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Lamar Central Outdoor, LLC

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10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

11 SCENIC NEVADA, INC.,

12
13 Petitioner,

14 vs.

15 CITY OF RENO, a political subdivision of the
16 State of Nevada, and the CITY COUNCIL
thereof,

17 Respondent.

Case No. CV17-00361
Dept. No. 9

18 LAMAR CENTRAL OUTDOOR, LLC,

19 Respondent in Intervention,

20 vs.

21 SCENIC NEVADA, INC.,

22 Petitioner in Intervention.

23 **LAMAR CENTRAL OUTDOOR, LLC'S REPLY IN SUPPORT OF MOTION TO**
24 **INTERVENE**

Intervenor Lamar Central Outdoor, LLC ("Lamar"), by and through its counsel, the law

1 firm of Kaempfer Crowell, hereby submits its reply in support of its motion to intervene as a party
2 respondent and as a real party in interest. Intervention is being sought as a matter of right under
3 NRCP 24(a)(2) and, alternatively, by permission under NRCP 24(b)(2). This reply is made and
4 based on the pleadings and papers on file, the accompanying Memorandum of Points and
5 Authorities, and any oral argument this Court may consider.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Lamar is a party with an interest in this case that will be severely injured if not allowed to
9 intervene. Lamar is entitled to intervene as a matter of right as its interests are not adequately
10 represented by the City (or Scenic Nevada). Lamar is also entitled to permissive joinder as its
11 participation in this case will cause no unnecessary delay or costs to the existing parties. Scenic
12 Nevada has provided no valid basis for denying Lamar either the right or permission to intervene
13 in this case.

14 **II. LEGAL ANALYSIS**

15 **A. Lamar's Is Entitled to Intervene as a Matter of Right as Its Interests are Not 16 Adequately Represented by the City.**

17 Construing Lamar's request "liberally in favor of [Lamar], focusing on practical
18 considerations rather than technical distinctions," as this court must do, there can be no conclusion
19 but that Lamar is entitled to intervene as a matter of right. *See PEST Comm. v. Miller*, 648 F. Supp.
20 2d 1202, 1211 (D. Nev. 2009) (emphasis added), *aff'd*, 626 F.3d 1097 (9th Cir. 2010). To
21 intervene as a matter of right under NRCP 24(a)(2), an applicant must meet four requirements:

22 (1) that it has a sufficient interest in the litigation's subject matter, (2) that it could
23 suffer an impairment of its ability to protect that interest if it does not intervene, (3)
24 that its interest is not adequately represented by existing parties, and (4) that its
application is timely.

Am. Home Assur. Co., 122 Nev. at 1238, 147 P.3d at 1126. Scenic Nevada does not dispute Lamar

1 has met its burden with respect to the first, second and fourth of these requirements. Instead Scenic
2 Nevada argues that Lamar cannot fulfil the third requirement; that its interests are not adequately
3 represented by the City.

4 Scenic Nevada's arguments on this point, and its heavy reliance on *Hairr* (and other
5 Nevada precedent), overlooks one key fact: that Lamar is the existing owner of banked receipts
6 that Scenic Nevada is attempting to substantially interfere with through its Petition. The Plaintiffs
7 in *Hairr* had no similar protectable property interest, and their only interest was in seeing that the
8 law at issue on that case be held unconstitutional; an interest it shared with the state in that case.
9 While it is true that both Lamar and the City have the joint position/interest in upholding the
10 constitutionality of the City's cap and trade system, Lamar, as the owner of the already existing
11 receipts at risk of being invalidated, has an additional and/or different legal interest distinct from
12 that of the City: ensuring that the existing rights of banked receipt holders are protected. Neither
13 the City nor Scenic Nevada share in this ultimate objective.

14 Scenic Nevada is essentially trying to eviscerate Lamar's - and similarly situated holders of
15 banked receipts - rights to use banked receipts without bringing Lamar into the lawsuit, and thus
16 without the need to post a bond with this Court, had Scenic Nevada tried to stop Lamar or others
17 similarly situated from using a banked receipt via injunction. Meanwhile, while the City does have
18 an interest in responding to the Petition and ensuring that its lawfully enacted ordinances are
19 defended, it has absolutely no interest in whether the banked receipts are actually utilized and used
20 to relocate displays. In fact, the City, which does not own any receipts at risk of being invalidated,
21 is neither capable of nor would it present the arguments that Lamar is capable of presenting as an
22 owner of these banked receipts. Thus, contrary to what Scenic Nevada states in its Opposition, not
23 all arguments Lamar may wish to make in this matter can be made by the City. As a holder of
24 banked receipts subject to being lost as a result of this Petition, Lamar offers a necessary element

1 to the proceedings – an uncompromising opposition to Scenic Nevada’s request to invalidate the
2 receipts banked during the “interim period.” *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528
3 (9th Cir. 1983) (In assessing the adequacy of an existing party’s representation, several factors are
4 considered, “including whether the [party] will undoubtedly make all of the intervenor’s
5 arguments, whether the [party] is capable of and willing to make such arguments, and whether the
6 intervenor offers a necessary element to the proceedings that would be neglected.”); *see also In re*
7 *Guardianship of A.M.*, No. 59116, 2013 WL 3278878, at *2 (Nev. May 24, 2013) (applying
8 *Sagebrush Rebellion* factors).¹ Thus, unlike the Plaintiffs in *Hairr*, Lamar has “shown that [it]
9 ha[s] a different legal interest than the [City] in the outcome of the litigation or that [its] interests
10 in defending the suit are adverse to the [City]’s interests.” *Hairr v. First Judicial Dist. Court*, 132
11 Nev. ___, ___, 368 P.3d 1198, 1202 (2016).

12 Accordingly, Lamar has not only met its “minimal” burden,² but it has also overcome any
13 presumption that the existing parties adequately represent its interest in this case. intervention as
14 matter of right is mandated here, and Scenic Nevada has presented this Court with no legal
15 justification for denying Lamar this right.

16 **B. If The Court Concludes That Lamar Is Not Entitled to Intervene As A Matter**
17 **of Right, Then Lamar Should Be Permitted To Intervene Under NRCP**
18 **24(b)(2).**

19 Scenic Nevada does not dispute that Lamar’s defenses and the main action have both
20 questions of law and fact in common. Scenic Nevada’s Petition seeks to invalidate receipts banked

21 ¹ In accordance with SCR 123, this unpublished opinion of the Nevada Supreme Court is not cited herein as precedent
or legal authority. Rather, this unpublished opinion is offered as information, only, to be considered in this Court’s
discretion.

22 ² Because Lamar has an interest in this case that is not adequately represented by existing parties, its “burden to prove
23 this requirement has been described as ‘minimal[.]’” *American Home Assur. Co.*, 122 Nev. at 1241, 147 P.3d at 1128.
24 Thus the more heightened standard is not applicable here. *See id.* (When the applicant’s interest or ultimate objective
in the litigation is the same as an existing party’s interest, or is subsumed within the existing party’s objective, the
existing party’s “representation should generally be adequate, unless the [applicant] demonstrates otherwise.”).

1 during the “interim period,” of which Lamar is the owner of the majority of such banked receipts
2 issued by the City. Instead, Scenic Nevada claims that Lamar is not entitled to intervene under
3 NRCP(b)(2) because its intervention will result in unnecessary delay and/or costs. There is
4 absolutely no risk of delay or increased costs that could justify deny Lamar’s request.

5 The only risk of delay Scenic Nevada can point to is the delay that will occur in it having to
6 file a reply to Lamar’s proposed response to Scenic Nevada’s Petition. This is simply not enough.
7 The Court has not yet set a hearing on Scenic Nevada’s Petition, and thus any hearing date to be
8 set can easily accommodate whatever additional minimal time may be necessary as a result of the
9 granting of Lamar’s request to intervene. In fact, once this Court rules on the instant Motion, it
10 can set a hearing on the underlying Petition for the very next day should it so choose. Scenic
11 Nevada has no automatic right to file a reply. *See* NRS 34.260. Thus, as soon as the instant Motion
12 is granted, and Lamar’s response to Scenic Nevada’s Petition formally filed, the underlying
13 Petition will be ripe for decision. And even if Scenic Nevada should chose to request leave to file
14 a reply, even assuming it did not do so on an order shortening time³ and even assuming Lamar
15 opposed such a motion, the full briefing on that motion would take no more than a month. This
16 short delay will not cause any prejudice to the existing parties. To the contrary, not allowing
17 Lamar to participate would significantly prejudice it and its right to protect its interest in its banked
18 receipts.

19 Similarly, the “increased costs” Scenic Nevada points to are negligible, at best, and in no
20 way support the conclusion that Lamar’s motion should be denied. The only increased “costs”
21 Scenic Nevada can point to are the past “costs” it incurred relative to drafting its opposition to
22 Lamar’s motion to intervene and motion to consolidate and whatever future costs may be related to

23 ³ If time really is of such an important that Lamar’s intervention would prejudice Scenic Nevada, then presumably
24 Scenic Nevada would be entitled to an order shortening time on its request for leave to file a reply, thus making any
delay caused by Lamar’s intervention less impactful to the existing parties.

1 filing a reply to Lamar's response to Scenic Nevada's Petition. Scenic Nevada has not pointed to
2 any unnecessary or unreasonable costs or expenses that would result from Lamar's joinder. First,
3 responding to the motion to intervene cannot in and of itself constitute the sort of increased costs
4 that would warrant denial of the motion to intervene, as any such related costs and expenses would
5 have already been incurred prior to the granting of the intervention (i.e. it is not future increased
6 costs to be avoided or protected against by denial of a request to intervene).

7 Likewise, the costs and expenses associated with the motion to consolidate are not of the
8 nature to be considered in granting or denying a motion to intervene, as any costs or expenses
9 related to such motion to consolidate are entirely independent of and in no way relate to the denial
10 or grant of the motion to intervene. In other words, these are likewise not costs or other expenses
11 that can be avoided by denial of the motion to intervene.

12 Finally, that Scenic Nevada might incur some costs or expenses in relation to filing a reply
13 to Lamar's response to Scenic Nevada's Petition is not enough. In fact, Scenic Nevada has no right
14 or duty to file any such reply. *See* NRS 34.260. And even if it did, by its argument, Scenic
15 Nevada is essentially claiming that simply having to respond to the initial filing by an intervening
16 party, and nothing more, is an unnecessary cost that should be protected against. In other words,
17 Scenic Nevada is essentially arguing that *any* increased cost whatsoever could substantiate denial
18 of a request to intervene, thus entirely eviscerating permissive joinder under NRCP 24(b)(2). This
19 simply makes no sense.⁴

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22 ⁴ Scenic Nevada asserts that Lamar's proposed response to Scenic Nevada's Petition should be treated as an amicus
23 brief, "which Scenic Nevada would not have to respond to. . . ." But Scenic Nevada need not respond to the response
24 even if treated as a formal response after intervention. Scenic Nevada has no automatic right, or duty, to file any
reply; rather, filing a reply is permitted with leave of the Court only. *See* NRS 34.260. Additionally, as stated above,
any resulting short delay in setting the hearing to permit Lamar to participate will not prejudice the existing parties.
To the contrary, not allowing Lamar to participate would significantly prejudice it and its right to protect its interest in
its banked receipts.

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

DATED this 24th day of April, 2017.


An employee of Kaempfer Crowell