

Electronically Filed  
Oct 10 2022 11:02 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## **EXHIBIT 20**

1 **OBJ**

2 THOMAS R. C. WILSON, ESQ.

3 Nevada State Bar # 1568

4 JAMES C. GIUDICI, ESQ.

5 Nevada State Bar # 224

6 MATTHEW C. ADDISON, ESQ.

7 Nevada State Bar # 4201

8 BRYAN R. CLARK, ESQ.

9 Nevada State Bar #4442

10 McDONALD CARANO WILSON McCUNE

11 BERGIN FRANKOVICH & HICKS LLP

12 2300 West Sahara Avenue, Suite 1000

13 Las Vegas, Nevada 89102

14 (702) 873-4100

15 Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

\*\*\*\*\*

12 GILBERT P. HYATT,

13 Plaintiff,

14 vs.

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

17 Defendants.

Case No. : A382999

Dept. No. : XVIII

Docket No. : R

**FTB'S OBJECTIONS TO AFFIDAVITS  
AND ERRATA FILED IN SUPPORT OF  
HYATT'S OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT**

Date of Hearing: April 21, 2000

Time of Hearing: 9:00 a.m.

18  
19 The Defendant, Franchise Tax Board of the State of California ("FTB") objects as set forth  
20 below to the "affidavits" of Eugene G. Cowan, Thomas K. Bourke, Gilbert P. Hyatt, and Michael  
21 W. Kern filed on March 22, 2000 in support of Plaintiff Hyatt's opposition to the FTB's motion for  
22 summary judgment or alternatively for dismissal. FTB also objects to the various "Errata"  
23 documents that Hyatt filed on April 5, 2000.

24 **GENERAL OBJECTIONS**

25 Materials submitted in opposition to a motion for summary judgment must be admissible  
26 evidence in order to be considered by the Court. See, e.g., *Adamson v. Bowker*, 85 Nev. 115, 119,  
27 450 P.2d 796 (1969) ("evidence that would be inadmissible at the trial of the case is inadmissible  
28 on a motion for summary judgment").

**FILED**

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CLERK

1 Rule 56(e), Nev. R. Civ. P., provides that affidavits opposing a summary judgment motion  
2 "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence,  
3 and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

4 In addition, sworn or certified copies of all papers or parts thereof referred to in an affidavit  
5 must be attached thereto or served therewith.

6 A party opposing summary judgment "may not rest upon the mere allegations or denial of  
7 his pleading, but his response, by affidavits or as otherwise provided in [Rule 56], must set forth  
8 specific *facts* showing that there is a genuine issue for trial." (Emphasis added). If the opposing  
9 party does not so respond, "summary judgment, if appropriate, shall be entered against him."

10 Local Rule 2.20(b) of the Eighth Judicial District Court Rules provides in pertinent part that  
11 an opposition to a motion may be supported by affidavit "stating *facts* showing why the motion  
12 should be denied." (Emphasis added). Local Rule 2.21(c) specifically provides:

13 Affidavits must contain *only factual, evidentiary matter*, conform with the  
14 requirements of NRCP 56(e), and avoid mere general conclusions or arguments.  
15 Affidavits substantially defective in these respects may be stricken, wholly or in part.  
(Emphasis added).

16 Rule 56(e) is clear that facts stated in an affidavit must be made upon the affiant's personal  
17 knowledge, and there must be an affirmative showing of his competency to testify to them;  
18 conclusory and self-serving statements are insufficient to defeat summary judgment. *Saka v.*  
19 *Sahara-Nevada Corp.*, 92 Nev. 703, 705, 558 P.2d 535 (1976); *Gunlord Corp. v. Bozzano*, 95 Nev.  
20 243, 245-46, 591 P.2d 1149 (1979). Rule 56(e) is mandatory, and a district court's reliance upon  
21 an affidavit that does not comply with the rule may constitute reversible error. *Havas v. Hughes*  
22 *Estate, Summa Corp.*, 98 Nev. 172, 173, 643 P.2d 1220 (1982).

23 Federal Rule 56(e) contains the same requirements for affidavits opposing summary  
24 judgment. Federal courts have held that affidavits have no probative value where they consist of:

- 25 1. conclusions, *see, e.g., Industrial Risk Insurers v. Creole Production Services, Inc.*,  
568 F. Supp. 1323, 1325 (D.C. Alaska 1983), *aff'd* 746 F.2d 526 (9th Cir. 1984);
- 26 2. legal conclusions, *see, e.g., Oxford Life Insurance Co. v. United States*, 574 F. Supp.  
27 1417, 1421-22 (D.C. Ariz. 1983), *aff'd in part and rev'd in part on other grounds*,  
790 F.2d 1370 (9th Cir. 1986);

28 //

- 1 3. mere assertions unsubstantiated with admissible evidence, *see, e.g., Factofrance*  
2 *Heller v. I.P.M. Precision Machinery Co.*, 627 F. Supp. 1412, 1416 (N.D. Ill. 1986);
- 3 4. allegations of ultimate facts, *see, e.g., Cohen v. Ayers*, 449 F. Supp. 298, 321 (N.D.  
4 Ill. 1978), 596 F.2d 733 (7th Cir. 1979);
- 5 5. opinion or impression of the state of mind or intent of other persons, *see, e.g.,*  
6 *Maiorana v. MacDonald*, 596 F.2d 1072, 1079-80 (1st Cir. 1979), *disapproved on*  
7 *other grounds, Gomez v. Toledo*, 446 U.S. 635 (1980);
- 8 6. arguments on the law or merits of the case, *see, e.g., Pfeil v. Rogers*, 757 F.2d 850,  
9 862-63 (7th Cir. 1985);
- 10 7. generalized or unsubstantiated statements, *see, e.g., Citizens Environmental Council*  
11 *v. Volpe*, 484 F.2d 870, 873 (10th Cir. 1973), *cert. denied*, 416 U.S. 936 (1974);
- 12 8. mere denials of essential facts, *see, e.g., First National Bank of America*, 606 F.2d  
13 760, 768 (7th Cir. 1979); or
- 14 9. mere questions about the contents of the materials submitted by the moving party.  
15 *See, e.g., id. at 768.*

#### 16 ATTORNEY AFFIDAVITS

17 An attorney's affidavit is entitled to the same consideration as any other affidavit based upon  
18 personal knowledge *if* the affidavit is based upon *the attorney's own knowledge of the facts set forth*  
19 *therein. Wilson v. Steinbach*, 656 P.2d 1030, 1032 (Wash. 1982) (emphasis added). An attorney's  
20 affidavit not based upon personal knowledge or referable to sources of actual knowledge of the facts,  
21 leaves the record for the purposes of summary judgment as it was without any affidavit at all.  
22 *Christophides v. Porco*, 289 F. Supp. 403, 407 (S.D.N.Y. 1968) (citations omitted). In *United States*  
23 *v. Dibble*, the Ninth Circuit Court of Appeals stated:

24 Because lawyers so often present inadmissible testimony (including their  
25 own), in the form of affidavits that they would not consider presenting from a  
26 witness stand, should we assume that the belief is common that the rules of evidence  
27 vanish when a witness testifies by affidavit rather than from the stand? Testimony  
28 presented by affidavit is different from testimony orally delivered, because the  
affiant is not subject to cross-examination. But that fact leads to greater, not lesser,  
strictures imposed on the testimony presented by affidavit. FRCP 56(e).

429 F.2d 598, 602 (9<sup>th</sup> Cir. 1970) (citations omitted).

Argument of the facts and the law appropriately should appear in briefs, not affidavits. At  
best, legal arguments and summations in affidavits will be disregarded by the court. *E. F. Hutton*  
& *Co. v. Brown*, 305 F.Supp. 371, 383 (S.D. Tex. 1969) (*citing United States v. Coleman Capital*  
*Corp.*, 295 F.Supp. 1016 (N.D. Ill. 1969); *Christophides v. Porco*, 289 F. Supp. 403 (S.D.N.Y.

1 1968)). Furthermore, a writing is not authenticated simply by attaching it to an affidavit, the affiant  
2 must have personal knowledge of the facts alleged and attest to the identity and due execution of the  
3 document. *Dibble*, 429 F.2d at 602.

4 Mr. Cowan is representing Mr. Hyatt in the ongoing audit protest proceedings in California.  
5 Cowan affidavit ¶ 4. Mr. Bourke is counsel of record for Mr. Hyatt in this case. Bourke affidavit  
6 ¶ 1. Nevada Supreme Court Rule 178 admonishes against a lawyer acting as a witness for his client.  
7 Yet, Mr. Bourke in particular uses his "affidavit" to testify as a witness on behalf of his client in this  
8 very case.

9 Violations of Rule 56(e) and Local Rule 2.21(c) permeate the "affidavits" of Eugene G.  
10 Cowan and Thomas K. Bourke to such an extent that they can be characterized as nothing more than  
11 an attempt to simply "shovel smoke" at the Court. *Oxford Life Insurance Co.*, 574 F. Supp. at 1421-  
12 22. Such affidavits fail to raise any genuine issue of material fact and should be disregarded by the  
13 Court. *Hotel & Restaurant Employees' Alliance v. Allegheny Hotel Co.*, 374 F. Supp. 1259, 1263  
14 (W.D. Pa. 1974). At best, the Cowan and Bourke "affidavits" are merely additional briefs in which  
15 each attorney offers his own personal argument. At worst, these attorney affidavits are flagrant  
16 violations of Rule 56(g) (court may hold attorneys in contempt and impose sanctions if the court is  
17 satisfied that affidavits are presented in bad faith or solely for the purpose of delay).

18 Beyond the general objections made above, the FTB raises specific objections as follows.

19 **OBJECTIONS TO THOMAS K. BOURKE AFFIDAVIT**

20 The FTB hereby makes the following specific objections to the Bourke affidavit.

- 21 1. **Lack of Personal Knowledge:** Bourke admits at the beginning of his affidavit that  
22 he has no personal knowledge of matters stated therein, however, that he is simply  
23 "marshalling (sic) the deposition and documentary evidence." Bourke Affidavit ¶  
24 2. Sections II, III, IV, V, VI, and VIII ¶ 185 may not be considered by this Court as  
25 they are not based upon Bourke's own personal knowledge. Bourke merely relies  
26 upon numerous hearsay documents that he has no personal knowledge of the facts  
27 alleged. Not only does Bourke lack any personal knowledge of the factual  
28 allegations he asserts, but his affidavit is replete with legal argument and  
conclusions. Bourke's affidavit is in no way an attempt to "compile or summarize"  
the evidence in the case so far but is merely argument on behalf of Hyatt. Either of  
these uses of an affidavit is improper. See *Dibble*, 429 F.2d at 602; Rule 56(e).
2. **Legal issues:** The following paragraphs contain improper argument on the law or  
merits of the case: 6, 9, 10, 11, 12, 14, 15, 16, 16.4, 17, 18, 20, 26, 33, 35, 36, 41, 45,

52, 53, 54, 62, 64, 69, 70, 71, 73, 75, 77, 80, 139, 147, 159, 165, 166, 167, 169, 171, 172 and 173.

3. Self-Serving: The following paragraphs contain improper self-serving statements instead of facts: 5, 9, 10, 12, 15, 16.2, 26, 34, 35, 37, 39, 40, 43, 44, 47, 51, 57, 59, 60, 61, 63, 65, 68, 79, 82, 83, 86, 90, 92, 102, 117, 125, 127, 129, 131, 134, 139, 145, 148, 149, 151, 158, 160, 161, 164, 168, 174, 176, 179, 180 and 184.
4. Conclusory: The following paragraphs contain improper conclusory statements: 4, 10, 11, 12, 13, 15, 16.2, 16.4, 16.5, 20, 21, 26, 27, 33, 38, 46, 49, 52, 58, 66, 71, 72, 74, 78, 84, 88, 104, 118, 123, 130, 139, 143, 158, 160, 175, 179, 180 and 186.
5. Personal Belief: The following paragraphs contain improper personal belief: 16.5 and 139.
6. Opinion or Impression of State of Mind: The following paragraphs contain improper impressions of the state of mind of other persons: 14, 16.2, 24, 63, 67, 72, 82, 101, 130, 158 and 160.
7. Irrelevant: The following paragraphs contain irrelevant statements and/or refer to irrelevant hearsay documents: 34, 36, 39, 40, 51, 52, 53, 54, 57, 58, 62, 68, 70, 108, 114, 135, 137, 138, 138.1, 138.2, 138.3, 138.5, 140, 142, 143, 144, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 160, 161, 163, 165, 168, 170, 171, 172, 179 and 181.

For all the reasons stated above, the Court should disregard all improper statements contained in the Bourke affidavit. Furthermore, Bourke's affidavit relies upon exhibits that are not proper for this Court to consider in deciding FTB's motion for summary judgment. NRCP 56(c). The FTB objects to Bourke's references to Exhibit 1, attached to Bourke's affidavit, the "Appendix to Gil Hyatt's Post-Hearing Memorandum," which is an unverified pleading with attached hearsay documents about which Bourke is not competent to testify.

Bourke is not competent to testify as to the facts alleged in the following exhibits as he has no personal knowledge of the facts alleged therein and therefore the FTB objects to any reference made to them by Bourke in his affidavit:

Exhibit 2 - Candace Les Deposition Transcript;  
Exhibit 3 - Hyatt's Protest Letter;  
Exhibit 4 & 5 - Excerpts from Audit Files<sup>1</sup>;  
Exhibit 6 - Sheila Cox deposition transcript;  
Exhibit 7 - FTB Narrative Reports;

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<sup>1</sup>FTB objects to any reference to Exhibit 5 which was not included with the March 22, 2000, filing of Hyatt's Opposition, nor was any exhibit marked as Exhibit 5 in Hyatt's Errata to Bourke's affidavit.

1 Exhibit 8 - Jovanovich's Telephone Call Memorandum;  
2 Exhibit 9 - Anna Jovanovich Deposition Transcript;  
3 Exhibit 10 - Letter by FTB auditor to Hyatt;  
4 Exhibit 11 - Cowan's Letter to FTB, April 30, 1996; and  
5 Exhibit 12 - Security and Disclosures Manuel;  
6 Exhibit 13 - Steven James Illia Deposition Transcript;  
7 Exhibit 14 - Carol Ford Deposition Transcript;  
8 Exhibit 15 - Transcript of Proceeding, April 20, 1999 (Bourke was not even present);  
9 Exhibit 16 - Transcript of Proceeding, May 5, 1999 (Bourke was not even present);  
10 Exhibit 17 - David S. Moore Affidavit;  
11 Exhibit 18 - Les Performance Evaluation;  
12 Exhibit 20 - Letter of R. Douglas Bramhall, May 16, 1996;  
13 Exhibit 21 - Penalties Class Materials;  
14 Exhibit 22 - Documents relating to Hyatt's patent agreements.  
15 Exhibit 23 - Narrative Report (H06363);  
16 Exhibit 24 - Rebekah Medina Deposition Transcript;  
17 Exhibit 26 - Jeffrey D. McKenney Deposition Transcript;  
18 Exhibit 28 - FTB Disclosure Education Training;  
19 Exhibit 29 - Video Tape;  
20 Exhibit 30 - Portions of Video Tape Deposition Testimony;  
21 Exhibit 33 - Douglas Dick Deposition Transcript;  
22 Exhibit 34 - Deposition Exhibit 278 (Maps);  
23 Exhibit 35 - Deposition Exhibit 286 (Photograph);  
24 Exhibit 36 - Deposition Exhibit 287 (Photograph);  
25 Exhibit 37 - Deposition Exhibit 294 (Photograph);  
26 Exhibit 38 - Deposition Exhibit 297 (Photograph);  
27 Exhibit 39 - Deposition Exhibit 166 (Chart);  
28 Exhibit 40 - Deposition Exhibit 296 (Photograph);  
Exhibit 41 - Johna Alvarado Deposition Transcript;  
Exhibit 44 - Paul Lou Deposition Transcript;  
Exhibit 45 - Allan Hideo Shigemitsu Deposition Transcript;  
Exhibit 46 - Declaration of Robert Alvarez;  
Exhibit 47 - Declaration of Barbara Hince;  
Exhibit 48 - Declaration of Gerald H. Goldberg;  
Exhibit 49 - Priscilla Maystead Deposition Transcript; and  
Exhibit 50 - Progress Report of Sheila Cox.

FTB objects to this Court's use of and Bourke's references to the following exhibits attached to Bourke's affidavit and referenced articles as they are irrelevant and/or hearsay documents:

Exhibit 19 - The Power to Destroy; *Matter of the Appeal of Joseph and Emily Gilber*, at pp. 14-16 of Bourke's affidavit;  
Exhibit 52 - Caltax letter;  
Exhibit 53 - Transcript of BOE, September 1, 1999;  
Exhibit 42 - Westlaw Search results; Stuart Taylor, Jr. "Opening Argument," National Journal, May 16, 1998 WL 2089190;  
Exhibit 43 - Newspaper Articles;  
Michael D. Harris, "DA's Believe Scandal Affects Trials' Results," Los Angeles Daily Journal, Wednesday, March 15, 2000, at pp. 79 & 81 of Bourke's affidavit;  
Scott Glover and Matt Lait, "LAPD to Charge 15 Officers in Scandal," Los Angeles Times, Thursday, March 9, 2000, at p. 82 of Bourke's affidavit;



1 Chris Ford, "City Attorney Says 743 Cases May Be Tainted," Los Angeles Daily Journal,  
2 Wednesday, March 15, 2000, at p. 81 of Bourke's affidavit;  
3 Shawn Hubler, "In Rampart, Reaping What We Sowed," Los Angeles Times, Thursday, February  
4 17, 2000, at pp. 80-81 of Bourke's affidavit;  
5 Michael D. Harris and Chris Ford, "DA, Chief Cooperate In Showdown's Wake," Los Angeles Daily  
6 Journal, Friday, March 17, 2000, at p. 80 of Bourke's affidavit;  
7 Joel Fox, "We Will Have To Pay the Piper but How?" Los Angeles Times, Sunday, March 12, 2000,  
8 at p. 80 of Bourke's affidavit;  
9 LAPD's Official 362 Page Report, at pp. 81-82 of Bourke's affidavit;  
10 Michael D. Harris, "Parks Immolates Rampart, CRASH In Inquiry Report," Los Angeles Daily  
11 Journal, Thursday, March 2, 2000, at p. 84 of Bourke's affidavit;  
12 Statement of Mayor Riordan, Los Angeles Times, Sunday, March 12, 2000, at p. 84 of Bourke's  
13 affidavit;  
14 Chris Ford, "Parks Announces He Is Suspending CRASH Program," Los Angeles Daily Journal,  
15 Monday March 16, 2000, at p. 85 of Bourke's affidavit;  
16 Miles Corwin, "Commission Hears Calls for Rampart Probe," Los Angeles Times, Wednesday,  
17 March 15, 2000, at p. 85 of Bourke's affidavit;  
18 Matt Lait and Scott Glover, "Web Site Crashes In On Rampart Scandal," Los Angeles Times,  
19 Thursday, March 6, 2000, at pp. 86-88 of Bourke's affidavit;  
20 Gregory J. Boyle, S.J., "We Have Met the Monster and It Is Us," Los Angeles Times Friday, March  
21 10, 2000, at pp. 89-90 of Bourke's affidavit;  
22 Anne-Marie O'Connor, "Rampart Set Up Latinos to Be Deported, INS Says" Los Angeles Times,  
23 Thursday, February 24, 2000, at p. 91 of Bourke's affidavit;  
24 Peter Blumberg, "LA Lawmaker Wants AG's Help With Rampart" Los Angeles Times Daily  
25 Journal, Monday, February 28, 2000, at p. 92 of Bourke's affidavit;  
26 Scott Glover & Matt Lait, "Panel Orders Parks to Work With Garcetti," Los Angeles Times,  
27 Saturday, March 18, 2000, at p. 92 of Bourke's affidavit;  
28 Martin Berg, "A Day in L.A.: Rampart Scandal Evolves Into a Public Spectacle." Los Angeles Daily  
Journal, March 17, 2000, at p. 93 of Bourke's affidavit; and  
Martin Berg, "Rampart Suits Might Be on Ice Six Months" Los Angeles Daily Journal, Tuesday,  
March 7, 2000, at p. 100 of Bourke's affidavit.

#### OBJECTIONS TO EUGENE G. COWAN AFFIDAVIT

The FTB hereby makes the following specific objections to the Cowan affidavit.

1. Personal Interpretation and Argument: Most of Mr. Cowan's "affidavit" is an irrelevant and improper attempt to argue the merits of the dispute between Hyatt and FTB as to the effective date of Hyatt's move to Nevada. Whether or not Hyatt's move to Nevada was effective September 26, 1991 (as Hyatt now asserts in ¶ 2 of his



1 affidavit) so as to terminate his liability for California income tax is irrelevant to the  
2 FTB's pending motion. This Court has already ruled in its April 16, 1999 Partial  
3 Judgment on the Pleadings that it does not have subject matter jurisdiction to decide  
4 that issue. The issues raised by the FTB's motion are whether any torts were  
5 committed during the audit for which this Court can impose liability upon the FTB.  
6 Moreover, what happened during the audit is in the audit file itself. The exhibits  
7 attached to Cowan's affidavit speak for themselves; his interpretation of what they  
8 mean is inadmissible. Almost his entire "affidavit" consists of such inadmissible  
9 interpretation and argument of the audit events and attached exhibits. The FTB  
10 objects to paragraphs 5, 7-11, 13, 15-57 on these grounds.

- 11 2. Misleading: FTB objects to the statement in paragraph 1: "I frequently represent  
12 clients before . . . the Franchise Tax Board of California" on the grounds that it is  
13 self-serving and misleading. The statement purports to clothe Mr. Cowan with  
14 experience and expertise when, in fact, he admitted at his deposition that the Hyatt  
15 matter was his first experience with an FTB residency audit.

- 16 3. Erroneous Legal Argument: Cowan's affidavit repeatedly attempts to impose a  
17 higher degree of confidentiality for information Hyatt gave to the FTB than is  
18 imposed by law. FTB specifically objects to paragraphs 15-18 wherein Mr. Cowan  
19 refers to the FTB's Security and Disclosure Manual then states nothing more than  
20 his personal interpretation of the Manual. Page A-2 of the excerpt from the Manual  
21 Cowan himself submitted as Exhibit 4 to his affidavit clearly states:

22 Employees have no authority to use such records and  
23 information for any purpose not specified by law.  
24 Basically the specified purposes are the  
25 administration of the Personal Income Tax Law, . . .  
26 (Emphasis added).

27 For the same reason, FTB specifically objects to paragraphs 49-51 wherein Mr.  
28 Cowan refers to FTB Notice 99-1 and suggests the FTB is violating its own  
procedures. The copy of FTB Notice 99-1 Cowan himself submitted as Exhibit 27  
to his affidavit clearly states:

It is recognized that there will be reasons why *some*  
*Protests are properly deferred (see infra)* and that  
there will be reasons why *some Protests may take*  
*longer to conclude.* (Emphasis added).

4. Inadmissible Settlement Discussions: FTB also specifically objects to paragraphs  
38-41 wherein Cowan attempts to portray a conversation he had with Anna  
Jovanovich as some sort of "extortion" threat. The best evidence of what Jovanovich  
said is her contemporaneous handwritten notes that she read into the record during  
her deposition, not Cowan's personal "spin" on the conversation. The statement  
regarding settlement merely identified the alternative procedures that were then  
available to Hyatt. Because Mr. Cowan had never been through an FTB residency  
audit before, Jovanovich was trying to be helpful by describing the process for him.  
Moreover, evidence of such settlement negotiations is inadmissible (Nev. Rev. Stat.  
§ 48.105) and cannot be considered in opposition to the FTB's motion for summary  
judgment. See e.g., *Adamson*, 85 Nev. at 119.

5. Hearsay: Much of Cowan's affidavit consists of hearsay, and many of the exhibits  
contain double hearsay. FTB objects to paragraphs 9-11, 13-15, 17-19, 25, 26, 28,  
31, 38-41, 45-51, and 55-57 on the grounds they contain hearsay. FTB objects to the

double hearsay contained in Exhibits 1, 3, 5, 26, 28 and 29. The double hearsay is also conclusory, argumentative and self-serving.

6. Conclusory or Self-Serving: A significant portion of Cowan's affidavit contains improper conclusory or self-serving statements instead of factual statements. FTB objects to paragraphs 3, 5, 7-11, 13, 15, 17, 19, 20, 26-33, 35, 36, 38, 39, 41 and 57 to the extent they contain improper conclusory statements.
7. Legal Conclusions: Cowan also uses his affidavit as a vehicle to assert and argue what are really nothing more than improper statements of his personal legal conclusions. FTB objects to paragraphs 3, 7-11, 13, 15-17, 19, 20, 26-31, 33, 35-38, 41, 49, 54 and 57 to the extent they contain improper legal conclusions.
8. Ultimate Facts: FTB objects to the allegations of ultimate facts contained in paragraphs 3, 4, 8, 10, 11, 13, 15, 17, 19, 26-28, 30, 31, 33, 35, 36, 38 and 41 of Cowan's affidavit.
9. State of Mind: FTB objects to the statements by Cowan of opinion or impression of state of mind or intent of other persons contained in paragraphs 7, 8, 10, 11, 15, 17-19, 22, 26, 30-32, 35, 36, 38, 39, 41, 47, 50 and 56 of Cowan's affidavit.
10. Legal Argument: FTB objects to Cowan's argument on the law or merits of this case or the residency dispute in paragraphs 3, 15, 26-31, 33, 35-38, 41, 56 and 57 of Cowan's affidavit.
11. Mere Denial of Essential Facts: FTB objects to Cowan's statements that merely deny essential facts in paragraphs 27-29, 31, 33, 35, 36 and 41 of Cowan's affidavit.
12. Mere Question of Opposing Material: FTB objects to Cowan's statements that merely question the contents of materials submitted by FTB in its motion or during the course of the residency audit in paragraphs 15-17, 19, 29, 31, 33, 35, 36 and 41 of Cowan's affidavit.
13. Unsubstantiated: FTB objects to the generalized or unsubstantiated statements in paragraphs 3, 5, 7, 8, 11, 13, 17 and 26 of Cowan's affidavit.
14. Speculation: FTB objects to paragraph 57 because it constitutes speculation.

#### **OBJECTIONS TO GILBERT P. HYATT AFFIDAVIT**

The "affidavit" of Mr. Hyatt is also such a flagrant violation of Rule 56(e) and Local Rule 2.21(c) that it should be treated as nothing more than another brief consisting of his personal arguments of what he thinks the law should be. Mr. Hyatt has several private law firms and many attorneys working on his case. With such legal representation, Mr. Hyatt's "affidavit" should be held to the same standards as his attorneys' affidavits under Rules 56(e) and (g) (Court may order party employing affidavits to pay other party the amount of reasonable expenses, including