | |
|----|--|----|---------|
| 24 | Federal itemized deductions. Add the amounts on federal Schedule A (Form 1040), lines 4, 8, 12, 16, 17, 18, 24 and 25 or Schedule A (Form 1040NR), lines 2, 4, 5, 6, 8 and 9 | 24 | 31,788. |
| 25 | State and local income taxes from federal Schedule A (Form 1040), line 5, or Schedule A (Form 1040NR), line 2 and foreign income taxes. See instructions | 25 | |
| 26 | Subtract line 25 from line 24 | 26 | 31,788. |
| 27 | Other adjustments. See instructions. Specify | 27 | NONE |
| 28 | Combine line 26 and line 27 | 28 | 31,788. |
| 29 | California itemized deductions. See Statement 2 | 29 | 6,358. |

- If your federal adjusted gross income on Form 540NR, line 13 is not more than:
 - \$100,000 if single or married filing separate
 - \$150,000 if head of household
 - \$200,000 if married filing joint or qualifying widow(er) enter the amount on line 28, on line 29
 - If your federal adjusted gross income on Form 540NR, line 13 is more than the amount listed above for your filing status, complete the worksheet in the instructions for line 29 to figure the amount to enter on line 29.
- If your California itemized deductions on line 29 are larger than your standard deduction, enter your California itemized deductions on Form 540NR, line 18. Otherwise, enter your standard deduction on Form 540NR, line 18.

0000015

1991

GILBERT HYATT

SSN: 069-30-9999

CALIFORNIA SOURCE INTEREST INC
SCHEDULE SI, LINE 2

ASSUME ALL INTEREST EARNED.... 14872.00
DURING 1/1/91 TO 10/1/91.....
FOR SIMPLICITY--ACTUALLY SOME.
INTEREST EARNED AFTER 10/1/91.
WHILE NON RESIDENT.....

Total 14872.00

CALIFORNIA SOURCE DIVIDENDS
SCHEDULE SI, LINE 3

ASSUMES ALL DIVIDENDS EARNED.. 4750.00
WHILE CALIFORNIA RESIDENT FROM
1/1/91 TO 10/1/91 FOR
SIMPLICITY -- ACTUALLY SOME...
DIVIDENDS EARNED AFTER 10/1/91
WHILE NON RESIDENT.....

Total 4750.00

CALIFORNIA BUSINESS SOURCE INC
SCHEDULE SI, LINE 5

PIONEER..... 200000.00
PHILIPS CORP..... 400000.00
NIKKEI ELECTRONICS (SPEAKING).. 12500.00
CMP PUBLICATIONS (SPEAKING)... 1105.65

Total 613606.00

DEDUCTION FOR SELF-EMP TAX
SCHEDULE SI, LINE 16

ASSUMES NO SE TAX DEDUCTION...
ALLOCABLE TO CAL SOURCE.....
BUSINESS INCOME FOR SIMPLICITY
--ACTUALLY A PORTION IS
ALLOCABLE.....

Total 0.00

SELF EMP HEALTH DEDUCTION
SCHEDULE SI, LINE 17



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0000016

1991

GILBERT HYATT

SSN: 069-30-9999

ASSUMES NO PORTION OF SELF-EMP
HEALTH DEDUCTION IS ALLOCABLE.
TO CAL SOURCE BUSINESS INCOME.
FOR SIMPLICITY -- ACUTALLY...
SOME PORTION IS ALLOCABLE.....

Total

0.00

SEP DEDUCTION
SCHEDULE SI, LINE 18

ASSUMES NO PORTION OF SEP.....
DEDUCTION IS ALLOCABLE TO CAL.
SOURCE BUSINESS INCOME FOR ...
SIMPLICITY -- ACTUALLY SOME ..
PORTION IS ALLOCABLE.....

Total

0.00



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AA001078

GILBERT HYATT

069-30-9999

PART I - ADJUSTMENTS TO FEDERAL ITEMIZED DEDUCTIONS

1. Federal itemized deductions before phase-out (from federal Schedule A, lines 4, 8, 12, 16, 17, 18, 24, and 25)..... 31,788.

2. State and local income taxes:

State/local taxes. Fed Sch A, ln 5
Foreign taxes. Fed Sch A, line 7

Total State and Local Taxes (Schedule CA, line 25).....

3. Other adjustments (for Form 540 or Form 540NR filers only):

Interest adj. FTB 3526, line 8
Depr adj for fed Form 2106 assets
Depr/amort adj for fed Sch A, ln 20



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Total Other Adjustments (Schedule CA, line 27).....

4. Total California Itemized Deductions (Schedule CA, line 28). 31,788.

PART II - ITEMIZED DEDUCTIONS WORKSHEET

1. CA Itemized Deductions before phase-out (Sch CA, line 28)... 31,788.

2. Add the amounts on Schedule A, line 4, line 11, and line 17 plus any gambling losses included on line 25.....

3. Subtract line 2 from line 1..... 31,788.

NOTE: If the result is zero, stop here; enter the amount from line 1 above on Schedule CA, line 29.

4. Multiply line 3 by 80% (.80)..... 25,430.

5. Enter the amount from Form 540, line 13..... 17,103,327.

6. Enter on line 6 the amount shown below for your filing status:

- Single or married filing separate \$100,000}

- Head of household \$150,000}

- Married joint, or surviving spouse \$200,000}

100,000.

7. Subtract line 6 from line 5..... 17,103,327.

NOTE: If the result is zero or less, stop here; enter the amount from line 1 above on Schedule CA, line 29.

8. Multiply line 7 by 6% (.06)..... 1022,090.

9. Compare the amounts on line 4 and line 8 above.

Enter the smaller of the two amounts here.....

25,430.

10. Total Itemized Deductions. Subtract line 9 from line 1.

Enter the result here and on Schedule CA, line 29.....

6,358.

0000018

CREDIT INFORMATION

1. Review the FTB instructions and enter an 'X' if qualified for any of the following credits:

- a. Credit for Joint Custody Head of Household.....[]
 b. Credit for Dependent Parent.....[]
 c. Credit for Senior Head of Household.....[]
 d. Credit for Qualified Parent.....[]
 Enter number of months qualified for this credit.._____

2. Enter total political contributions for 1991..... 1,000.

3. Enter total military income received in 1991..... Taxpayer Spouse

SUMMARY OF AVAILABLE CREDITS

CODE	CREDIT NAME	
	Credit for Child and Dependent Care Expenses.....	
	Credit for Taxpayers with Military Income.....	
170	Credit for Joint Custody Head of Household.....	
173	Credit for Dependent Parent.....	
163	Credit for Senior Head of Household.....	
164	Credit for Head of Household with a Nondependent Relative...	
165	Credit for Public Retirees Under 65 or the Credit for the Elderly or Disabled.....	
184	Credit for Political Contributions.....	
162	Prison Inmate Labor Credit, FTB 3507.....	
166	Jobs Credit, FTB 3524.....	
160	Low Emission Vehicle Credit, FTB 3554.....	
169	Enterprise Zone Employee Credit, FTB 3553.....	
161	Credit for Qualified Parent.....	
171	Credit Carryovers, FTB 3518.....	
191	Ridesharing Large Employer Program, FTB 3518.....	
192	Credits Small Employer Program, FTB 3518.....	
193	Employer Subsidized Transit Passes, FTB 3518..	
194	Employee Vanpool Program, FTB 3572.....	
176	Enterprise Zone Hiring/Sales and Use Tax Credit, FTB 3805Z..	
177	Program Area Hiring/Sales and Use Tax Credit, FTB 3805Z.....	
178	Water Conservation Credit Carryover.....	
179	Solar Pump Credit Carryover (farmers only).....	
182	Energy Conservation Credit Carryover, FTB 3514.....	
186	Residential Rental and Farm Sales Credit, FTB 3529.....	
189	Employer Child Care Program Credit, FTB 3501.....	
190	Employer Child Care Contribution Credit, FTB 3501.....	
174	Recycling Equipment Credit, FTB 3527.....	
175	Agricultural Products Credit, FTB 3534.....	
180	Solar Energy Credit Carryover, FTB 3805L.....	
181	Commercial Solar Energy Credit Carryover, FTB 3805L.....	
196	Commercial Solar Electric System Credit, FTB 3556.....	
183	Research Credit, FTB 3523 (start-up companies, use FTB 3505)	
185	Orphan Drug Credit, FTB 3528.....	
172	Low-income Housing Credit, FTB 3521.....	
188	Credit for Prior Year Alternative Minimum Tax, FTB 3510.....	
187	Other State Tax Credit, Schedule S.....	

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TAXABLE YEAR

1991

Alternative Minimum Tax and Credit Limitations - Nonresidents or Part-Year Residents

CALIFORNIA SCHEDULE

P (540NR)

Attach this schedule to Form 540NR.

Name(s) as shown on Form 540NR

GILBERT HYATT

Your social security number

069-30-9999

Part I Section A - Tentative Minimum Tax (TMT) and Alternative Minimum Tax (AMT) Computation

1	Taxable income from Form 540NR, line 19 (may be less than zero)	1	17,727,743.
2	Amount, if any, from line 9 of the worksheet for line 29 of Schedule CA	2	(25,430)
3	Combine line 1 and line 2	3	17,702,313.
4	Adjustments (See instructions before completing):		
a	Standard deduction from Form 540NR, line 18	4a	
b	Medical and dental expense	4b	NONE
c	Miscellaneous itemized deductions from federal Schedule A (Form 1040), line 24	4c	
d	Personal and real property taxes	4d	1,860.
e	Refund of personal and real property taxes	4e	
f	Interest	4f	NONE
g	Combine lines 4a through 4f	4g	1,860.
h	Depreciation of property placed in service after 1986	4h	
i	Circulation and research and experimental expenditures paid or incurred after 1986	4i	
j	Mining exploration and development costs paid or incurred after 1986	4j	
k	Long-term contracts entered into after 2/28/86	4k	
l	Pollution control facilities placed in service after 1986	4l	
m	Installment sales of certain property		
n	Adjusted gain or loss		
o	Certain loss limitations		
p	Tax shelter farm activities		
q	Passive activities		
r	Beneficiaries of estates and trusts		
s	Combine lines 4h through 4r	4s	
5	Tax preference items (See instructions before completing):		
a	Appreciated property charitable deduction	5a	
b	Depletion	5b	
c	Add line 5a and line 5b		
d	Accelerated depreciation of real property placed in service before 1987	5d	
e	Accelerated depreciation of leased personal property placed in service before 1987	5e	
f	Amortization of certified pollution control facilities placed in service before 1987	5f	
g	Intangible drilling costs	5g	
h	Add lines 5d through 5g	5h	
6	Alternative minimum taxable income. Combine lines 3, 4g, 4s, 5c and 5h. If married filing separate, see instructions	6	17,704,173.
7	Enter: \$40,000 (\$20,000 if married filing separate; \$30,000 if single or head of household)	7	30,000.
8	Enter: \$150,000 (\$75,000 if married filing separate; \$112,500 if single or head of household)	8	112,500.
9	Subtract line 8 from line 6. If zero or less, enter zero here and on line 10	9	17,591,673.
10	Multiply line 9 by 25% (.25)	10	4,397,918.
11	Subtract line 10 from line 7. If zero or less, enter zero. If this schedule is for a child under age 14, see instructions	11	NONE
12	Subtract line 11 from line 6. If zero or less, enter zero here and on line 17	12	17,704,173.
13	Multiply line 12 by 8.5% (.085)	13	1,504,855.
14	a Alternative minimum taxable income. Enter the amount from line 6	14a	17,704,173.
b	Itemized deductions not included in line 4 adjustments or line 5a. See instructions	14b	4,498.
c	Total AMT adjusted gross income. Add line 14a and line 14b and complete Part I, Section B.	14c	17,708,671.
d	AMT California adjusted gross income from Part I, Section B, line 4	14d	633,228.
e	Ratio. Divide line 14d by line 14c. Enter the percentage on this line (ratio can exceed 100%)	14e	3.5758%
15	Tentative minimum tax. Multiply line 13 by line 14e	15	53,811.
16	Regular tax from Form 540NR line 22 multiplied by the percentage from Form 540NR, line 21. If an amount is entered on Form 540NR, line 26, see instructions	16	69,470.
17	Alternative minimum tax. Subtract line 16 from line 15. If less than zero, enter zero. See instructions if this schedule is for a child under age 14. If you do not have Part II, Section D credits, also enter this amount on Form 540NR, line 44	17	NONE

* If you have entered an amount on line 15, see the special note on page 6 of the Schedule P (540NR) instructions.

Schedule P (540NR) 1991 Side 1

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Part I Section B - Alternative Minimum Tax (AMT) California Adjusted Gross Income

1 California adjusted gross income from Schedule SI, line 22	1	633,228.
2 Adjustments (See instructions before completing):		
a Depreciation of property placed in service after 1986	2a	
b Circulation and research and experimental expenditures paid or incurred after 1986	2b	
c Mining exploration and development costs paid or incurred after 1986	2c	
d Long-term contracts entered into after 2/28/86	2d	
e Pollution control facilities placed in service after 1986	2e	
f Installment sales of certain property	2f	
g Adjusted gain or loss	2g	
h Certain loss limitations	2h	
i Tax shelter farm loss	2i	
j Passive activity loss	2j	
k Beneficiaries of estates and trusts	2k	
l Total adjustments. Add lines 2a through 2k	2l	
3 Tax preference items (See instructions before completing):		
a Depletion	3a	
b Accelerated depreciation of real property placed in service before 1987	3b	
c Accelerated depreciation of leased personal property placed in service before 1987	3c	
d Amortization of certified pollution control facilities placed in service before 1987	3d	
e Intangible drilling costs	3e	
f Add lines 3a through 3e	3f	
4 AMT California adjusted gross income. Combine lines 1, 2l and 3f. Enter here and on Part I, Section A, line 14d	4	633,228.

Part II Credit Limitations**Section A - Tax in excess of tentative minimum tax**

1 a Regular tax from Part I, Section A, line 16	1a	69,470.
b Tentative minimum tax from Part I, Section A, line 15	1b	53,811.
c Subtract line 1b from line 1a. If less than zero, enter zero	1c	15,659.
d Exemptions from Form 540NR, line 11, multiplied by \$60, times the percentage from Form 540NR, line 21. If you were required to limit your exemption credits, see instructions.	1d	NONE
e Enter line 1c or line 1d, whichever is smaller	1e	NONE
f Divide the amount on line 1e by the percentage from Form 540NR, line 21. Enter the result here and on Form 540NR, line 23, and check the Schedule P(540NR) box	1f	NONE
2 a Enter the amount from Form 540NR, line 27 (use refigured amount if exemption credits are limited)	2a	69,470.
b Tentative minimum tax from Part I, Section A, line 15	2b	53,811.
3 Subtract line 2b from line 2a. If less than zero, enter zero	3	15,659.

Part II continues on Side 3.



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Sherrill
JAN 3 2000

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Section B - Credits that may not reduce excess tax below tentative minimum tax

Code	(a) Credit amount	(b) Credit used this year	(c) Tax balance	(d) Credit carryover
4 Enter the amount from line 3	4		15,659.	
5 Credit for child and dependent care expenses from the worksheet in Form 540NR instructions \times the percentage from Form 540NR, line 21	5		15,659.	
6 Credit for taxpayers with military income from the worksheet in Form 540NR instructions \times the percentage from Form 540NR, line 21	6		15,659.	
7 Credit for joint custody head of household from the worksheet in Form 540NR instructions \times the percentage from Form 540NR, line 21	7		15,659.	
8 Credit for dependent parent from the worksheet in Form 540NR instructions \times the percentage from Form 540NR, line 21	8		15,659.	
9 Credit for senior head of household from the worksheet in Form 540NR instructions \times the percentage from Form 540NR, line 21	9		15,659.	
10 Credit for head of household with a nondependent relative (see Form 540NR instructions) \times the percentage from Form 540NR, line 21	10		15,659.	
11 Credit for political contributions \times the percentage from Form 540NR, line 21	11		15,659.	
102 12 Prison inmate labor credit from form FTB 3507	12		15,659.	
166 13 Jobs credit from form FTB 3524	13		15,659.	
160 14 Low-emission vehicles credit from form FTB 3554	14		15,659.	
169 15 Enterprise zone employee credit from form FTB 3553	15		15,659.	
181 16 Credit for qualified parent (from worksheet in Form 540NR instructions)	16		15,659.	
171 17 Ridesharing credit: Carryover from form FTB 3518	17		15,659.	
191 18 Ridesharing credit: Large employer program from form FTB 3518	18		15,659.	
192 19 Ridesharing credit: Small employer program from form FTB 3518	19		15,659.	
193 20 Ridesharing credit: Employer subsidized transit passes from form FTB 3518	20		15,659.	
184 21 Ridesharing credit: Employee vanpool program from form FTB 3572	21		15,659.	
178 22 Enterprise zone hiring/sales and use tax credit from form FTB 3805Z	22		15,659.	
177 23 Program area hiring/sales and use tax credit from form FTB 3805Z	23		15,659.	
178 24 Water conservation credit carryover from statement	24		15,659.	
179 25 Solar pump credit carryover from statement	25		15,659.	
182 26 Energy conservation credit carryover from form FTB 3514	26		15,659.	
186 27 Residential rental and farm sales credit from form FTB 3529	27		15,659.	
189 28 Employer child care program credit from form FTB 3501	28		15,659.	
190 29 Employer child care contribution credit from form FTB 3501	29		15,659.	
174 30 Recycling equipment credit from form FTB 3527	30		15,659.	
178 31 Agricultural products credit from form FTB 3534	31		15,659.	
180 32 Solar energy credit carryover from form FTB 3805L	32		15,659.	
181 33 Commercial solar energy credit carryover from form FTB 3805L	33		15,659.	
196 34 Commercial solar electric system credit from form FTB 3556	34		15,659.	
183 35 Research credit from form FTB 3523 (start-up companies use FTB 3505L)	35		15,659.	
185 36 Orphan drug credit from form FTB 3528	36		15,659.	
172 37 Low-income housing credit from form FTB 3521	37		15,659.	
188 38 Credit for prior year alternative minimum tax from form FTB 3510	38		15,659.	

Section C - Credits that may reduce tax below tentative minimum tax

39 If line 3 is zero, enter the amount from line 2a. If line 3 is more than zero, enter the total of line 2b and line 38, column (d)	39		69,470.	
180 40 Solar energy credit carryover from line 32, column (d)	40		69,470.	
181 41 Commercial solar energy credit carryover from line 33, column (d)	41		69,470.	
196 42 Commercial solar electric system credit from line 34, column (d)	42		69,470.	
183 43 Research credit from line 35, column (d)	43		69,470.	
185 44 Orphan drug credit from line 36, column (d)	44		69,470.	
172 45 Low-income housing credit from line 37, column (d)	45		69,470.	
188 46 Other state tax credit from Schedule S	46		69,470.	

Section D - Credits that may reduce alternative minimum tax (AMT)

47 Enter your prorated alternative minimum tax from Part I, Section A, line 12	47		NONE	
48 Solar energy credit carryover from line 40, column (d)	48		NONE	
49 Commercial solar energy credit carryover from line 41, column (d)	49		NONE	
50 Adjusted AMT. Enter line 49, column (d), here and on Form 540NR, line 4a	50		NONE	

Schedule P (540NR) 1991 Side 3

0000022

356034-K382 04/13/96 00:29:25 V150

GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 1
069-30-9999

Supplement to Form 540NR

California Phaseout of Personal Exemptions

1. Total exemptions multiplied by \$ 60		60.
2. Adjusted gross income from line 13	17103327.	
3. Filing status income limit:		
a) 1 or 3, \$100,000 b) 4, \$150,000		
c) 2 or 5, \$200,000	100,000.	
4. Line 2 less line 3 (Stop if over \$22,500)	17003327.	
5. Line 4 divided by 2,500 (1,250 if MFS)		
6. Line 5 multiplied by \$ 6		
7. Line 6 multiplied by the number of exemptions .		
8. Deduction for exemptions (Line 1 less line 7).		NONE



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J. Hernandez
JAN 3 2000

0000023

Statement 1

AA001084

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GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 2
069-30-9999

Supplement to Form 540NR Schedule CA

California Itemized Deductions Worksheet

1. Enter the amount from Schedule CA, line 28.....	31,788.
2. Schedule A, lines 4, 11, and 17 amounts plus any gambling losses on line 25	NONE
3. Subtract line 2 from line 1	31,788.
4. Multiply line 3 by 80%	25,430.
5. Enter the amount from Form 540, line 13	17134841.
6. Enter on line 6 the amount for filing status: a) 1 or 3, \$100,000 b) 4, \$150,000 c) 2 or 5, \$200,000	100,000.
7. Line 5 less line 6	17034841.
8. Multiply line 7 by 6%	1,022,090.
9. Enter the smaller of line 4 or line 8	25,430.
10. Total itemized deductions	6,358.



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Shemler
JAN 3 2000

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Statement 2

AA001085

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GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 3
069-30-9999

California Carryover Schedule



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Sheridan
JAN 3 2000

Net Operating Loss Carryover

Carryover generated FYE 12/31/77	2,351.
Total utilization	(NONE)
Carried forward from 12/31/90	2,351.
Carryover generated FYE 12/31/78	27,964.
Total utilization	(NONE)
Carried forward from 12/31/90	27,964.
Carryover generated FYE 12/31/79	32,527.
Total utilization	(NONE)
Carried forward from 12/31/90	32,527.
Carryover generated FYE 12/31/80	38,549.
Total utilization	(NONE)
Carried forward from 12/31/90	38,549.
Carryover generated FYE 12/31/81	41,128.
Total utilization	(NONE)
Carried forward from 12/31/90	41,128.

Continued on next page

Statement 3

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AA001086

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GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 4
069-30-9999

California Carryover Schedule (Cont'd)



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JAN 3 2000

Carryover generated FYE 12/31/82	40,110.
Total utilization	(NONE)
Carried forward from 12/31/90	40,110.
Carryover generated FYE 12/31/83	52,774.
Total utilization	(NONE)
Carried forward from 12/31/90	52,774.
Carryover generated FYE 12/31/84	52,367.
Total utilization	(NONE)
Carried forward from 12/31/90	52,367.
Carryover generated FYE 12/31/85	68,275.
Total utilization	(NONE)
Carried forward from 12/31/90	68,275.
Carryover generated FYE 12/31/86	67,391.
Total utilization	(NONE)
Carried forward from 12/31/90	67,391.
Carryover generated FYE 12/31/87	89,027.
Total utilization	(NONE)

Continued on next page

Statement 4

0000026

AA001087

356034-K382 04/13/91 00:29:25 V150

GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 5
069-30-9999

California Carryover Schedule (Cont'd)

Carried forward from	12/31/90		89,027.
Carryover generated FYE 12/31/88	81,485.	
Total utilization	(NONE)	
Carried forward from	12/31/90		81,485.
Carryover generated FYE 12/31/89	62,696.	
Total utilization	(NONE)	
Carried forward from	12/31/90		62,696.
Carryover generated FYE 12/31/90	86,658.	
Total utilization	(NONE)	
Carried forward from	12/31/90		86,658.
Total amount carried forward from YE 12/31/90s	743,302.	



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JAN 3 2000

Statement 5

0000027

AA001088

SCHEDULE C
(Form 1040)Department of the Treasury
Internal Revenue Service**Profit or Loss From Business**
(Sole Proprietorship)Partnerships, joint ventures, etc., must file Form 1065.
Attach to Form 1040 or Form 1041. See instructions for Schedule C Form 1040.

OMB No. 1545-0074

1991Attachment
Sequence No. 09

Name of proprietor

GILBERT HYATT

Social security number 0330

069-30-9999

A Principal business or profession, including product or service (see instructions)

SPEAKEING/PATENTS

B Enter principal business code

From page 21 **6882**

C Business name

GILBERT HYATT

D Employer ID number (dot SSN)

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code **3225 S PECOS ROAD APT NO 237F LAS VEGAS, NV 89121**F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____

G Method(s) used to

Lower of cost

Other (attach

Does not apply if

value closing inventory: (1) ☐ Cost (2) ☐ or market (3) ☐ explanation(4) ☒ checked, skip line H

Yes No

H Was there any change in determining quantities, costs, or valuations between opening and closing inventory? (If "Yes," attach explanation)

I Did you "materially participate" in the operation of this business during 1991? (If "No," see instructions for limitations on losses)

☒ Yes ☐ No

J If this is the first Schedule C filed for this business, check here

☒ Yes ☐ No**Part I Income**

1 Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see the instructions and check here

Sept. 6

1 13,606.

2 Returns and allowances

2

3 Subtract line 2 from line 1

3 13,606.

4 Cost of goods sold (from line 40 on page 2)

4

5 Subtract line 4 from line 3 and enter the gross profit here

5 13,606.

6 Other income, including Federal and state gasoline or fuel tax credit or refund (see instructions)

6

7 Add lines 5 and 6. This is your gross income

7 13,606.

Part II Expenses (Caution: Enter expenses for business use of your home on line 30)

8 Advertising

8

9 Bad debts from sales or services

9

(see instructions)

10 Car and truck expenses (see

10

instructions - also attach

Form 4562)

11

11 Commissions and fees

11

12 Depreciation

12

13 Depreciation and section 179

13

expense deduction (not included

in Part III) (see instructions)

14 Employee benefit programs (other

14

than on line 19)

15 Insurance (other than health)

15

16 Interest:

a Mortgage (paid to banks, etc.)

16a

b Other

16b

17 Legal and professional services

17

18 Office expense

18

19 Pension and profit-sharing plans

19

20 Rent or lease (see instructions):

a Vehicles, machinery, and equipment

20a

b Other business property

20b

21 Repairs and maintenance

21

22 Supplies (not included in Part III)

22

23 Taxes and licenses

23

24 Travel, meals, and entertainment:

a Travel

24a

b Meals and

entertainment

c Enter 20% of line

24b subject to

limitations (see

instructions)

d Subtract line 24c from line 24b

24d

25 Utilities

25

26 Wages (less jobs credit)

26

27 Other expenses (list type and amount):

TRUE AND CORRECT COPY OF THE

ORIGINAL DOCUMENT ON FILE WITH THE

FRANCHISE TAX BOARD

27b Total other expenses

27b

28 Add amounts in columns for lines 8 through 27b. These are your total expenses before expenses for business use of your home

28 106.

29 Tentative profit (loss). Subtract line 28 from line 7

29 13,500.

30 Expenses for business use of your home (attach Form 8829)

30

31 Net profit or (loss). Subtract line 30 from line 29. If a profit, enter here and on Form 1040, line 12. Also enter the net profit on Schedule SE, line 2 (statutory employees, see instructions). If a loss, you MUST go on to line 32 (fiduciaries, see instructions)

31 13,500.

32 If you have a loss, you MUST check the box that describes your investment in this activity (see instructions)

32a All investment is at risk.

If you checked 32a, enter the loss on Form 1040, line 12, and Schedule SE, line 2 (statutory employees, see instructions). If you checked 32b, you MUST attach Form 6198.

32b Some investment is not at risk.

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule C (Form 1040) 1991

356034-K382 04/10/ 00:49:11 V150
CILBERT HYATT.

069-30-9999

Schedule C (Form 1040) 1991

Page 2

Part III Cost of Goods Sold (See instructions)

33 Inventory at beginning of year. (If different from last year's closing inventory, attach explanation).	33
34 Purchases less cost of items withdrawn for personal use	34
35 Cost of labor. (Do not include salary paid to yourself).	35
36 Materials and supplies	36
37 Other costs	37
38 Add lines 33 through 37	38
39 Inventory at end of year	39
40 Cost of goods sold. Subtract line 39 from line 38. Enter the result here and on page 1, line 4	40

Part IV Principal Business or Professional Activity Codes

Locate the major category that best describes your activity. Within the major category, select the activity code that most closely identifies the business or profession that is the principal source of your sales or receipts. Enter this 4-digit code on page 1, line B. For example, real estate agent is under the major category of "Real Estate," and the code is "5520." (Note: If your principal source of income is from farming activities, you should file Schedule F (Form 1040), Profit or Loss From Farming.)

See IRS instruction guide for codes.



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FRANCHISE TAX BOARD.

J. Peterson

N753

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AA001090

SCHEDULE C
(Form 1040)Department of the Treasury
Internal Revenue Service**Profit or Loss From Business**
(Sole Proprietorship)Partnerships, joint ventures, etc., must file Form 1065.
Attach to Form 1040 or Form 1041. See instructions for Schedule C (Form 1040).

OMB No. 1545-0046

1991Attachment
Sequence No. 09

Name of proprietor

GILBERT HYATT

Social security number (SSN)

069-30-9999

A Principal business or profession, including product or service (see instructions)

INVENTOR/LCD - COMPUTERS

B Enter principal business code

If on page 2 ▶ 7617

C Business name

GILBERT HYATT

D Employer ID number (if 330)

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code ▶ 3225 S PECOS ROAD APT NO 237 F LAS VEGAS, NV 89121

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

G Method(s) used to

value closing inventory: (1) ☐ Cost (2) ☐ Lower of cost or market (3) ☐ Other (attach explanation) (4) ☒ Does not apply (if checked, skip line 10) Yes No

H Was there any change in determining quantities, costs, or valuations between opening and closing inventory? (If "Yes," attach explanation)

I Did you "materially participate" in the operation of this business during 1991? If "No," see instructions for limitations on losses

J If this is the first Schedule C filed for this business, check here

Part I Income

1 Gross receipts or sales. Caution: If this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, see the instructions and check here

\$181.7

1 42,266,667.

2 Returns and allowances

2

3 Subtract line 2 from line 1

3 42,266,667.

4 Cost of goods sold (from line 40 on page 2)

4

5 Subtract line 4 from line 3 and enter the gross profit here

5 42,266,667.

6 Other income, including Federal and state gasoline or fuel tax credit or refund (see instructions)

6

7 Add lines 5 and 6. This is your gross income

7 42,266,667.

Part II Expenses (Caution: Enter expenses for business use of your home on line 30)

8 Advertising

8 187.

9 Bad debts from sales or services

9

(see instructions)

10 Car and truck expenses (see

instructions - also attach

Form 4562)

10

11 Commissions and fees

11 24,267,350.

12 Depletion

12

13 Depreciation and section 179

expense deduction (not included

in Part III) (see instructions)

13

14 Employee benefit programs (other

than on line 19)

14

15 Insurance (other than health)

15

16 Interest:

a Mortgage (paid to banks, etc.)

16a

b Other

16b

17 Legal and professional services

17 23,770.

18 Office expense

18 1,973.

19 Pension and profit-sharing plans

19

20 Rent or lease (see instructions):

a Vehicles, machinery, and equipment

20a

b Other business property

20b

21 Repairs and maintenance

21

22 Supplies (not included in Part III)

22

23 Taxes and licenses

23

24 Travel, meals, and entertainment:

a Travel

24a 2,650.

b Meals and

entertainment

521.

c Enter 20% of line

24b subject to

limitations (see

instructions)

104.

d Subtract line 24c from line 24b

24d 417.

25 Utilities

25

26 Wages (less jobs credit)

26

27 a Other expenses (list type and amount):

See Statement 7

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27 b Total other expenses

27b 233,886.

28 Add amounts in columns for lines 8 through 27b. These are your total expenses before expenses for business use of your home

28 24,530,233.

29 Tentative profit (loss). Subtract line 28 from line 7

29 17,736,434.

30 Expenses for business use of your home (attach Form 8829)

30

31 Net profit or (loss). Subtract line 30 from line 29. If a profit, enter here and on Form 1040, line 12. Also enter the net profit on Schedule SE, line 2 (statutory employees, see instructions). If a loss, you MUST go on to line 32 (fiduciaries, see instructions)

31 17,736,434.

32 If you have a loss, you MUST check the box that describes your investment in this activity (see instructions)

If you checked 32a, enter the loss on Form 1040, line 12, and Schedule SE, line 2 (statutory employees, see instructions). If you checked 32b, you MUST attach Form 6198.

32a All investment is at risk.
32b Some investment is not at risk.

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule C (Form 1040) 1991

Part III Cost of Goods Sold (See instructions)

33 Inventory at beginning of year. (If different from last year's closing inventory, attach explanation.)	33
34 Purchases less cost of items withdrawn for personal use	34
35 Cost of labor. (Do not include salary paid to yourself.)	35
36 Materials and supplies	36
37 Other costs	37
38 Add lines 33 through 37	38
39 Inventory at end of year	39
40 Cost of goods sold. Subtract line 39 from line 38. Enter the result here and on page 1, line 4	40

Part IV Principal Business or Professional Activity Codes

Locate the major category that best describes your activity. Within the major category, select the activity code that most closely identifies the business or profession that is the principal source of your sales or receipts. Enter this 4-digit code on page 1, line 8. For example, real estate agent is under the major category of "Real Estate," and the code is "5520." (Note: If your principal source of income is from farming activities, you should file Schedule F (Form 1040), Profit or Loss From Farming.)

See IRS instruction guide for codes.



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J. Peterson

356034-K382 04/10/02 00:49:11 V150

GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 7
069-30-9999

Supplement to Schedule C

Gross Receipts or Sales - Schedule C, line 1

Business name: GILBERT HYATT

PHILLIPS	400,000.
FUJITSU	9,000,000.
FUJITSU	7,666,667.
MATSUSHITA	9,000,000.
MATSUSHITA	9,000,000.
MATSUSHITA	7,000,000.
PIONEER (LAPSE OF OPTION ON LICENSE)	200,000.
Total to Schedule C, line 1	42,266,667.

Other expenses - Schedule C, line 27a

Business name: GILBERT HYATT

R & D EXPENSES

Total to Schedule C, line 27b

233,886.

233,886.



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J. Peterson

0000032

Statement 7

356034-K382 04/10/92 00:49:11 V150

GILBERT HYATT
LAS VEGAS, NEVADA 89160

Statement 6
069-30-9999

Supplement to Schedule C

Gross Receipts or Sales - Schedule C, line 1

Business name: GILBERT HYATT

NIKKEI ELECTRONICS MAGAZINE
CMP PUBLICATIONS

12,500.
1,106.

Total to Schedule C, line 1

13,606.



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FRANCHISE TAX BOARD.

J. Peterson

0000033

Statement 6

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

150 VAN NUYS BLVD., ROOM 100

VAN NUYS, CA 91401-3381

TELEPHONE: (818) 901-5225

For Privacy Act Notice, See Form FTB 1131



Date: June 17, 1993

Gilbert P. Hyatt
P.O. Box 60028
Las Vegas, NV 89160

Years: 1989 & 1990 & 1991

Your returns have been assigned to this office for examination. We hope to complete the examination as soon as possible, but our workload sometimes requires that our audits be delayed for some time. Answers to the questionnaire on the reverse side will assist us in scheduling an appointment on a mutually convenient date, and in expediting the examination of your returns.

Please complete the questionnaire and return it to our office within 10 days. If additional information is needed, you or your designated representative will be contacted.

Your cooperation is appreciated.

Marc Shayer
Marc Shayer
Tax Auditor

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

5150 VAN NUYS BLVD., ROOM 100

VAN NUYS, CA 91401-3381

TELEPHONE: (818) 901-5225

For Privacy Act Notice, See Form FTB 1131

2ND NOTICE 111



Date: July 1, 1993

Gilbert P. Hyatt
P.O. Box 60028
Las Vegas, NV 89160

Years: 1989 & 1990 & 1991

Your returns have been assigned to this office for examination. We hope to complete the examination as soon as possible, but our workload sometimes requires that our audits be delayed for some time. Answers to the questionnaire on the reverse side will assist us in scheduling an appointment on a mutually convenient date, and in expediting the examination of your returns.

Please complete the questionnaire and return it to our office within 10 days. If additional information is needed, you or your designated representative will be contacted.

Your cooperation is appreciated.

Marc Shayer
Marc Shayer
Tax Auditor

CONFIDENTIAL

H 01214

0000035

Officers and Founding Directors
Richard H. Bowler
Michael W. Kern
L. Ralph Piercy
Revelle B. Taylor

PIERCY, BOWLER, TAYLOR & KERN
CERTIFIED PUBLIC ACCOUNTANTS, LTD.
A Professional Corporation
A Member of the AICPA
SEC Practice Section

660 West Charleston Blvd., Suite 118
Las Vegas, Nevada 89102

Telephone (702) 384-1120
Fax (702) 870-2474

VN JUL 14 1993 REC'D

CERTIFIED/RETURN RECEIPT REQUESTED

Jul 2, 1993

Mr. Mark Shayer
Tax Auditor
Franchise Tax Board
6150 Van Nuys Blvd., Room 100
Van Nuys, California 91401-3381

Dear Mr. Shayer:

Enclosed please find the Power of Attorney we discussed on behalf of Gilbert P. Hyatt for tax years 1989, 1990 and 1991.

I understand you will be forwarding to me a questionnaire on residency status for completion by Mr. Hyatt.

If, in the meantime, you have any questions, please do not hesitate to call.

Yours truly,

PIERCY, BOWLER, TAYLOR & KERN



Michael W. Kern

MWK:mlp
Enclosures

cc: Mr. Gilbert P. Hyatt

CONFIDENTIAL
H 01215

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AA001097



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942840
SACRAMENTO, CA 94240

Power of Attorney

(ENTER TAXPAYERS NAME(S) AND ADDRESSES INCLUDING ZIP CODE, SOCIAL SECURITY OR CORPORATE NUMBER)

Gilbert P. Hyatt
P.O. Box 81230
Las Vegas, Nevada 89180
SS #: 069-30-9999

(ENTER NAME(S), ADDRESSES (INCLUDING ZIP CODES) AND TELEPHONE NUMBERS OF SPECIFIC APPOINTEE(S) BELOW. DO NOT ENTER NAMES OF ACCOUNTING OR LAW FIRMS PARTNERSHIPS, CORPORATIONS, ETC.)
HEREBY APPOINTS:

Eugene G. Cowan, Esq.
300 South Grand Avenue, 29th Floor
Los Angeles, California 90071
(213) 229-4824

As attorney(s) — in — fact to represent the taxpayer(s) before any office of the Franchise Tax Board for the following tax matters (SPECIFY THE TYPE(S) OF TAX AND YEAR(S) OR PERIOD(S) AND DATE OF DEATH IF ESTATE TAX.)

1991 Form 540NR and attachments

The attorney(s) — in — fact (or any of them) are authorized, subject to revocation, to receive confidential information and to perform on behalf of the taxpayer(s) the following acts for the tax matters described above:

CHECK THE BOXES FOR THE POWERS GRANTED.

- ☐ 1. To receive, but not to endorse and collect, checks in payment of any refund of California Personal Income or Bank and Corporation taxes, penalties or interest.
- ☐ 2. To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- ☐ 3. To execute consents extending the statutory period for assessment or collection of taxes.
- ☐ 4. To execute closing agreements under Section 19132 or 25781 of the California Revenue and Taxation Code.
- ☐ 5. To delegate authority or to substitute another representative.
- ☐ 6. Other acts (specify).

This Power of Attorney revokes all earlier Powers of Attorney on file with the California Franchise Tax Board for the same matters and years or periods covered by this form except the following (SPECIFY TO WHOM GRANTED, DATE, AND ADDRESS INCLUDING ZIP CODE, OR REFER TO ATTACHED COPIES OF EARLIER POWERS):

Mike Kern, CPA
6600 West Charleston, Suite 118
Las Vegas, Nevada 89102

This Power of Attorney will remain effective for the time limit specified below:

Until the expiration of statute of limitations for the taxpayer's 1991
Form 540NR.

Please execute this form on the reverse side.

INDIVIDUAL

Albert P. Hyatt _____ 9/27/93
 Signature of Testator Signature of Spouse Date

CORPORATION

certify that I have the authority to execute this Power of Attorney on behalf of the Corporation named herein.

 Signature of Corporate Officer Title of Officer Date

STATE OF CALIFORNIA

COUNTY OF _____

_____ before
 undersigned, a Notary Public for the State of California, personally appeared

_____ known to me to be an officer
 the corporation that executed this instrument and acknowledged to me that
 such corporation executed the same

 Notary Public

PARTNERSHIP

*certify that I have the authority to execute this Power of Attorney on behalf of the
 partnership named herein.*

 Signature of Partner Date

STATE OF CALIFORNIA

COUNTY OF _____

_____ before
 undersigned, a Notary Public for the State of California, personally appeared

_____ known to me to be one of the
 members of the partnership that executed this instrument and acknowledged to me
 that such partnership executed the same.

 Notary Public

VN JUL 14 1993 REC'D



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942840
SACRAMENTO, CA 94240

Power of Attorney

Taxpayers' Name(s) & Telephone No. GILBERT HYATT

Social Security/Taxpayer Identification
Number(s) 069-30-9999

Corporation ID _____

Taxpayers' Mailing Address P.O. BOX 81230, LAS VEGAS, NEVADA 89180-1230
Street and Number City State ZIP Code

As owner or corporate officer of a business herein described or as a party to the tax matter before the Franchise Tax Board, I hereby appoint (Enter below, name(s), addresses (including ZIP codes), telephone numbers, and FAX numbers of specific appointee(s). Do not enter names of accounting or law firms, partnerships, corporations, etc.)

MICHAEL W. KERN, 6600 W. CHARLESTON BLVD., #118, LAS VEGAS, NV 89102

CAF NO. 8000-7535R PHONE NUMBER (702) 384-1120

FAX NUMBER (702) 870-2474

as attorney(s)-in-fact to represent the taxpayer(s) for the following tax matters: (Specify the type(s) of tax)

- ☒ Personal Income Tax Law
☐ Bank and Corporation Franchise Tax Law
☐ Other: _____

Specify the tax year(s) or period(s) (and/or date of death if estate tax): _____

1989, 1990, 1991

The attorney(s)-in-fact (or any of them) are authorized, subject to revocation, to receive confidential tax information and to perform on behalf of the taxpayer(s) the following acts for the tax matters described above: (Check the box(es) for the powers granted.)

- ☒ To confer and resolve any assessment, claim or collection of a deficiency or other tax matter pending before the Franchise Tax Board and attend any meetings or hearings thereto for the specified law identified above.
☐ To receive, but not to endorse and collect, checks in payment of any refund of taxes, penalties or interest.
☐ To execute petitions, claims for refund and/or amendments thereto.
☐ To execute consents extending the statutory period for assessment or determination of taxes.
☐ To execute closing agreements under section 19132 or 25781 of the California Revenue & Taxation Code.
☐ To delegate authority or to substitute another representative.
☐ Other acts (specify): _____

This Power of Attorney revokes all earlier Powers of Attorney on file with the California Franchise Tax Board for the same matters and years or periods covered by this form except the following (SPECIFY TO WHOM GRANTED, DATE, AND ADDRESS INCLUDING ZIP CODE, OR REFER TO ATTACHED COPIES OF EARLIER POWERS):

This Power of Attorney will remain effective for the time limit specified below:

FTB 3520 (REV 11-92) SIDE 1

(The reverse side of this form must be completed)

CONFIDENTIAL

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AA001100

INDIVIDUAL

Gilbert P. Hyatt
Signature of Testator

N/A
Signature of Sonnet

July 2, 1993
Date

CORPORATION

I certify that I have the authority to execute this Power of Attorney on behalf of the Corporation named herein.

Signature of Corporate Officer

Title of Officer

Date

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before
the undersigned, a Notary Public for the State of California, personally appeared

_____ known to me to be an officer
of the corporation that executed this instrument and acknowledged to me that
such corporation executed the same

Notary Public

PARTNERSHIP

I certify that I have the authority to execute this Power of Attorney on behalf of the
partnership named herein.

Signature of Partner

Date

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before
the undersigned, a Notary Public for the State of California, personally appeared

_____ known to me to be one of the
partners of the partnership that executed this instrument and acknowledged to me
that such partnership executed the same

Notary Public

FTB 3320 (REV 11-82) 5062 2

CONFIDENTIAL

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STATE OF CALIFORNIA



FRANCHISE TAX BOARD

1150 VAN NUYS BOULEVARD, ROOM 100
VAN NUYS, CA 91401

Tel: (818) 901-5225

July 15, 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:

The State of California resident/non-resident tax returns of Gilbert P. Hyatt for 1989 & 1990 & 1991 have been forwarded to this office for examination. To assist in clarifying the taxpayer's residency status, please provide the following:

1. A completed copy of Form FTB 3805F(both sides) by the taxpayer for tax years 1986 through 1991.
2. A workpaper schedule showing how the figures listed on the California Schedule SI in 1991 were calculated.
3. The 1991 California Schedule SI indicates that the taxpayer left California on 10/01/91. Please identify what significant event took place on that day to support it as the taxpayer's date of departure from California.
4. The 1991 Federal Schedule C lists a business address at 3225 S. Pecos Road, Apt. 237, Las Vegas. Please indicate if the taxpayer lived at this address? If he did, then please list the exact dates that the taxpayer lived at this address.
5. One of the 1991 Federal Schedule C's reports \$42,266,667 in gross receipts from several entities. Please explain what these payments made to the taxpayer were for.

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Please submit the requested information to the above address by August 12, 1993.

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AA001102

Gilbert P. Hyatt
July 15, 1993
Page 2 Of 2

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

Thank you for your cooperation.

Marc Shayer

Marc Shayer
Tax Auditor

Enclosure

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CONFIDENTIAL
H 01222

Officers and Founding Directors
Richard H. Bowler
Michael W. Kern
L. Ralph Piercy
Revelle B. Taylor

PIERCY, BOWLER, TAYLOR & KERN
CERTIFIED PUBLIC ACCOUNTANTS, LTD.
A Professional Corporation
A Member of the AICPA
SEC Practice Section

6600 West Charleston Blvd., Suite 118
Las Vegas, Nevada 89102

Telephone (702) 384-1120
Fax (702) 870-2474

VN AUG - 9 1993 REC'D

CERTIFIED/RETURN RECEIPT REQUESTED

August 4, 1993

Mr. Marc Shayer
Tax Auditor
Franchise Tax Board
6150 Van Nuys Boulevard
Room 100
Van Nuys, California 91401

Dear Mr. Shayer:

Pursuant to your request of July 15, 1993 (copy enclosed) I am submitting the following information:

1. A completed copy of Form FTB 3805F (both sides) for Mr. Gilbert Hyatt for tax years 1986 through 1993.
2. A workpaper schedule summarizing the figures listed on the California Schedule SI in 1991.
3. The 1991 California Schedule SI indicated that the taxpayer left California on October 1, 1991. Taxpayer actually left California on September 25, 1991 and became a resident of Nevada on September 25, 1991. The significant event that took place on September 25, 1991 to support the taxpayer's date of departure from California was his traveling to Las Vegas, Nevada from California to start setting up his residence and business. The significant event that took place on October 1, 1991 was his return to California to sign a Grant Deed and a Deed of Trust to complete the sale of his house in California and then he immediately returned to Las Vegas, Nevada on the same day.
4. The 1991 Federal Schedule C lists the business address at 3225 S. Pecos Road, Apt. 237, Las Vegas. Mr. Hyatt lived and worked out of 3225 S. Pecos Road, Apt. 237 in Las Vegas until he acquired his home in Las Vegas in April of 1992. Mr. Hyatt has worked out of his home as well as his business address at 6600 W. Charleston, Suite 118, Las Vegas.

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Mr. Marc Shayer
Tax Auditor
Franchise Tax Board
Van Nuys, California

August 4, 1993

5. The 1991 Federal Schedule C reports \$42,266,667 in gross receipts from several entities. The payments were for licenses from major Japanese and European companies for patented technology to be incorporated into future products.

If you have any questions, please do not hesitate to call.

Yours truly,

PIERCY, BOWLER, TAYLOR & KERN



Michael W. Kern

MWK:mlp
Enclosures

cc: Mr. Gilbert P. Hyatt

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CONFIDENTIAL

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STATE OF CALIFORNIA
FRANCHISE TAX B
P.O. BOX 942840
SACRAMENTO, CA 94240-5540

INFORMATION CONCERNING RESIDENT STATUS

Please Type or Print	Last Name HYATT		First Name(s) and Initial(s) GILBERT P.		Your Social Security No. 069-30-9999		Spouse's Social Security No.				
	Present Home Address (Number and Street or Rural Route) P.O. BOX 81230			City, Town or Post Office LAS VEGAS		State NV		County CLARK		ZIP Code 89180	
	Prior California Address										
	7841 JENNIFER CIRCLE, LA PALMA, CALIFORNIA 90623										
	Out of State Address P.O. BOX 81230, LAS VEGAS, NEVADA 89180										

PLEASE PROVIDE THE FOLLOWING INFORMATION FOR YOU AND YOUR SPOUSE (if married) FOR EACH YEAR SHOWN BELOW: H = Husband W = Wife

	TAXABLE YEARS:											
	19__		19__		19__		19__		19_86		19_87	
	H	W	H	W	H	W	H	W	H	W	H	W
1 Exact date you (and your spouse, if married) first entered California: H: W:												
2 Number of months spent each year in California									12		12	
3 Number of months spent each year in other states or countries:												
a Location												
b Location												
4 Where were you registered to vote?									NONE		NONE	
5 State(s) or country(ies) in which you held valid driver's license(s)									CA		CA	
6 State(s) or country(ies) in which your automobile(s) were registered									CA		CA	
7 Where did your children attend school (if applicable)?									GROWN CHILDREN			
a In which state(s) or country(ies) did you maintain your												
(1) checking accounts									CA		CA	
(2) savings accounts									CA		CA	
b In which state were the majority of banking activities transacted?									CA		CA	
9 Number of months you owned a personal dwelling (House, Trailer, etc.) in California									6		12	
10 Number of months you rented a personal dwelling or apartment in California for your own use									6		0	

ALSO PROVIDE THE INFORMATION REQUESTED ON THE REVERSE SIDE

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H 01229



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942840
SACRAMENTO, CA 94240-5540

INFORMATION CONCERNING RESIDENT STATUS

Please Type or Print	Last Name HYATT		First Name(s) and Initial(s) GILBERT P.		Your Social Security No. 069-30-9999		Spouse's Social Security No.	
	Present Home Address (Number and Street or Rural Route) P.O. BOX 81230		City, Town or Post Office LAS VEGAS		State NV		County CLARK	
							ZIP Code 89180	
	Prior California Address 7841 JENNIFER CIRCLE, LA PALMA, CALIFORNIA 90623							
	Out of State Address P.O. BOX 81230, LAS VEGAS, NEVADA 89180							

PLEASE PROVIDE THE FOLLOWING INFORMATION FOR YOU AND YOUR SPOUSE (if married) FOR EACH YEAR SHOWN BELOW: H = Husband W = Wife

	TAXABLE YEARS:											
	19 88		19 89		19 90		19 91		19 92		19 93	
	H	W	H	W	H	W	H	W	H	W	H	W
1 Exact date you (and your spouse, if married) first entered California: H: 1954 W:												
2 Number of months spent each year in California	12		12		12		8.9		0		0	
3 Number of months spent each year in other states or countries:												
a Location <u>LAS VEGAS, NV</u>							3.1		12		12	
b Location												
4 Where were you registered to vote?	NONE		NONE		NONE		NV		NV		NV	
5 State(s) or country(ies) in which you held valid driver's license(s)	CA		CA		CA		CA NV		NV		NV	
6 State(s) or country(ies) in which your automobile(s) were registered	CA		CA		CA		CA		CA NV		NV	
7 Where did your children attend school (if applicable)?	GROWN CHILDREN											
a In which state(s) or country(ies) did you maintain your												
(1) checking accounts	CA		CA		CA		CA NV		NV		NV	
(2) savings accounts	CA		CA		CA		CA NV		NV		NV	
b In which state were the majority of banking activities transacted?	CA		CA		CA		CA NV		NV		NV	
9 Number of months you owned a personal dwelling (House, Trailer, etc.) in California	12		12		12		8.9		0		0	
10 Number of months you rented a personal dwelling or apartment in California for your own use	0		0		0		0		0		0	

ALSO PROVIDE THE INFORMATION REQUESTED ON THE REVERSE SIDE

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CONFIDENTIAL
H 01230

Name GILBERT P. HYATT Social Security Number 069-30-9999 Taxable Years _____

IF MORE SPACE IS NEEDED, PLEASE ATTACH AN ADDITIONAL SHEET.

- 11 For the years in question, provide a brief summary of your business activities including type, address, and the nature of your involvement.

PURSUED PATENT APPLICATIONS WITH U.S. PATENT OFFICE IN WASHINGTON

D.C. FULL TIME.

- 12 For the years in question, provide a brief summary of your civic and social activities such as club memberships, professional associations, etc. The summary should provide the name and address of the organization, explain the type of activity and the nature of your involvement.

(SEE ATTACHED LETTER)

- 13 List all real property holdings you had in California during the years in question. Indicate which properties you or your family occupied during these years and the specific dates.

Location of Property	Dates occupied by you or family
<u>7841 JENNIFER CIRCLE</u>	<u>JUNE 1986 TO SEPTEMBER 24, 1991</u>
<u>LA PALMA, CALIFORNIA</u>	<u>(SOLD OCTOBER 1, 1991)</u>
_____	_____
_____	_____

- 14 List all real property holdings you had outside California during the years in question. Provide the address and type of use of the property; i.e. business, personal.

Location of Property	Type of use
<u>(SEE ATTACHED)</u>	_____
_____	_____
_____	_____
_____	_____

- 15 During what time period did you consider yourself to be a California resident?

H: THROUGH SEPTEMBER 24, 1991

W: _____

PRIVACY NOTICE

The Information Practices Act of 1977 and the federal Privacy Act require the Franchise Tax Board to tell you why we ask you for information. The Operations and Compliance Divisions ask for tax return information to carry out the Personal Income Tax Law of the State of California. We may request additional information if we audit your return or take collection action.

If you meet the income requirements, the Revenue and Taxation Code requires you to file a return or statement in the form we prescribe (Sections 18401 and 18431). When you file these or other documents, you must include your social security number for identification and return processing (Section 18934).

It is mandatory to furnish all information requested when you are required to file a return or statement. If you do not file a return, or do not provide the information we ask for, or provide fraudulent information, the law says you may be charged penalties and interest and, in certain cases, you may be subject to criminal prosecution. We also may disallow claimed exemptions, exclusions, credits, deductions or adjustments. This could make the tax higher or delay or reduce any refund.

We may give the information you furnish us to the United States Internal Revenue Service, the proper official of any state imposing an income tax or a tax measured by income, the Multistate Tax Commission and to California government

agencies and officials, as provided by law. If you owe any monies, we may disclose the amount due to employers, financial institutions, County Recorders, vacation trust funds, process agents and other payers.

You have a right to access records containing your personal information maintained by the Franchise Tax Board. The officials responsible for maintaining the information are: 1) Filing of returns - Director, Document Processing Bureau; 2) Auditing of returns - Director, Personal Income Tax Audit Bureau; and 3) Collection of monies - Director, Enforcement Bureau. The address is: Franchise Tax Board, P.O. Box 942840, Sacramento, CA 94240-1040; telephone: (916) 369-0500.

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CONFIDENTIAL

H 01231

FT
TAXABLE YEAR

1991

**Nonresident or Part-Year Resident
California Adjusted Gross Income**

CALIFORNIA SCHEDULE

SI

File this schedule if you were a full-year nonresident or part-year resident of California in 1991. Attach to Form 540NR. See Schedule SI instructions.
 310 as shown on your return Your social security number

GILBERT HYATT

069-30-9999

STEP 1 - California Income - Enter all of your income earned while you were a California resident and your income received from sources within California while you were a nonresident.

1	Wages, salaries, tips, etc.	1	
2	Taxable interest income	2	14,872.
3	Dividend income	3	4,750.
4	Alimony received	4	
5	Business income or (loss)	5	613,606.
6	Capital gain or (loss)	6	
7	Capital gain distributions not reported on line 6	7	
8	Other gains or (losses)	8	
9	a Total IRA distributions	9a	
	b Taxable amount	9b	
10	a Total pensions and annuities	10a	
	b Taxable amount	10b	
11	Rents, royalties, partnerships, S corporations, estates, trusts, etc.	11	
12	Farm income or (loss)	12	
13	Other income (list type and amount)	13	
14	California Income. Add lines 1 through 13 in the far right column	14	633,228.

STEP 2 - California Adjusted Gross Income - Enter adjustments that are directly related to income reported above.

15	IRA deduction: You	15	
16	Deduction for self-employment tax	16	
17	Self-employed health insurance deduction	17	
18	Keogh retirement plan and self-employed SEP deduction	18	
19	Penalty on early withdrawal of savings	19	
20	Alimony paid. Recipient's last name: Recipient's social security number	20	
21	Total adjustments. Add lines 15 through 20	21	
22	California adjusted gross income. Subtract line 21 from line 14. Enter the amount here and on Form 540NR, line 20	22	633,228.

Note: Be sure to complete Step 3.

STEP 3 - Important: Check the appropriate boxes below and enter the appropriate information that applies to you and your spouse.

	You		Spouse	
	Yes	No	Yes	No
1 I changed my legal residence from California during 1991 and have not moved back to California	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 I changed my legal residence from California during or before 1991 and moved back to California during 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 I changed my legal residence to California during 1991. I was not previously a California resident	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 I was a nonresident of California for all of 1991. I was not previously a California resident	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I was a resident of NEVADA				
My spouse was a resident of				
5 I was a military nonresident stationed in California in 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 I was a California military resident stationed outside California in 1991	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 I owned a home in California while not living in California	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, enter the address of the home				
8 I lived in California during 1991 for (enter the number of days)	273			
9 I left California on (enter date)	10/01/91			
10 I returned to California on (enter date)				
11 I became a California resident during 1991 on (enter date)	01/01/91			

ATTACH THIS SCHEDULE TO FORM 540NR

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H 01232

Gilbert P. Hyatt
069-30-9999
1991 California Schedule SI

Line 2 Taxable interest income

Fidelity Thrift & Loan	\$ 3,596
California Federal Bank	5,751
Irvine City Bank	3,292
Note from sale of residence	2,233
Total Line 2	* <u>\$ 14,872</u>

Line 3 Dividend income

Franklin Federal Money	\$ 2,928
Total Line 3	* <u>\$ 4,750</u>

Line 5 California Business Income

Pioneer	\$200,000.00
Philips Corp.	400,000.00
Nikkei Electronics Magazine (speaking)	12,500.00
CMP Publications (speaking)	<u>1,105.65</u>
Total Line 5	<u>\$613,605.65</u>

* Inadvertantly this amount was overstated.

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AA001110

Attachment to Number 14

<u>Location of Property</u>	<u>Type of Use</u>
3225 S. Pecos, Apt. 237 Las Vegas, Nevada	Residence, Personal Business Office (October of 1991 - April 1992)
6600 W. Charleston, Suite 118 Las Vegas, Nevada	Business Lease April 1992 through Present
Las Vegas, Nevada (Home address is confidential, but can be given to you in confidence upon your request.)	Residence, Personal Business Office April 1992 to Present

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Supplemental Answer
to Question 12 of the FTB Information Form

Institute of Electrical and Electronic Engineers (IEEE)
345 East 47 Street; New York, New York 10017
Professional society, no activity
Period: about 1957 to present

Association of Computing Machinery (ACM)
P.O. Box 12115 Church Street Station,
New York New York 10249
Professional society, no activity
Period: about 1980 to present

Licensing Executives Society (LES)
71 East Avenue; Norwalk, Connecticut 06851
Professional society, no activity
Period: about 1988 to present

Sam's Club
Las Vegas, Nevada
Membership department store, purchasing activity
Period: April 4, 1992 to present

The Sports Authority
2620 Decatur Boulevard, Las Vegas, Nevada 89102
Sports equipment, sports activity
Period: April 4, 1992 to present

Bizmart
2640 Decatur Boulevard, Las Vegas, Nevada 89102
Membership department store, purchasing activity
Period: June 12, 1992 to present

Personal Computer Users Group
316 Bridger Avenue, Las Vegas, Nevada 89101
Computer club, hobby activity
Period: about November 1991 to present

Temple Beth Am
4180 Pecos Road, Las Vegas, Nevada
Jewish temple, religious activity
Period: October 1991 to present

Mount Charleston Ski Resort
Mount Charleston, Nevada
Ski resort, ski activity
Period: October 1991 to present

Comdex

Las Vegas Convention Center
Computer conference, professional activity
Comdex speaker in 1990
Periodic: November 1990
October 1991
November 1992

Clark County School District
Las Vegas, Nevada
Elementary through high school, civic activity
Volunteer consulting with Clark County School
District regarding computer training for
quality of education and motivation of
entrepreneurs
Period: about April 1992 to present

Nevada Governor Robert Miller
Nevada Senator Richard Bryan
Las Vegas, Nevada
International trade activity
Period: 1992 to present

Nevada Development Authority (NDA)
Las Vegas, Nevada
International trade activity
Period: October 1991 to present

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CONFIDENTIAL

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STATE OF CALIFORNIA

ANCHISE TAX BOARD

3 N. GLENOAKS BLVD., SUITE 200
BURBANK, CA 91502-1170
TELEPHONE: (818)

(818) 556-2942

February 27, 1995

Dr. Edgar Hamer
3801 Katella Ave. Suite 101
Los Alamitos 90720

For the purposes of administering the California Personal Income Tax Law, and for that purpose only, the following information is requested under authorization of California Personal Income Law Section 19254.

Between 1991 and 1993, was the following individual listed below treated at your facility?

Gilbert P. Hyatt

If so, please indicate which dates the individual visited your office/facility.

For your own convenience, you may make marginal notations on the extra copy of this letter and return it in the enclosed postage paid envelope.

Thank you for your valuable cooperation.

Sheila Cox
Tax Auditor
Telephone (818) 556-2942

March 1, 1995

Dear Ms. Cox: The above-referenced individual was examined in our office on September 26, 1991. There were no other visits.

Edgar E. Hamer, M.D.
EDGAR E. HAMER, M. D.

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CONFIDENTIAL

H 01542

AA001113

556-2942

8/2/95

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

Re: FTB audit of Gilbert P. Hyatt for 1991

Dear Mr. Kern:

We have reviewed the information provided and gathered regarding the taxpayer's residency status. The purpose of this letter is to explain our understanding of the facts and to inform you of our determination.

I. INFORMATION/FACTS

A review of department records indicate that Mr. Hyatt filed a Non-Resident or Part-Year Resident tax return for 1991 and did not file California tax returns after 1991. In response to our questionnaire, Information Concerning Resident Status, Mr. Hyatt left California on September 24, 1991 for Nevada.

During the year under examination the taxpayer had the following connections with California:

1. The taxpayer owned a home at 7841 Jennifer Circle in La Palma, CA. According to the taxpayer this home was sold on October 1, 1991 to Grace Jeng. Grace Jeng is the taxpayer's assistant, who works and resides with the taxpayer. The title on the house did not pass to Grace Jeng until June of 1993. The taxpayer paid the property tax on this house from 1988-1992. Grace Jeng paid the property tax from 1992-1994. Grace Jeng still owns the house in La Palma.
2. The taxpayer maintained bank accounts in California. The taxpayer had a Franklin Fund Account through Investment Financial Corp. of California Federal Bank in Long Beach. The taxpayer's address on the 12/31/91 and 12/31/92 account statements was 7841 Jennifer Circle in La Palma California (the residence that he claimed that he had sold). This account is where the taxpayer transferred the licensing fees that he had received from the Japanese companies (approximately \$40 Million).

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3. The taxpayer maintained two safe deposit boxes in California. Information was obtained from the bank that the taxpayer did have safe deposit boxes in California and they provided the dates that he visited these boxes. The taxpayer did not change the address on the safe deposit box accounts to his Las Vegas P.O. Box until 7/21/92, even though he visited the boxes on 12/5/91 and 12/10/91 (after the date of the taxpayer's alleged change to Nevada residency). He also visited the boxes on 7/13/92.
4. The taxpayer had a 1977 Toyota (vehicle license 886 SLP) registered in the State of California through 3/18/93. The taxpayer registered a 1977 Toyota in Nevada in March of 1992 (vehicle license number 557 EMR).
5. The taxpayer had a California driver's license (F0566131), which was valid through 3/26/93.

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CONFIDENTIAL
H 01859

6. The taxpayer used the services of California professionals. i.e. accountants, attorneys, doctors, and investment advisors, based upon examination of his banking information and other correspondence.

Attorneys

Law Office of Gerard Tramwell - Los Angeles
(Date of Check - 12/18/91)

Law Office of Loeb and Loeb - Los Angeles
(Date of Check - 12/18/91)

Riordan and McKenzie - Los Angeles
(Dates of checks - 12/18/91, 2/10/92, 7/28/92)

Roger McCaffrey, Attorney - Anaheim
(Dates of checks - 3/30/92, 6/23/92)

LAIPLA-LA Patent Law Association - Los Angeles
(Date of check - 7/2/92)

Dale Fiola - Los Angeles
(Date of check - 7/1/92)

Pretty, Schroeder, Brueggemann & Clark - Los Angeles

Goldberg and Andrus - Studio City
(Engaged December of 1992 through summer of 1993)

Law Offices of Gregory Roth - La Palma
(provided patent services for the past 25 years)

Accountant

Block, Plant, Egler - Sherman Oaks
(Dates of checks - 5/10/92, 10/24/92)

Investment Services

Shearson Lehman - Los Angeles
(Dates of checks - 3/6/92, 8/24/92)

Portfolio Advisory Services - Los Angeles
(Dates of checks - 8/26/92, 9/2/92, 10/18/92, 10/30/92)

Doctors

1. Dr. Myatt - La Palma (Dentist)
2. Dr. William H. Peloquin - Fullerton (Ophthalmologist)
(dates visited - 9/13/91, 10/31/91, 2/4/93)
3. Dr. Gerald M. Isenberg - Long Beach (Internist)
Association of Colo-Rectal Surgeons
(dates visited - 10/9/91, 1/23/92, 1/24/92, 1/30/92,
2/12/92, 2/21/92, 3/5/92, 4/9/92, 7/6/92)
4. Dr. Edgar Hamer - Los Alamitos (Dermatologist)
(date visited - 9/26/91)
5. Los Alamitos Medical Center - Los Alamitos (Hospital)
(dates of treatment - 1/24/92, 2/4/92, 2/11/92-2/21/92,
9/3/92, 9/23/92)
6. Dr. Melvin Shapiro - 5400 Balboa Encino, CA -
(dates visited - 2/3/92, 3/17/93)
7. Los Alamitos Imaging Clinic - Los Alamitos, CA
(dates of treatment - 1/23/92, 2/4/92, 2/11/92-2/21/92,
9/3/92, 9/23/92)

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CONFIDENTIAL

H 01861

Page 4

AA001117

7. The taxpayer continued (and continues) to maintain at least two P.O. boxes in California. The P.O box application (Form 1093) shows that Gilbert P. Hyatt and Grace Jeng were listed as the box users of P.O. box 3357 in Cerritos, CA. This box was renewed on 4/16/92, after the date of the taxpayer's alleged change to Nevada residency. The taxpayer sent a letter to the Postmaster on 2/2/92 requesting to add Grace Jeng and Barry Lee to P.O. Box 3357 in Cerritos.
8. The taxpayer signed an agreement to receive payments from Matsushita Co. Ltd. of Osaka Japan on November 14, 1991 for the use of his patent for the microchip. Although the agreement was signed after the taxpayer's alleged change to Nevada residency, the agreement had his California address. The agreement stated that it was to be in accordance with the laws of the State of California. On November 15, 1991 \$25,000,000 was wire transferred to Gilbert Hyatt through a trust account at Union Bank in Los Angeles.
8. The taxpayer signed an agreement to receive payments from Fujitsu Ltd. of Tokyo Japan on October 24, 1991 for the use of his patent for the microchip. Although the agreement was signed after the taxpayer's alleged change to Nevada residency, the agreement had his California address. The agreement stated that it was to be in accordance with the laws of the State of California. On October 31, 1991 \$15,000,000 was wire transferred to Gilbert Hyatt through a trust account at Union Bank in Los Angeles.
9. The taxpayer did not turn off the La Palma City Water Services at the La Palma residence until 11/26/91, when Grace Jeng had the water service turned on in her name, even though he claimed that he had sold the home on 10/1/91.

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CONFIDENTIAL

H 01862

The taxpayer claims he was a resident of Nevada from September 24, 1991 to the present. This claim is based on the following connections with Nevada:

1. The taxpayer rented an apartment at 3225 Pecos Avenue Apartment 237 in Las Vegas from November 1, 1991 thru April of 1992. He claimed to have left California on September 24, 1991. We do not know where he resided from September 24, 1991 through November 1, 1991.

During March of 1995, I and another representative of FTB visited the Wagon Trails Apartments at 3225 Pecos in Las Vegas. We interviewed the managers and they provided the rental file for examination. The manager had stated that Gilbert Hyatt had rented the apartment, but Grace Jeng had come in and made the rental arrangements for him. She had signed the lease for him and did the initial walkthrough of the apartment. He later came back and signed for himself. He had faxed the initial application to her.

The taxpayer had stated on the rental application that his employer was D&C Corporation of P.O. Box 846 Cypress, California (213) 809-1087. He had listed that his closest relative or contact was his associate Grace Jeng at 13337 E. South Street Cerritos, California 90071.

When I asked if the apartment 237 appeared to have been regularly occupied, the manager had stated that she didn't see the taxpayer too often. She stated that the taxpayer had told her that he travelled a lot for business. The taxpayer had reported on the California Form 3805F that he had worked out of this apartment.

Based upon examination of the letter of 30 day notice in the rental file, the taxpayer had stated 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.

I asked the managers if they had any record of how the rent had been paid, whether through the mail, in person, etc. They indicated that they have no record of it. They stated that the taxpayer did pay by check each month, often paying ahead of time with a postdated check. We saw in the file 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 date stamped 12/8/91.

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2. The taxpayer purchased a house in Las Vegas in April of 1992 at 7335 Tara Avenue. The escrow instructions stated that the purchaser could change the name on the title when escrow closed. Information obtained from the Clark County Treasurer's office showed that this parcel of land is in the name of Kern Trust; Mike Kern is the trustee. Mike Kern is the taxpayer's accountant and representative in Las Vegas.
3. 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.
4. The taxpayer registered to vote in Nevada on November 27, 1991. The address listed was 3225 S. Pecos Rd. in Las Vegas. The Clark County Department of Elections informed us that the taxpayer voted once in the 11/92 election, but they did not indicate whether he had voted in person or using an absentee ballot. On 7/5/94, the taxpayer re-registered claiming to be residing at 5441 Sand Piper Lane in Las Vegas. The Clark County assessor's office verified ownership of 5441 Sandpiper Lane Las Vegas. The property is in the name of Michael W. and La Don Kern since 12/14/82. Michael Kern is Gilbert Hyatt's accountant. This house was sold by the Kerns on 10/27/94.
5. The taxpayer got a Nevada driver license in November of 1991.
6. The taxpayer maintained several bank accounts in Las Vegas. These accounts were established on 11/22/91, 12/12/91, 1/27/92, 8/13/92. Three of the accounts were opened at California Federal Bank, the same bank where the taxpayer had accounts in California.
7. The taxpayer began using the services of a dentist in Las Vegas in April of 1992. The taxpayer visited Dr. Steven Hall's office on the following dates: 4/6/92, 4/7/92, 6/9/92, 6/18/92, 11/3/92, 11/12/92, 12/21/93.
8. The taxpayer purchased a 1992 Toyota Celica hatchback in Las Vegas, Nevada in March of 1992. The vehicle was purchased from Toyota West of Las Vegas. The vehicle registration was not obtained from the Nevada Department of Motor Vehicles, so it is not known if this car is registered in the taxpayer's name.

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AA001120

II. CALIFORNIA TIES VS. NEVADA TIES

1. TIME SPENT IN CALIFORNIA AS OPPOSED TO TIME SPENT IN NEVADA.

Based on the schedules provided by the taxpayer, he admits to spending 8.9 months in California and 3.1 months in Nevada in 1991. He admits that he spent 12 months in Las Vegas in 1992 and 1993.

Analysis

The taxpayer claimed that he left California on 9/24/91. He did not rent an apartment in Las Vegas until November 1, 1991. The taxpayer does not state where he resided from 9/24/91 through 11/1/91. The taxpayer has provided no documentation of moving expenses, other than a registration of a trailer owned by someone in his family.

The taxpayer claimed that he spent 12 months in Las Vegas in 1992. Based upon documentation received, the taxpayer had surgery in California during 1992 and hospitalized for most of February 1992. The taxpayer was treated at the following facilities and saw the following doctors:

Los Alamitos Medical Center in Los Alamitos -
1/24/92, 2/4/92, 2/11/92-2/21/92, 9/3/92, and 9/23/92.

Los Alamitos Imaging Clinic of Los Alamitos -
1/23/92, 2/4/92, 2/11/92-2/21/92, 9/3/92, and 9/23/92.

Dr. Gerald M. Isenberg of the Association of Colo-Rectal Surgeons in Long Beach -
10/9/91, 1/23/92, 1/24/92, 1/30/92, 2/12/92, 2/21/92, 3/5/92, 4/9/92, and 7/6/92

Dr. Melvin Shapiro of Encino, CA -
2/3/92, 3/17/93

Conclusion:

Although the taxpayer stated on the Form 3805F that he was in Nevada for 12 months during 1992, the taxpayer was in California for most of February 1992 and throughout the rest of the year he spent time in California. It is not known whether the taxpayer recuperated from his surgery in California.

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2. OWNERSHIP OF REAL PROPERTY

The taxpayer owned a home at 7841 Jennifer Circle in La Palma, CA. According to the taxpayer this home was sold on October 1, 1991 to Grace Jeng. Grace Jeng is the taxpayer's assistant, who works and resides with the taxpayer. The title on the house did not pass to Grace Jeng until June of 1993. The taxpayer paid the property tax on this house from 1988-1992. Grace Jeng paid the property tax from 1992-1994. The water services at this house was in the taxpayer's name until 11/26/91, when it was transferred to Grace Jeng's name. Grace Jeng still owns the house in La Palma.

The taxpayer rented an apartment at 3225 Pecos Avenue Apartment 237 in Las Vegas from November 1, 1991 thru April of 1992. He claimed to have left California on September 24, 1991. We do not know where he resided from September 24, 1991 through November 1, 1991.

The taxpayer purchased a house in Las Vegas in April of 1992 at 7335 Tara Avenue. The escrow instructions stated that the purchaser could change the name on the title when escrow closed. Information obtained from the Clark County Treasurer's office showed that this parcel of land is in the name of Kern Trust; Mike Kern is the trustee. Mike Kern is the taxpayer's accountant and representative in Las Vegas.

The Las Vegas Valley Water District has provided information that the account for 7335 Tara was established on 4/1/92. The customer name is G. Julia Jeng and the mailing address is P.O. Box 81230 Las Vegas.

Southwest Gas Corporation of Las Vegas has provided information that Gilbert Hyatt is not the customer of record at 7335 Tara. The account for that address is in the name of G. Julia Jeng.

Silver State Disposal Service in Las Vegas has provided information that the account at 7335 Tara was opened on 4/1/92 in the name of Michael Kern. (The taxpayer's representative) There is a notation on the account that payments have been made by Gilbert Hyatt. When we were in Las Vegas on 3/7/95, we saw the Silver State Disposal Service coming up Tara street. We asked the trashman if they got much trash at 7335 Tara. He said that they got a bag every once in a while. He said that he had always wondered if anyone lived there.

Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las Vegas home will not be weighed in the determination, as the taxpayer sold the La Palma house on 10/1/91 before he purchased the house in Las Vegas during April of 1992.

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When we observed the house at 7335 Tara in Las Vegas during March of 1995 we noted that the house was not landscaped at all and that the driveway was unfinished. We noted that all of the other homes in the neighborhood were landscaped. In observation of this house, we also noted that there were no gates or apparent security systems. This is in spite of the taxpayer's representatives repeated statements that the taxpayer is afraid of being kidnapped.

Analysis

If the house in Las Vegas is the taxpayer's primary residence, why wouldn't he invest in landscaping the house and paving the driveway?

Conclusion:

It does not make sense that a person such as the taxpayer who was a millionaire would want to live in a low income (HUD) apartment, such as the Wagon Trails. Clara Kopp had told us that most of the residents were low income and many were receiving subsidies from HUD.

The taxpayer did not close his account with the City of La Palma Water Services until 11/26/91, when Grace Jeng had the account opened in her name. Most people have the utilities turned off when they sell a house. The taxpayer retained access to the house in La Palma through his assistant Grace Jeng.

The house in Las Vegas and the utilities for this house are in Mike Kern's (Trust) name or Grace Jeng's name. The taxpayer apparently did not want his name associated with this residence.

The house had been owned by the taxpayer for nearly 3 years when we observed it in March of 1995, but the taxpayer had not landscaped the yard nor had he paved the driveway.

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3. BANKING ACTIVITIES

A list of all the taxpayer's bank accounts which were active during years 1990, 1991, and 1992 had been requested from the taxpayer. The taxpayer had been unable to find the statements for his Southern California bank accounts from 1990 to 1992. When he finally provided the documentation the account statements did not cover 1990 and there were not many checks written on the accounts for 1991. The taxpayer's representative had stated in his letter the taxpayer had supplied all of the information which had been requested. Information provided for the later years 1991 and 1992 indicate that the taxpayer is a check writer.

In reviewing the taxpayer's banking information, such as cancelled checks from California Federal Bank account 177-0514457-7 (Las Vegas Branch), California Federal Bank account 179-0512056-2 (Las Vegas Branch), Valley Bank of Nevada account 210173019 (Las Vegas), Bank of America account 210173019 (Las Vegas Branch), and other information, it was noted that many of the checks are written in handwriting which is quite different from the taxpayer's handwriting.

The taxpayer's representative had stated in a letter that the taxpayer has not authorized any other individuals to sign checks on his bank accounts. He had also stated that the taxpayer may have authorized other to use the credit cards, but he does not maintain records of such authorizations. This financial information is relevant to this residency determination; this information was requested for analysis to determine the taxpayer's whereabouts during the year. If the taxpayer authorized other individuals to use his account, then the information is not necessarily indicative of the taxpayer's location.

It is also noted that the taxpayer opened three Las Vegas bank accounts at California Federal Bank, where he already had accounts in California. The statements show that transactions were made in Las Vegas and in California.

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Supporting Statistics:

A. Total CA Bank Accounts 7

1. Franklin Federal Money Fund (checking account 11300991158)
(Invest Financial Corp. California Federal Long Beach, CA)
account closed 5/18/92
2. Irvine City Bank -savings account 11105172-8 -
account closed 1/8/91
3. First Fidelity Thrift and Loan Association-(savings) -
account closed 12/17/91
4. California Federal Bank (checking account 004-0513797-3)
account closed 8/13/92
5. California Federal Bank (checking account 082-0522494-6)
account closed 8/13/92
6. California Federal Bank (checking account 004-0513065-8)
account closed 8/13/92
7. California Federal Bank (checking account 004-0513798-2)
account closed 6/11/91

Total Nevada Bank Accounts 4

1. Valley Bank of Nevada 210173019 (checking account)
account opened on 12/20/91

Bank of America 210173019 (checking account)
B of A took over Valley Bank in 8/92
2. California Federal Bank 177-0016768-7 (checking account)
account opened on 1/27/92
3. California Federal Bank 177-0514457-7 (checking account)
account opened on 10/25/91
4. California Federal Bank 179-0512056-2 (checking account)
account opened on 8/13/92

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B. Total Ending Balances 1991:

Franklin Federal Money Fund (11300991158)	\$10,179,147
Irvine City Bank	0
First Fidelity Thrift and Loan Association	0
California Federal Bank (004-0513797-3)	12,426
California Federal Bank (082-0522494-6)	453
California Federal Bank (004-0513065-8)	16,377
California Federal Bank (004-0513798-2)	0

California	\$10,208,403 **

Valley Bank of Nevada 210173019	200
Bank of America 210173019	0
California Federal Bank 177-0016768-7	0
California Federal Bank 177-0514457-7	13,132
California Federal Bank 179-0512056-2	0

Nevada	13,332

**Many of these funds were used to pay licensing fees to Phillips and the rest was invested in various money markets and mutual fund accounts. The Franklin Fund Account was closed in May of 1992.

Total Ending Balances 1992:

Franklin Federal Money Fund (11300991158)	0
Irvine City Bank	0
First Fidelity Thrift and Loan Association	0
California Federal Bank (004-0513797-3)	0
California Federal Bank (082-0522494-6)	0
California Federal Bank (004-0513065-8)	0
California Federal Bank (004-0513798-2)	0

California	\$0

Valley Bank of Nevada 210173019	0
Bank of America 210173019	9,891
California Federal Bank 177-0016768-7	0
California Federal Bank 177-0514457-7	831
California Federal Bank 179-0512056-2	2,917

Nevada	13,639

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C. Total # of checks written on CA Bank Accounts:

7/91	1
10/91	4
11/91	8
12/91	10
1/92	4
2/92	2
3/92	2
4/92	2

Total # of checks written on Nevada Bank Accounts:

11/91	3
12/91	11
1/92	21
2/92	22
3/92	10
4/92	43
5/92	33
6/92	50
7/92	55
8/92	36
9/92	23
10/92	15
11/92	39
12/92	26

Analysis

In reviewing the banking activities of the taxpayer, it is not determinable to what extent his banking activities were transacted in California versus Nevada. For example, with the three California Federal Accounts opened in Las Vegas, deposits were made at the following branches in California:

<u>Account</u>	<u>Date</u>	<u>Location of Branch</u>	<u>Amount</u>
177-0514457-7	12/14/91	Los Cerritos, CA	\$15,000
177-0514457-7	12/28/91	Los Cerritos, CA	623
177-0514457-7	12/31/91	Los Cerritos, CA	2,200
177-0514457-7	1/8/92	Los Cerritos, CA	5,137
179-0512056-2	9/11/92	Los Cerritos, CA	10,000
179-0512056-2	9/19/92	Los Cerritos, CA	2,200
179-0512056-2	9/25/92	Anaheim, CA	166

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Although the taxpayer wrote the majority of the checks on Nevada bank accounts, many of the checks had been cashed in California. It was noted that the taxpayer does have grown children who are California residents and he wrote checks to them, usually on a monthly basis. It was also noted in examination of the taxpayer's checks that the taxpayer had used various businesses located in California such as copier Services, typing services, etc. after the date he allegedly became a resident of Nevada.

11/9/91	Linda Wetsch	\$10,000.00	San Diego
12/22/91	Leni Schlindwein	\$50.00	Northridge
1/18/92	Ron R. Hoffman	\$200.00	Los Angeles
1/18/92	Copley/Colony Cable	27.50	Santa Ana
1/31/92	KCET	100.00	Los Angeles
1/20/92	Bill Sherman	20.00	Manhattan Beach
2/11/92	Black Angus	66.00	Cerritos
3/1/92	Harry Widdifield	1,000.00	Los Angeles
3/11/92	Copy Us, Inc.	164.81	Fullerton
3/12/92	John Heller	10.00	Los Angeles
4/9/92	John Herman	121.75	Los Angeles
4/13/92	Ron Schuchord	390.00	El Monte
7/11/92	Leni's Typing	500.00	Northridge
7/27/92	Xerographic Copier	377.10	California
7/27/92	Xerographic "	3,900.00	California
7/28/92	Copy Tech	740.99	Long Beach
8/12/92	Leni's Typing	500.00	El Monte
9/2/92	John Harmon	151.30	California
9/3/92	Chasen's	500.00	California
9/21/92	Chasen's	1,926.48	California
10/2/92	Majordomo	593.31	Santa Monica
10/2/92	Leni's Typing	400.00	El Monte
10/20/92	Youngmart Travel	1,700.00	California
10/30/92	John Harmon	167.20	California
11/15/92	John Harmon	300.00	Pasadena
12/6/92	Leni's Typing	1,267.00	California
12/6/92	Adella Bormentos	300.00	Los Angeles

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Based upon examination of the taxpayer's checks and bank statements provided to date, it was noted that there were a number of checks which the taxpayer had made out to "CASH". He endorsed the check and the check was then endorsed by Grace Jeng. Most of these checks had been cashed at California Banks. It is unusual that the taxpayer would be giving money to Grace Jeng every month, if he had sold his house to her and she paid mortgage payments to him (as the taxpayer's Schedule B shows interest income from the sale of residence).

<u>Bank Account</u>	<u>Check</u>	<u>Date</u>	<u>Amount</u>
California Federal	99	1/8/92	\$ 200
California Federal	173	2/5/92	1,000
California Federal	229	3/30/92	1,000
Valley Bank of Nevada	324	6/1/92	1,000
Valley Bank of Nevada	395	7/17/92	1,000
Valley Bank of Nevada	452	9/14/92	1,000
California Federal	116	10/16/92	1,000
Valley Bank of Nevada	503	12/7/92	200
Valley Bank of Nevada	512	12/7/92	500

Also, as mentioned above, it is not known if another individual was writing checks on these accounts, as the handwriting differs dramatically. It is also unusual that the taxpayer provided no checks for 1990, unless other account information has not been disclosed. This information had been requested and the taxpayer's representative had sent a statement that they had given us all information requested.

As the banking information does not appear to be complete for all years requested and that another individual was writing checks on these accounts, the banking information will not be weighed heavily in making the determination of the taxpayer's residency.

Conclusion:

The banking information provided by the taxpayer is not conclusive, but the information indicates that the taxpayer did still have many ties with the state of California throughout 1992. The taxpayer was still present in California throughout the year 1992, in contradiction to his assertion that he spent 12 months in Nevada.

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4. MEDICAL PROFESSIONALS USED DURING 1991-1992

California: Dr. Edgar Hamer (Los Alamitos, CA) - 9/26/91

Dr. William Peloquin (Fullerton, CA) -
9/13/91, 10/31/91, 2/4/93

Los Alamitos Medical Center (Los Alamitos, CA) -
1/24/92, 2/4/92, 2/11/92-2/21/92, 9/3/92, 9/23/92

Dr. Melvin Shapiro (Encino, CA) -
2/3/92, 3/17/93

Los Alamitos Imaging (Los Alamitos, CA) -
1/23/92, 2/4/92, 2/11/92-2/21/92, 9/3/92, 9/23/92

Association of Colo-Rectal Surgeons (Long Beach)
10/9/91, 1/23/92, 1/24/92, 1/30/92, 2/12/92,
2/21/92, 3/5/92, 4/9/92, 7/6/92

Dr. Myatt DDS (La Palma)
(could not be located)

Nevada: Dr. Steven Hall DDS (Las Vegas) -
4/6/92, 4/7/92, 6/9/92, 6/18/92, 11/3/92, 11/12/92,
12/21/93.

Analysis

This is a clear connection to California. If the taxpayer truly intended to become a Nevada resident he would have sought out Nevada doctors. He did see a dentist in Nevada beginning in April of 1992.

Conclusion

The medical information indicates that the taxpayer did still have many ties with the state of California throughout 1992. The taxpayer was still present in California throughout the year 1992, in contradiction to his assertion that he spent 12 months in Nevada.

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5. OTHER PROFESSIONALS USED DURING 1991-1992

Attorneys -

- | | |
|---|---------------|
| 1. Gerard Tramwell | - Los Angeles |
| 2. Loeb and Loeb | - Los Angeles |
| 3. Riordan and McKenzie | - Los Angeles |
| 4. Roger McCaffrey, Attorney | - Anaheim |
| 5. LAIPLA-LA Patent Law Association | - Los Angeles |
| 6. Dale Fiola | - Los Angeles |
| 7. Pretty, Schroeder, Brueggemann & Clark | - Los Angeles |
| 8. Goldberg and Andrus | - Studio City |
| 9. Gregory Roth | - La Palma |

Accountant -

- | | |
|------------------------|---------------------|
| 1. Block, Plant, Egler | - Sherman Oaks |
| 2. Michael Kern | - Las Vegas, Nevada |

Investment Services

- | | |
|--------------------------------|---------------|
| 1. Shearson Lehman | - Los Angeles |
| 2. Portfolio Advisory Services | - Los Angeles |

Analysis -

The taxpayer utilized California professionals exclusively, with the exception of his Nevada accountant. The taxpayer had several lawsuits in California during this time period, but he did not retain any legal counsel in Nevada. The taxpayer was present at the house in La Palma in December of 1992, when legal papers were served regarding one of these lawsuits.

Dates that the taxpayer had meetings with these professionals is not known, but checks were written throughout 1991 and 1992 to these professionals. See page 3 of this letter for schedule of dates checks were written.

This is a clear connection to California. If the taxpayer truly intended to become a Nevada resident he would have sought out Nevada professionals.

Conclusion

This information indicates that the taxpayer did still have many ties with the state of California throughout 1992. It is not known how many meetings the taxpayer had in California throughout the year 1992, but it is evident that he still was conducting business and investment activities in California.

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6. DRIVER'S LICENSES AND VEHICLE REGISTRATIONS

The taxpayer obtained a Nevada driver's license during November of 1991. The taxpayer had a California driver's license which expired in March of 1993.

The taxpayer registered a 1977 Toyota in Nevada in March of 1992 (vehicle license number 557 EMR). This car had been registered in California.

The taxpayer purchased a 1992 Toyota Celica hatchback in Las Vegas, Nevada in March of 1992. The vehicle was purchased from Toyota West of Las Vegas. The vehicle registration was not obtained from the Nevada Department of Motor Vehicles, so it is not known if this car is registered in the taxpayer's name.

Analysis

The taxpayer's Nevada driver's license is a connection to Nevada, but the information obtained from the Nevada Department of Motor Vehicles did not indicate whether or not the taxpayer had surrendered his California driver license, which was valid until 3/93.

It is not known why the taxpayer did not register his car in the State of Nevada until March of 1992. The Nevada Department of Motor Vehicles requires that new residents of Nevada register their cars in the state of Nevada within 45 days of establishing residency in Nevada.

Conclusion:

The taxpayer's Nevada driver license is a connection to Nevada, but the taxpayer did not register his car with the Nevada DMV until 1992. It is unusual that he would not have done both acts at the same time. If the taxpayer moved to Nevada in November of 1991 as he claims, then he was in violation of the Nevada Department of Motor Vehicle law regarding vehicle registration.

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7. VOTER REGISTRATION

- a. There was no record of the taxpayer being registered to vote in California
- b. The taxpayer registered to vote in Nevada in November of 1991. The Clark County Department of Elections informed us that the taxpayer voted once in the 11/92 election, but they did not indicate whether he had voted in person or using an absentee ballot.

On 7/5/94, the taxpayer re-registered in Nevada claiming to be residing at 5441 Sand Piper Lane in Las Vegas. The Clark County assessor's office verified ownership of 5441 Sandpiper Lane Las Vegas. The property is in the name of Michael W. and La Don Kern since 12/14/82. Michael Kern is Gilbert Hyatt's accountant. This house was sold by the Kerns on 10/27/94.

Note: When looking at voter registration as an indication of domicile we must consider how the courts have viewed voting as a test of domicile. In rejecting voting as a test of domicile the United States Supreme Court said in *District of Columbia v. Murphy*, 314 S. 441, pages 456 and 457 [62 S. Ct. 303, 86 L. ed 329]: "Whether or not one votes where he claims domicile is highly relevant but by no means controlling. Each state prescribes for itself the qualification of its voters, and each has its own machinery for determining compliance with such qualifications. A vote cast without challenge and adjudication may indicate only laxity of the state officials."

Analysis:

Voter registration is a minor area, and very easy to establish. This area is not given much weight. It is not known why the taxpayer registered to vote using Michael Kern's address.

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8. Travel

Little information was obtained about the taxpayer's travels. The credit card statements provided by the taxpayer show that the taxpayer took a few trips during the years under examination, but the statements do not show where the taxpayer's air travel began or ended. No information was provided about the taxpayer's travel between California and Nevada. The taxpayer claims to have spent 12 months in Nevada and 0 months in California during 1992 and 1993.

The area of travel will not be given much weight.

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9. Business Activities

- a. The taxpayer was an electronics engineer and aerospace consultant who was granted a patent for the single-chip integrated circuit (Microprocessor chip) for computers on 7/17/90. In 1968, he formed a closely held company with which he developed the microprocessor chip. He filed a patent application on the microprocessor chip on 12/28/70. The U.S. patents office heavily scrutinized his application, and did not issue the patent for almost 20 years. During this 20 year period, the taxpayer's closely held corporation went out of business, and he formed another closely held corporation, Digital Nutronics (a California corporation).
- b. In addition to the taxpayer's corporation Digital Nutronics, the taxpayer has filed a Schedule C as a "Patent Agent" on his 1989, 1990, and 1991 California tax returns. The addresses listed for the business on the Schedule C and for his corporation Digital Nutronics were both the same as the taxpayer's P.O. Box in California. It is not determinable where the taxpayer was conducting his business nor was any significant event identified which would cause the businesses to relocate to Nevada, other than the taxpayer's supposed change of residence.
- c. It was noted in examination of the taxpayer's checks that the taxpayer had used various businesses located in California such as copier Services, typing services, etc. after the date he allegedly became a resident of Nevada.
- d. The only professional hired by the taxpayer in Nevada was his accountant, Michael Kern.
- e. The taxpayer claimed on the Form 3805F that he was working out of an office in Las Vegas and that he was working out of the same office as his accountant Michael Kern and Michael Kern had confirmed this statement during a telephone conversation in January of 1995. When we went to this office in March of 1995, the receptionist did not know who the taxpayer was when we asked to see him.

Analysis

As the main activity of the taxpayer's business pursuits had been the pursuit of the patent, there is not sufficient information to use the taxpayer's business activities in determination of residency, other than the fact that the attorneys who represented the taxpayer and the corporation were California professionals and this is a significant California tie.

Conclusion

The taxpayer had significant California ties, as seen through his business activities during 1991 and 1992, such as patent agreements and the use of California professionals.

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9. Other Information

- a. The taxpayer had listed the following items as civic and social activities in response to question 12 of the FTB Form 3805F to show his social, professional, and other ties:

1. Institute of Electrical and Electronic Engineers
(New York, New York)
Professional Society

A letter was sent to this organization, but no response was received.

2. Association of Computing Machinery (ACM)
(New York, New York)
Professional Society

A letter was sent to this organization. The taxpayer joined this association in May of 1992. He had changed his address to a Las Vegas P.O. Box on 5/29/92.

3. Licensing Executives Society (LES)
(Norwalk, Connecticut)
Professional Society

A letter was sent to this organization. The address given by the taxpayer was incorrect. No listing could be found for this organization in Norwalk Connecticut.

4. Sam's Club
(Las Vegas, Nevada)
Retail Store

A letter was sent to this store. No response was received. This is a retail store and is not verifiable. This would not be considered a Nevada tie.

5. Bizmart
(Las Vegas, Nevada)
Retail Store

A letter was sent to this store. No response was received. This is a retail store and is not verifiable. This would not be considered a Nevada tie.

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6. Personal Computer User's Group
(Las Vegas, Nevada)
Computer Club

A letter was sent to this club. The letter was sent back from the post office, as the address was incorrect. No listing could be found in Las Vegas for this club. This would not be considered a Nevada tie.

7. Temple Beth Am
(Las Vegas, Nevada)
Religious activity

A letter was sent to this temple. The letter came back from the post office, as the address had been forwarded and the forwarding order had expired. A letter was sent to the new address and no response was received.

8. Mount Charleston Ski Resort
(Mount Charleston, Nevada)
Ski activity

This is a ski resort and is not verifiable. This would not necessarily be considered a Nevada tie.

9. Comdex
(Las Vegas, Nevada)
Computer Conference

This is a computer conference held in Las Vegas each year. It is attended by people from all over the country, and would not necessarily be considered a Nevada tie.

10. Clark County School District
(Las Vegas, Nevada)
Volunteer activities

A letter was sent to the Clark County School District. They have no record of any volunteer activities performed by the taxpayer.

11. Nevada Governor Robert Miller
(Las Vegas, Nevada)
International Trade Activity

A letter was sent to Governor Miller's office. The Governor's office responded to our letter that they have never heard of the taxpayer and have no record of him meeting with the Governor.

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12. Nevada Senator Richard Bryan
(Las Vegas, Nevada)
International Trade Activity

A letter was sent to Senator Bryan's office. No response was received.

13. Nevada Development Authority
(Las Vegas, Nevada)
International Trade Activity

A letter was sent to this organization and they could not find any record of either Gilbert Hyatt or Digital Nutronics.

Analysis:

The items listed by the taxpayer as Nevada ties were self-serving statements with no documentary proof. A person may shop in Nevada, attend a convention, go skiing, etc. but this is not indicative of a person's residence. A person may join an organization, but this does not mean that the person is an active member. The documentation obtained from third party sources does not support the taxpayer's alleged ties to Nevada.

Conclusion:

The above items will not be considered Nevada ties.

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III. APPLICABLE STATUTORY REFERENCES

A. Law

California Revenue and Taxation Code section 17041 imposes a personal income tax upon the entire taxable income of every resident of this state.

California Revenue and Taxation Code section 17014 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.

B. Regulations

The regulation provides that the underlying theory of California's definition of "resident" is the state where the taxpayer has his closest connections (Cal. Adm. Code Tit. 18 Reg. 17014, Subd. (b)). The purpose of this definition is to define a class of individuals who should contribute to the support of the state because they receive substantial benefits and protections from its laws and government (Cal Adm. Code Tit. 18 Reg. 17014). An individual may claim only one domicile at a time (Cal Adm. Code Tit. 18, Reg. 17014 Subd. (c)).

When it is determined that a taxpayer was domiciled in this state, he will be considered a resident if his absence was for a temporary or transitory purpose. The determination of whether a taxpayer's purposes in leaving California are temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case (Cal Adm. Code tit. 18, Reg. 17014 Subd. (b)).

Consistently, in light of these regulation, it has been held that the connections which a taxpayer maintains in this and other states are important indication of whether an individual's presence in or absence from California is temporary or transitory.

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C. Court Rulings

A person may have only one domicile at a time (Whittel v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 (41 Cal Rptr 673)(1964)) and he retains that domicile until he acquires one elsewhere (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 with the intention to remain permanently or indefinitely (Estate of Phillips, 269 Cal. App. 2d 656, 659 (75 Cal Rptr. 301)(1969)).

One does not lose a former domicile by going to and stopping at another place for a limited time with no intention to reside there permanently through the absence may continue for a number of years (Chapman v. Superior Court, 162 Cal. App. 2d 421, 426--427 (238 P. 2d. 23)(1958)). The courts have gone on to further define domicile as a person's true, fixed permanent home, the place where he or she has no intention of permanently leaving and whenever absent he or she has the intention of returning there (Whittel, supra).

The Whittel case emphasizes that mere formalisms such as changing voter registration or statements to the effect that the taxpayer intended to be a resident of another state are transparent and cannot control the issue. The taxpayer attempted to emphasize his Nevada property holdings by deprecating his California interests because they were held in corporate form. The taxpayer in this case devoted much effort to his attempt to show that he was closely connected with Nevada, while minimizing the significance of the amount of time he spent in California. The brevity of the taxpayer's stays in Nevada considerably detracts from his claim of extensive activities there. The time element is one of the most important factors in determining residency.

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IV. AUDIT DETERMINATION

The facts in this particular case indicate the taxpayer was domiciled in California for the above referenced year and his absences from California were for temporary or transitory purposes. The taxpayer retained his California domicile until he acquired one in Nevada. The establishment of a new domicile requires actual residence in a new place with the intention to remain permanently or indefinitely. The taxpayer had significant ties with California beyond 1991. The taxpayer began developing significant ties with Nevada during 1992, but it is not determinable when he established a new domicile.

TEMPORARY OR TRANSITORY

California Regulations explain that whether a taxpayers 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 Zuanovic, Calif. St. Bd. of Equal., Jan 6, 1976).

In accordance with the Regulations, the California State Board of Equalization has consistently held that the connections which a taxpayer maintains with this and other states/countries are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards and Kathleen K. Hardman, Calif. St. Bd. of Equal. August 19, 1975). Some of the 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, Calif. St. Bd. of Equal., June 2, 1971).

As shown in the California ties vs. Nevada ties section of this letter, the taxpayer's connections to California by far overwhelm his connections to Nevada.

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IV. CONCLUSION

Based on the taxpayer's extensive ties to California, it is our conclusion that the taxpayer was a resident of California for the year 1991. As such, he is taxable on all income, regardless of its source.

Refer to the enclosed Schedule for the computation of the proposed tax assessment. If the taxpayer would like to make a payment on the deficiency, the interest can be calculated.

If you have any further information you wish to provide regarding the taxpayer's residency status or can demonstrate our understanding of the facts presented is incorrect, please do so in writing by August 31, 1995. If you need additional time, a waiver on the Statute of Limitations will be needed to extend the Statute. All cases must be submitted to review seven months prior to expiration of the Statute. For this reason, a waiver is enclosed, which should be signed by the taxpayer and sent to my office by August 31, 1995.

Please note, the determination reached in the audit is subject to further review.

If you have any additional questions concerning the audit, you can contact me at (818) 556-2942

Sheila Cox
Tax Auditor

cc: Eugene Cowan

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TAX EFFECT

The tax effect of the case assuming that the taxpayer is a California resident for 1991 is as follows:

Taxpayer's 1991 Federal AGI	17,103,327
CA total taxable income	17,727,743
California AGI	633,228
Ratio	.0357
Tax on total taxable income	1,945,940
Less tax previously assessed	69,469

Tax Effect	\$1,876,471
 Fraud Penalty (75%)	 1,407,353

TOTAL TAX PLUS PENALTY	\$3,283,824
	=====

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PENALTIES

Under 19164 of the Revenue and Taxation Code California has adopted the fraud penalty imposed in accordance with the provisions of IRC Section 6663. Under the federal IRC section, if any underpayment of tax required to be shown on the return is due to fraud, addition to tax will be made in amount equal to sum of 75% of the portion of the underpayment attributable to fraud. In order to impose the fraud penalty, FTB has the burden of proof to establish by clear and convincing evidence that:

- 1) There was an underpayment, and
- 2) That the underpayment is attributable to fraud.

The FTB burden to prove fraud by clear and convincing evidence is a lesser standard than the burden to establish tax evasion in a criminal proceeding, which must be established beyond a reasonable doubt.

Civil fraud is often defined as an intentional wrongdoing on the part of the taxpayer, with the specific purpose of evading a tax known or believed to be owing. For the fraud penalty to apply, there must be an intentional wrongdoing; the intent required is the specific purpose to evade a tax believed to be owing. The taxpayer must have intended to mislead, conceal, or otherwise prevent collection of such taxes. Mere carelessness is not sufficient.

Since intent is difficult to establish directly, courts have inferred fraudulent intent from various kinds of circumstantial evidence. Among the factors that courts have cited as indications of fraud are:

- 1) Understatement of income
- 2) Inadequate records
- 3) Implausible or inconsistent explanations of behavior
- 4) concealment of assets
- 5) failure to cooperate with tax authorities
- 6) engaging in illegal activities
- 7) dealing in cash
- 8) failure to make estimated tax payments.

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It is our position that the taxpayer qualifies for the penalty under items 3, 4 and 5 above. In examination of these factors with respect to the taxpayer, the following observations are made:

IMPLAUSIBLE OR INCONSISTENT EXPLANATIONS OF BEHAVIOR -

The taxpayer signed agreements to receive payments from Matsushita and Fujitsu, both of Japan, for the use of his patent for the microchip. Although both agreements were signed after the taxpayer's alleged change of residence to Nevada, both agreements had his California address. The money was to be wire transferred to a trust account in Los Angeles. The agreements state that they are to be in accordance with the laws of the State of California.

The taxpayer transferred the licensing fees that he had received from the Japanese companies (approximately \$40 Million) into a Franklin Fund Account in Long Beach, California. The taxpayer's address on the account statements was the La Palma California residence of the house that he had supposedly sold.

INTENTIONAL EVIDENCE OF INTENT TO DEFRAUD

The taxpayer provided documentation stating that he had sold his home in La Palma on 10/1/91 to Grace Julia Jeng. We have gotten affidavits from several parties stating that Grace Jeng lives with the taxpayer and serves as his assistant, and that Grace and the taxpayer are always together. The title on the house did not pass to Grace Jeng until 6/93.

Based upon examination of the taxpayer's checks and bank statements provided to date, it was noted that there were a number of checks which the taxpayer had made out to "CASH". He then endorsed the check and the check was then endorsed by Grace Jeng. Most of these checks were cashed at California Banks. It is unusual that the taxpayer would be giving money to Grace Jeng every month if he had sold his house to her.

The statements made that the taxpayer lives with Grace Jeng (who the taxpayer supposedly sold the California house to), along with transfers of cash to Grace Jeng indicate that the taxpayer retained access to the house and the house was beneficially owned by the taxpayer. The transfer of the house was a sham transaction rather than a bona fide sale. The transaction was set up solely to avoid payment of California Income taxes.

Additionally, in examination of the checks, it was also noted that many of the checks are written in handwriting which is quite different from the taxpayer's handwriting. The signatures appear to be that of the taxpayer. One individual has given an affidavit that they had seen Grace Jeng use the taxpayer's credit

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We received a letter from the La Palma City Water Services stating that Grace Jeng turned on water service 11/26/91 and that her mailing address was P.O. Box 3357 Cerritos. The owner was listed as Gilbert P. Hyatt. It does not make sense that the taxpayer would have sold his home on 10/1/91 and did not turn off the water service until 11/26/91, when Grace Jeng had the water service turned on in her name. People usually turn off the utilities when they sell their homes and move.

Based upon examination of the taxpayer's checks, it was noted that there was a check dated 4/13/92 to Ron's Repair and Remodelling. This check was cashed in California. I called Ron Schuchord of Ron's Repair and Remodelling and interviewed him on 3/28/95. He stated that he had done work for Mr. Hyatt at the house in La Palma. Ron stated that it is customary for him to receive a check from his customers on the date that the work is completed. He said that if the check was dated 4/13/92, then he was there on that date, but he no longer has invoices.

The taxpayer continued (and continues) to maintain at least two P.O. boxes in California. A letter from the U.S. Postmaster dated 5/12/94 included a copy of Form 1093 (P.O. Box application). Gilbert P. Hyatt and Grace Jeng were listed as the P.O. Box users and the renewal dated 4/16/92 was in Grace Jeng's name. Also included was a copy of a letter from Gilbert Hyatt to the Postmaster dated 2/2/92 requesting to add Grace Jeng and Barry Lee to P.O. Box 3357 in Cerritos.

The taxpayer rented at least two P.O. boxes in Las Vegas, he registered to vote, and he got a Nevada driver license in November of 1991. These items are considered minor aress, which are very easy to establish. Voter registration, P.O. boxes, and driver licenses are not given much weight.

The taxpayer rented an apartment in Las Vegas Nevada beginning on November 1, 1991. The taxpayer claimed that he left California on October 1, 1991. Based upon this information we do not know where the taxpayer lived from October 1 through November 1 of 1991. He rented this apartment in Las Vegas from November 1991 through April of 1992 and paid \$540 per month for rent.

During March of 1995, I and another representative of FTB visited this apartment in Las Vegas. The apartments did not have any security gates or doors. (Despite statements by the representative that the taxpayer is afraid of being kidnapped).

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I asked the managers if they had any record of how the rent had been paid, whether through the mail, in person, etc. They indicated that they have no record of it. They stated that the taxpayer did pay by check each month. We saw in the file 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 date stamped 12/8/91. Clara stated that he would pay the rent ahead of time with a post dated check. They would keep the check until the rent was due.

Based upon our interview at the apartment in Las Vegas and examination of the rental file, the taxpayer rented this apartment in attempt to give the appearance of a Nevada residency. The fact that he had someone else rent the apartment for him, that he was paying the rent with postdated checks and mailing them from California, along with the appearance that he was not occupying the apartment are all evidence of this fact.

In April of 1992, the taxpayer purchased a house in Las Vegas at 7335 Tara. We received a letter from the Las Vegas Valley Water District showing that the account for 7335 Tara was established on 4/1/92. The customer name is G. Julia Jeng and the mailing address is P.O. Box 81230 Las Vegas.

We received a letter from Southwest Gas Corporation of Las Vegas which stated that Gilbert Hyatt is not the customer of record at 7335 Tara. I called Southwest Gas and spoke to Georgia Heki. She confirmed that account is in the name of G. Julia Jeng.

We received a letter from Silver State Disposal Service in Las Vegas. The account was opened on 4/1/92 in the name of Michael Kern. (The taxpayer's representative) There is a notation on the account that payments have been made by Gilbert Hyatt. When we were in Las Vegas on 3/7/95, we saw the Silver State Disposal Service coming up Tara street. We asked the trashman if they got much trash at 7335 Tara. He said that they got a bag every once in a while. He said that he had always wondered if anyone lived there.

When the taxpayer submitted the FTB Form 3805F, he also submitted a list of civic and social activities in response to question 12 on the form. The items listed as Nevada civic and social ties were checked. Several of the items were for retail stores in Nevada (not verifiable) and several were for clubs and religious organizations but the addresses given were not correct.

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The taxpayer had stated on the 3805F that he had volunteered for the Clark County school district. We checked on this and the Clark County School District had no record of this. The taxpayer had listed the Senator from Nevada and the Governor of Nevada as Nevada ties. The Governor's office responded to our letter that they have never heard of the taxpayer and have no record of him meeting with the Governor. The items listed by the taxpayer as Nevada ties were self-serving statements with no documentary proof.

The taxpayer had stated on the FTB Form 3805F that he worked out of an office at the same address as the taxpayer's representative Mike Kern. The taxpayer's representative Mike Kern of Las Vegas had stated during a telephone conversation in January of 1995 that he saw the taxpayer on a frequent basis because he subleased office space and worked out of Mike Kern's office. When we were in Las Vegas, we went to the representative Mike Kern's office and asked for the taxpayer. The receptionist did not know who we were talking about. This is an indication that the taxpayer and his representative had made false statements with an intent to deceive.

It is not readily determinable if the taxpayer's records are inadequate, or if he is attempting to conceal them from FTB. The taxpayer does not have many of the documents requested, such as telephone bills. It is not determinable whether these items had been intentionally destroyed.

When the taxpayer's moving expenses were requested, the taxpayer's representative stated that the taxpayer had moved himself to Las Vegas using his son's trailer. As evidence of this, they gave me a copy of the trailer registration, which was registered in the state of Nevada in 1992. This does not provide any documentation or proof of the taxpayer's moving expenses.

Also, as evidence of the taxpayer's specific intent to defraud the government, we have gotten affidavits from several individuals that the taxpayer may have cheated on his taxes in the past. They stated that he would collect bills and receipts from various family members, friends, etc. and use those for business writeoffs.

We were told in affidavits that the taxpayer always wanted to pay expenses for family members and friends with checks. He wanted friends and family members to give him receipts from restaurants, bills, etc. He wanted receipts for anything. He would pay with a check with a stamp which said "private contractor." (In examination of the taxpayer's checks we saw checks with this stamp imprinted on the back.) He would use other people's receipts for business expense writeoffs, so he wouldn't have to pay income taxes. This is indication that the taxpayer has used tax avoidance schemes in the past.

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In addition to the taxpayer's corporation Digital Nutronics, the taxpayer has filed a Schedule C as a "Patent Agent" on his 1989, 1990, and 1991 California tax returns. The taxpayer has deducted items such as office expense, utilities, etc. The addresses listed for the business on the Schedule C and for his corporation Digital Nutronics are both a P.O. Box. It is not determinable whether the taxpayer is deducting expenses for a home office or whether these items are personal expenses, as there is no indication of where the taxpayer carried on these businesses.

Concealment of Assets

In April of 1992, the taxpayer purchased a house in Las Vegas. The taxpayer's representative provided a copy of the escrow instructions for the purchase of the house with the address deleted. (The taxpayer's representative stated that the reason for the deletion was the taxpayer's concern about confidentiality). The escrow instructions state that the purchaser may change the name on the title when escrow closes. The Clark County Treasurer's office was called and they stated that this parcel of land is in the name of Kern Trust. Mike Kern is the trustee. He is the taxpayer's representative in Las Vegas. The taxpayer may have put this house into a trust account to make it difficult to trace his property.

When the taxpayer was asked to provide a list of all bank accounts, cancelled checks, etc. he provided a list of bank accounts at the representatives office. The representative stated that they had been unable to get any of the California account information. For one of the accounts, they did not even have the account number. They later provided this information after I told them that I would request it from the bank directly if they did not.

There was one account which had not been included on the taxpayer's list. This account was for a Franklin Fund Account in Long Beach, California. We knew that this account existed, because the taxpayer had provided copies of checks from this account. We requested this account information from the taxpayer and they eventually provided it to us. The taxpayer's address on the account statements was the La Palma California residence of the house that he had sold. This account is where the taxpayer transferred the licensing fees that he had received from the Japanese companies (approximately \$40 Million).

From examination of the licensing agreements with the Japanese, the funds were to be wire transferred to a trust account in care of a Los Angeles attorney. When I asked the taxpayer's representative for copies of the account statements, he said that they did not have them because the trust fund had been mutually agreed upon and that the taxpayer did not have any control over it. Letters were sent to Matsushita and Fujitsu in Japan and we

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From examination of the taxpayer's checks, it was noticed that there was one check to Capital Bank in Cerritos, California. The back of the check said that it was for safe deposit boxes. Information was obtained from the bank that the taxpayer did have safe deposit boxes in California and they provided the dates that he visited these boxes.

The taxpayer did not change the address on the safe deposit box accounts to his Las Vegas P.O. Box until 7/21/92, even though he visited the boxes on 12/5/91 and 12/10/91 (after the date that he supposedly left California). He also visited the boxes on 7/13/92.

Failure to cooperate with tax authorities

Throughout the course of the audit, the taxpayer's attorney and accountant have been reluctant to provide copies of the taxpayer's documents requested by the auditors. They both had stated that the documents could only be examined at the attorney's office. They said that the reason for this was the taxpayer's fear that he would be kidnapped. This reason is irrational and is an evasive tactic used by the taxpayer.

The apartment that the taxpayer had rented in Las Vegas and the house that he bought were both observed during a field visit to Las Vegas. The apartment had no security system and the house did not have a fence or any visible security system. It is not logical that someone who was worried about being kidnapped would not have his home enclosed or live in a gated community. We did note that there was a gated community several blocks from the taxpayer's home.

(The taxpayer's representatives began providing copies of documentation requested after a copy of the Firestone case was provided to them.)

The taxpayer's accountant has used delaying tactics, such as calling on the due date of a document request to state that he would not have the requested documentation on time. He had also stated that he felt that they had provided enough documentation to support the taxpayer's residency. He felt that we were being unreasonable to request the taxpayer's financial information. The taxpayer's representative tried to use intimidation techniques to get us to back off on document requests.

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The taxpayer's representative has sent the requested financial information piecemeal and also has sent some of the bank statements more than once, to give the appearance of compliance with the document requests. He has sent copies of letters from the taxpayer to the credit card companies, showing that the taxpayer has requested the statements more than once. If the taxpayer really wanted to obtain this information from the credit card companies, he would have called them and followed up on this matter.

The taxpayer does not have many of the documents requested, such as telephone bills. It is not determinable whether these items had been intentionally destroyed.

Failure to cooperate with the FTB can be an indication of fraud. Thus, lying or giving evasive answers to FTB personnel, delaying tactics, and other actions designed to mislead FTB auditors are all indicia of fraud. These and other indicia or badges of fraud (including acts of concealment, the use of dummy business entities and bank accounts opened under assumed names or in the names of relatives or nominees) can be found in numerous criminal and civil fraud cases.

In evaluating the evidence, courts also consider the education level and sophistication of the taxpayer. Each case is decided on its own particular facts, and often no single factor is decisive. There is no exclusive list of factors to be considered in determining whether fraud has occurred.

The taxpayer in this case is an intelligent person with degrees from Berkeley and USC. He has owned businesses in California, he has dealt with the U.S. Patent Office, and negotiated licensing agreements, so he has shown a high degree of business knowledge and sophistication. Based upon examination of evidence, the taxpayer is a businessman of above-average education, considerable ability and experience.

The taxpayer's knowledge of the tax law is an important factor in determining whether fraud has been committed. The fact that the taxpayer is intelligent and sophisticated in tax matters will be taken into account even if the taxpayer is not a tax specialist. The taxpayer cannot escape the penalty by delegation of the tax return preparation to his accountant.

It is likely that the taxpayer has a knowledge of tax law, as it appears that he prepared his own tax returns and that of his corporation (Digital Nutronics) prior to 1991. (These earlier year tax returns did not have a preparer sign.)

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If the taxpayer relied on a third part to keep his books and records, to prepare and file his returns, or for tax advice generally, such reliance may indicate the absence of fraudulent intent, even if an understatement of income occurs. When the taxpayer in good faith turns over all of his books and records or otherwise makes a full and complete disclosure of all of the facts to a third party to whom he has given the tax of preparing his return, the court generally do not find fraudulent intent. If however, the taxpayer did not supply his bookkeeper or tax return preparer with all of the relevant and necessary information, fraud has been found.

In this case, the taxpayer may have not revealed all of the facts regarding his residency to the taxpayer's representative. We do not know what the representatives know, but it is apparent that they have used using delaying tactics and evasive tactics in an attempt to protect their client. We do not know to what extent they advised the taxpayer on the perpetration of this scheme to defraud.

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RICHARD J. RIORDAN
(RETIRED)

FILE NO.

September 25, 1995

8-160-002

HAND DELIVERED

Franchise Tax Board
333 North Glenoaks Boulevard, Suite 200
Burbank, California 91502-1170

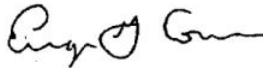
Attention: Sheila Cox, Tax Auditor

Re: Gilbert P. Hyatt

Dear Ms. Cox:

Enclosed is our original September 22, 1995 response to your letter dated August 31, 1995 regarding the 1991 tax audit for Mr. Gil Hyatt. Enclosed also is the accompanying documentation. Please kindly acknowledge receipt of our letter and documentation by initialling and/or date-stamping a copy of this letter and returning it to me.

Sincerely,



Eugene G. Cowan
of RIORDAN & MCKINZIE

EGC:agm
Enclosures

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RICHARD J. RIORDAN
(RETIRED)

FILE NO.

September 22, 1995

BUR SEP 26 1995 REC'D

08-160-002

Franchise Tax Board
333 N. Glenoaks Blvd., Suite 200
Burbank, CA 91502-1170
Attention: Sheila Cox, Tax Auditor

Re: FTB audit of Gilbert P. Hyatt for 1991
Response to FTB Letter dated 8/31/95

Dear Ms. Cox:

We have reviewed your letter of August 31, 1995. Your letter greatly assisted this response by acknowledging that the Franchise Tax Board (FTB) is aware that Mr. Hyatt began establishing ties in Nevada in early 1992 and by noting that the purpose of the audit is to determine when Mr. Hyatt established ties with Nevada and severed ties with California. Thus, it appears to us that we could most benefit the FTB's review by providing additional information regarding Mr. Hyatt's ties from September, 1991 through early 1992. This letter also responds to your requests and comments in your August 31, 1995 letter.

Mr. Hyatt moved to Las Vegas in September, 1991. He left Southern California just after he finished his appointment with Dr. Hamer and took up residence in Las Vegas. He thought that his appointment was on September 24, 1991 (see enclosed

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Franchise Tax Board
September 22, 1995
Page 2

statement from Dr. Hamer), but, after reviewing your letter of August 2, 1995, it appears that the appointment could have been on September 26, 1991.

Mr. Hyatt drove to Southern California on October 1st to execute the sale documents for his La Palma home and returned to Las Vegas that evening. He came back to Southern California for his appointment with Dr. Isenberg and returned to Las Vegas immediately thereafter.

Mr. Hyatt signed his Wagon Trails apartment rental agreements on October 13, 1991. The agreements covered rent from October 20 to October 31, 1991 and covered the full 6-month lease starting November 1st. Mr. Hyatt started the rental period on October 20th, because he knew that he was going away on an extended business trip.^{1/} Mr. Hyatt returned to Las Vegas from his business trip in time to attend the COMDEX '91 trade show.^{2/}

In the fall of 1991, after selling his California home, Mr. Hyatt rented and moved into his apartment in Las Vegas, applied for and received his Nevada drivers license (surrendering his California drivers license), registered to vote in Nevada, opened his Nevada bank accounts, sent in changes of addresses, joined a temple, continued with his house hunting, etc. These are all items that a person first does when he moves into a new area to reside. We do not understand the FTB's position that Mr. Hyatt's activities described above were formalities, especially since the FTB recognizes that Mr. Hyatt has established ties with

^{1/} Mr. Hyatt went to Washington D.C., Dallas, Texas and New York, New York during the trip.

^{2/} See attached representative documentation.

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Franchise Tax Board
September 22, 1995
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Nevada and became a resident of Nevada (at least according to the California courts in 1993). Frankly, we do not believe that a court would dismiss Mr. Hyatt's 1991 Nevadan activities as mere formalities.

The FTB dwells on Mr. Hyatt's private nature, expressing its disbelief that an individual concerned about privacy would live in the modest style in which Mr. Hyatt lives. We do not believe that the FTB is aware of the methods which successfully increase one's privacy. Mr. Hyatt's privacy has been successfully maintained because of his modest lifestyle and because of his low profile. Mr. Hyatt's Las Vegas apartment (at Wagon Trails) was modest. His Las Vegas home where he continues to reside is modest. The Las Vegas apartment did not and his Las Vegas home does not attract the scrutiny of the curious public or his intrusive family. High walls and gates are noticeable and invite the curious. By living modestly, Mr. Hyatt had not been bothered in his Nevada home by the public or by his intrusive family members even after the Hard Copy TV program acquired a photo of the home in 1993.^{3/} This was not the case when he lived in La Palma, a residence that was well known and convenient to the public and to his family. Regardless of his current financial resources, Mr. Hyatt to this day is still maintaining his long standing character as a frugal inventor. Please understand that Mr. Hyatt is not trying to keep uninvited visitors out with high walls; he is keeping a low profile so that uninvited visitors cannot find him.

Your August 31, 1995 letter identifies a handful of newspaper articles published in early 1992 concerning Mr. Hyatt. The February, 1992 Los Angeles Times articles and McHenry & Associates press release cited in your letter acknowledge

^{3/} Mr. Hyatt expressly refused to be interviewed by Hard Copy. He has no control over the efforts exerted by that program to discover his residence.

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Mr. Hyatt's Las Vegas residency. The February, 1992 New York Times article cited in your letter does not address Mr. Hyatt's residency.

News articles and press releases generally are of little value in determining residency. Reporters take "license" in writing their articles and it is well understood that most articles are replete with inaccuracies and inconsistencies. Reporters draw much of their information from older articles and materials and have little time to check whether the original materials were accurate or are still current.

The articles concerning Mr. Hyatt are no exception. The press release's reference to a "dateline" has no significance. The New York Times article stating, "Reached in La Palma" no doubt reflected a reporter's attempts to contact Mr. Hyatt in La Palma after he had moved. Phone messages were often left for Mr. Hyatt in La Palma with Grace Jeng, the new resident of the La Palma house, as well as with Greg Roth, Mr. Hyatt's patent counsel, and with Philips Corporation. Mr. Hyatt would return the phone calls from his home in Las Vegas. Reporters never asked Mr. Hyatt if he was returning the call from La Palma.

The LA Times article noting that Mr. Hyatt was looking for a permanent home in Las Vegas, was reflecting the fact that, at that time (2/25/92), Mr. Hyatt was looking for a home to purchase in Las Vegas (i.e. a permanent home, rather than his rental apartment).

Home Sale to Grace Jeng. Mr. Hyatt knew that Ms. Jeng wanted to buy a home in the La Palma -- Cerritos area because there was a large Chinese community in the area. Ms. Jeng was willing to pay Mr. Hyatt's asking price for his La Palma home so

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Mr. Hyatt did not need to engage a realtor (thereby saving the commission), advertise the home for sale, or show the home to "looky loos." Hence, Mr. Hyatt does not have any realtor or advertisement materials.

Offers on Las Vegas Home. Enclosed is representative documentation concerning Mr. Hyatt's offers on homes in Las Vegas in 1991-1992. Included in the materials are computer printouts of available homes in December, 1991 and March, 1992; a receipt for dinner with Realtor Ron Stevenson (12/12/92); and copies of home purchase offers and counteroffers made in December, 1991, January, 1992, February, 1992 and March, 1992.

Business License. Enclosed is a copy of Mr. Hyatt's Nevada business license materials.

Business Travel. Enclosed is representative documentation of Mr. Hyatt's business travels to other locations during the period at issue: a 10-14-91 to 10-22-91 trip to Washington, D.C., Dallas and New York; a 11-18-91 to 11-20-91 trip to New York; a 1-8-92 to 1-17-92 trip to Washington D.C., New York and Dallas; a trip to Denver about 3-11-92; a 4-22-92 trip to San Francisco; a 5-19-92 to 5-21-92 trip to San Francisco, and a 5-25-92 to 5-28-92 trip to Dallas and Austin, Texas.^{4/}

Grace Jeng Assignments. Mr. Hyatt engaged Ms. Jeng for business services through Leetronics Corporation (9700 Sombra Valley, Sunland, CA 91041, Attention: Barry

^{4/} Mr. Hyatt did take an occasional business trip thereafter in 1992.

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Lee). Mr. Hyatt paid Leetronics for Ms. Jeng's services. He did not keep records of the assignments. Tasks were assigned verbally.

Banking Information. We do not understand the FTB's view that where an individual opens a mutual fund money market non-bank account (i.e., the Franklin Federal Market Fund account in the case of Mr. Hyatt) is relevant to a determination of that individual's residency, once he has moved.^{2/} Likewise, the original address on an account is irrelevant once a change of address is in place (as of October, 1991 in the case of Mr. Hyatt). As your August 31, 1995 letter acknowledges, the relevance of any account to the determination of an individual's ties is the written record created by the account. As your letter notes, Mr. Hyatt's Franklin account had "checks" to the Wagon Trails Apartments written on the account -- a clear indication of Mr. Hyatt's ties to Las Vegas.

There appears to be confusion over the FTB's request for banking information from Mr. Hyatt and his cooperation in producing the information. Mr. Hyatt initially provided whatever banking information he had. The FTB then added to its request for banking information after Mr. Hyatt's submission. Mr. Hyatt then ordered any requested information that he did not have from the banks and credit card companies. The bank statements and check copies ordered by Mr. Hyatt were provided to you as Mr. Hyatt

^{2/} The FTB's position would mean that if an individual opened a mutual fund money market account from Oregon (perhaps while passing through Oregon), such an individual would be an Oregon resident.

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received them from the banks.^{6/} The exchange of financial information was done conscientiously and timely.

Please note that the FTB never requested bank statements or credit card statements for 1990; that is why none were provided.^{7/} However, in response to your August 31, 1995 letter, Mr. Hyatt has requested 1990 statements from the banks and credit card companies.

1991 and 1992 Checks. A brief summary of the checks was contained in our previous response. Additional information, to the best of Mr. Hyatt's recollection, is provided below:

Linda Wetsch was paid a bonus for secretarial services performed in May-June, 1991;

Leni Schlindwein (and Leni's Typing), Harry Widdifield and John Keller were (and are still) old friends of Mr. Hyatt;

Ron Hoffman, CPA, was paid for accounting services for tax advice from August to September, 1991;

Copley/Colony Cable was paid for an old cable service bill;

^{6/} Enclosed are copies of Mr. Hyatt's statement requests.

^{7/} For example, the authorization forms attached to your March 1, 1995 correspondence identified only 1991 and 1992 materials.

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KCET was given a donation for public TV;

Black Angus was paid for a meal contemporaneously with Mr. Hyatt's stay at Los Alamitos hospital;

Copy Tech was paid for a telephone purchase of copy toner by mail;

John Harmon was paid for library services ordered by phone and provided by mail;

Ron Schuchord was paid by mail for work that Mr. Hyatt had agreed with Ms. Jeng that he was going to pay for with respect to the La Palma property;

Xerographic Copier was paid for a copier purchased by phone, which was shipped to Mr. Hyatt's home in Las Vegas;

Copy Us was paid for photocopying service costs incurred by Ms. Jeng for her work for Mr. Hyatt/Leetronics, which costs were directly paid by Mr. Hyatt;

Chasen's was paid for an anniversary party for an old friend as a gift.

Majordomo was paid for an air cleaner purchased by mail as a gift for Mr. Hyatt's daughter;

Youngmart Travel was paid for tickets for a trip to New York with Mr. Hyatt's patent attorneys;

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Adella Bormentos was paid for babysitting services for the children of a family member.

Professionals. Mr. Hyatt worked with a world-wide network of professional advisors, consultants and colleagues in 1991 to 1992 from patent examiners in Washington D.C. to lawyers in Taiwan. Schedule 1 attached hereto sets forth a representative list of non-California professionals that Mr. Hyatt used in 1991 to 1992 (to the best of Mr. Hyatt's recollection).

California Medical Trips. Mr. Hyatt has not found any travel documentation concerning his trips to California for medical treatment, although, except for his stay at the Los Alamitos Medical Center, most of his trips were completed in one day.

Pneumonia. Enclosed is representative documentation concerning treatment of Mr. Hyatt's pneumonia.

Affiliations. Enclosed is representative documentation concerning Mr. Hyatt's Nevadan affiliations and activities, such as his 1991 ski trip to Mt. Charleston, the Las Vegas PC Users Group, Nevada Development Authority activities, temple membership, Governor Miller meetings, and the Reliability and Maintainability Symposium.

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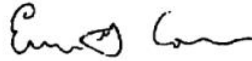
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If you have any additional questions or need additional information or clarification, please contact me.

Sincerely,



Eugene G. Cowan
of Riordan & McKinzie

cc: Gilbert Hyatt
Mike Kern, CPA

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Schedule 1

Representative List of Non-California Professionals
Used by Mr. Hyatt in 1991 - 1992

<u>Professionals</u>	<u>Location</u>
J. Haken, Esq.*	New York
A. Tamoshunas, Esq.*	New York
H. Beckers, Esq.*	New York
R. Peters, Esq.*	New York
Egli International	New York
Burns, Doane	Washington D.C.
Mahr-Leonard	Dallas
Lee & Li	Taiwan
John Fox, Esq.*	New York
Hidekazu Koyama, Esq.*	Japan
Tom Briody, Esq.*	New York
Dave Leonard, Esq.	Dallas
Bob Lott, Esq.	Dallas
Dick Winter, Esq.	New Jersey
Bob Nimps, Esq.	New Jersey
Don Erickson, Esq.	Kentucky
Bob Fletcher, Esq.	Kentucky
Jim Williams, Esq.	New York
John DiMatteo, Esq.	New York
Danny Huntington, Esq.	Washington D.C.
Bill Schuyler, Esq.	Washington D.C.
Sid Kearns	Washington D.C.
Don Craft	Colorado
Don Black	Colorado
Steve Leuthold	Minnesota
Dave Deming	Minnesota
John Zaro	New York
Ken Holeski	Ohio

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Donn Goodman	Ohio
George Sullivan	Massachusetts
Tom Neidemeyer	Massachusetts
Howard Eckers, Esq.	Nevada
Robert Durrans, M.D.	Nevada
Jim Jimmerson, Esq.	Nevada
Piercy, Bowler, Taylor & Kern	Nevada
Lee Howard	Nevada
Bob Huddleston	Nevada
Steven Hall, DDS	Nevada
Gard Jamison, CPA	Nevada
Ivan Goldsmith, M.D.	Nevada

* Lawyer with Philips Corporation

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Statement from Dr. Hamer

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(714)995-1087

PHONE

Billing Below:

STATEMENT

SUITE 101
LOS ALAMITOS MEDICAL CENTER EAST - 2801 KATELLA AVENUE
LOS ALAMITOS, CALIFORNIA 90720-3307
(212) 888-8893 • (714) 825-5161

**CHARGES ON
PAYMENTS MADE
AFTER LAST DATE
SHOWN WILL APPEAR
ON YOUR NEXT
STATEMENT**

Gilbert P. Hyatt
P.O.Box 3357
Cerritos, CA 90703

THIS IS THE AMOUNT OF YOUR BILL DUE US. ANY MONEY RECEIVED FROM
INSURANCE WILL BE CREDITED TO YOUR ACCOUNT OR REFUNDED TO YOU
WHEN YOUR BILL IS PAID IN FULL.
DETACH AND RETURN WITH YOUR REMITTANCE.

AMOUNT
ENCLOSED \$

[illegible]

EXPLANATION OF CHARGES		
Office Visit	D-Special Exam,	Malp.
Hungry	Treatment	I-Infection
Sluggish	X-Ray	A-Amblyopia
	Onset	C-Congestive
		H-Histamine Papers
		S-Surgical Consultation

ALANITOS DERMATOLOGICAL
MEDICAL CLINIC, INC.
EDGAR E. MAHER, M.D.
SIDNEY S. NEWMAN, M.D.
SUITE 201
LOS ALANITOS MEDICAL CENTER EAST
8001 RAYELLA AVE.
LOS ALANITOS, CA 94520-0007
(916) 868-0000 (761) 888-9107

PLEASE PAY
LAST AMOUNT
IN THIS
COLUMN

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Wagon Trails Rental Agreement

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H 01961

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- PLEASE READ CAREFULLY BEFORE SIGNING

REMARKS _____ DATE _____

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Requests for Statements

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PRM:

TEL: 0

SEP. 21. 1995 5:16 PM P 2

P.O. Box 81230
Las Vegas, NV 89180
PHONE: (702) 871-9899
FAX: (702) 871-9397

March 7, 1995

Household Credit Services, Inc.
Household Bank, N.A.
Department 0009
Anaheim, CA 92850-0009

Account Nos. 4317-3410-1024-2499
5418-2961-4100-6386
5414-7410-1018-2135

Dear Sirs:

I am the account holder in the above referenced credit card accounts. I would appreciate a copy of the account statements for 1991 and 1992. Annual account statements will suffice.

Thank you.

Best Regards,


Gilbert P. Hyatt

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FROM :

P.O. Box 81230
Las Vegas, NV 89180
PHONE: (702) 871-9899
FAX: (702) 871-9397

March 7, 1995

Visa Credit Card Department
Chase Manhattan Bank
P.O. Box 15008
Wilmington, DE 19850-5008

Account No. 4226-563-134-706

Dear Sirs:

I am the account holder in the above referenced account. I would appreciate a copy of the account statements for 1991 and 1992. An annual account statement for 1991 and for 1992 will suffice.

Thank you.

Best Regards,


Gilbert P. Hyatt

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