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8 SCENIC NEVADA, INC.

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

14 SCENIC NEVADA, INC.,
15
16 Plaintiff,

Case No. CV12-02863

Dept. 7

17 vs.

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT**

18 CITY OF RENO, a political subdivision
19 of the State of Nevada, and the CITY
20 COUNCIL thereof,

21 Defendant.
22 _____ /

23 SAUNDERS OUTDOOR ADVERTISING,
24 INC., a Utah corporation,

Case No. CV12-02917

Dept. 7

25 Plaintiff,

26 vs.

27 CITY OF RENO, a municipal corporation
28 and political subdivision of the State of
Nevada,

Defendant.
_____ /

1 Before the Court is a motion for summary judgment, filed on behalf of Defendant
2 the City of Reno, represented by City Attorney John J. Kadlic, by Deputy City Attorney
3 Jonathan D. Shipman, against Plaintiff Scenic Nevada, Inc., represented by Mark Wray.

4 The Court has read and considered the City's motion filed November 26, 2013, the
5 Scenic Nevada opposition filed December 24, 2013, and the City's reply filed January 8,
6 2014, including the evidence and arguments asserted in each of these filings.

7 The burden to establish the nonexistence of material facts is on the City. *City of*
8 *Boulder v. State*, 106 Nev. 390, 392, 793 P.2d 845 (1990). In this case, the City has not
9 filed a separate statement of facts establishing the nonexistence of material facts. *See*
10 *NRCP 56(c)*. In the reply, the City essentially offers concessions as to the facts asserted
11 by Scenic Nevada. Thus, the city has not met its initial burden. *NRCP 56(c); Wood v.*
12 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

13 Meanwhile, in its separate statement of alleged disputed facts under *NRCP 56(c)*,
14 Scenic Nevada lists 23 issues of fact.

15 The City argues issues are time barred under the applicable statute of limitations.
16 When a statute of limitations period begins to run is subject to the discovery rule and is a
17 question of fact. *Winn v. Sunrise Hosp. & Med. Ctr.*, 277 P.3d 458, 463 (Nev. 2012)

18 Certain facts are not in dispute. The City does not dispute that the Reno voters
19 enacted the initiative in 2000. The City does not dispute that the City Council adopted
20 the digital billboard ordinance in 2012 and the City does not dispute that the initiative
21 was codified when the digital billboard ordinance was adopted. Both parties agree that
22 the city council adopted the digital billboard ordinance, that the Federal Highway
23 Beautification Act governs highway billboards and that the Federal Highway
24 Administration guidance letter is in evidence.

25 The Nevada Supreme Court has a policy of adjudicating matters on their merits,
26 and while summary judgment is not a disfavored procedural tool, in this particular case,
27 Scenic Nevada is entitled to its day in court.

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IT IS THEREFORE ORDERED that the Defendant City of Reno's motion for summary judgment is DENIED.

Patrick Flanagan
PATRICK FLANAGAN
District Judge

DATED: FEBRUARY 18, 2014