IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR BOISE COUNTY

DENNIS LARGENT, MARY CORDOVA, CHUCK STEELE, JULIE STILLMAN, ROLLY WOOLSEY, MEMBERS OF THE BOARD OF DIRECTORS OF THE TERRACE LAKES WATER COMPANY, Plaintiffs, vs. ILENE JOHNSON, LONNIE BRAMON, DARLENE BLAKESLEE, Defendants.	Case No. CV08-21-103 ORDER DENYING MOTION FOR RECONSIDERATION

THIS MATTER comes before the Court on Defendants' motion requesting reconsideration of the Court's *Findings of Fact & Conclusions of Law* (filed March 29, 2022) (hereafter, "Findings" or "Order"). Following an evidentiary hearing, this Court issued an Order making certain declaratory findings with respect to Terrace Lakes Water Company's ("the Company") affairs and entering a preliminary injunction preventing Defendants from calling a Special Meeting until the equitable fraud claim is finally adjudicated. Defendants seek reconsideration of this Court's entry of a preliminary injunction and various other rulings. For the reasons set forth herein, the Court finds reconsideration is not warranted.

BACKGROUND

The parties have been involved in litigation for a year and a half related to the management and affairs of the Company,[1] particularly with respect to who gets to run it. In the first lawsuit, Plaintiffs Mary Cordova ("Cordova"), Dennis Largent ("Largent"), and Chuck Steele ("Steele")

[1] The Company was created in 2006 as a non-profit domestic water distribution company benefitting the members, also known as "Subscribers," of the Terrace Lakes Subdivision in Garden Valley.

filed suit against the Company, Ilene Johnson ("Johnson"), Lonnie Bramon ("Bramon"), and Darlene Blakeslee ("Blakeslee") seeking a preliminary injunction.[2] Cordova, Largent, and Steele were validly elected to the Board of Directors of the Company in October 2020. Immediately thereafter, Largent began a campaign to invalidate the election and re-install herself, Bramon, and Blakeslee to the Board. In December 2020, Johnson issued a notice of meeting to Subscribers to hold a new election. However, at the time, there was a State Order in effect prohibiting gatherings of over 10 people due to the COVID-19 pandemic ("State Order"). The meeting was held with over 30 people present, and Johnson, Bramon, Blakeslee and two other individuals were elected. Following briefing and a hearing, this Court granted the preliminary injunction and held the October 2020 election was valid, the December 2020 election was invalid, the legitimate Board of Directors was comprised of Cordova, Steele, and Largent, and the defendants were required to transfer all Company books and records to the plaintiffs, in addition to other obligations. Thereafter, the parties entered into a stipulation to resolve the remaining matters.[3] The parties agreed that Largent, Cordova, and Steele made up the legitimate current Board of Directors[4] and imposed various obligations on Johnson, Bramon, and Blakeslee to transfer Company books and records to the new Board within 10 days. An order granting the stipulation was filed May 13, 2021.

After signing the stipulation, Johnson again tried to hold a new election to appoint herself to the Board. She did so by issuing and collecting written 42 demands for a Special Meeting. However, she altered the demands after they were received, and without consent from the individuals who

[2] Ada County Case No. CV08-20-247
[3] Johnson signed the stipulation on April 1, 2021. The stipulation was not filed until April 30, 2021.
[4] In March 2021, Julie Stillman ("Stillman") and Rolly Woolsey ("Woolsey") were appointed to fill the two vacant spots on the Board of Directors.

signed them, by writing in "including Julie Stillman and Rolly Woolsey" as individuals that would be removed at the Special Meeting. She also wrote a letter to Subscribers which contained various lies, including that the monthly water bills will be substantially increasing, a grant was "no longer available," and the election of the current Board was illegal.

Thus, on May 10, 2021, Plaintiffs Largent, Cordova, Steele, Stillman, and Woolsey, as the Company's Board of Directors, filed the instant action seeking equitable and declaratory relief against Defendants Johnson, Bramon, and Blakeslee, including a temporary restraining order preventing the May Special Meeting, and preliminary and permanent injunctive relief. The parties stipulated to the entry of a TRO preventing the May 2021 meeting from happening. Defendants again tried to call for another meeting in June 2021 to hold a new election; however, their attempt was again invalid.

An evidentiary hearing was held October 1 and 28, 2021, and January 28, 2022, addressing whether a preliminary injunction was warranted and various other Company matters concerning the process for voting, meetings, elections. On March 29, 2022, the Court issued its decision finding (1) a jury trial would be held on the equitable fraud claim; (2) Defendants are enjoined, from calling a Special Meeting, until a jury trial is held on the equitable fraud issue; (3) a Special Master is appointed to ensure all Company books and records are transferred to the Plaintiffs with costs to be paid by the Defendants; (4) North Ridge lot owners are not currently Subscribers and proper action needs to be taken to include them as Subscribers; (5) Plaintiffs' board seats will be extended for one year to allow them time to (a) sort out the Company books and records, (b) hold a vote (in person or by mail) to determine whether to amend the Bylaws to include

North Ridge, and (c) determine the total amount of eligible voters; and (6) no meetings will be mandated until these matters are resolved by the current Board.

On April 14, 2022, Defendants filed a motion for reconsideration. On April 26, 2022, Plaintiffs filed a response. Defendants filed a reply on June 6, 2022. Oral argument was heard June 10, 2022, and the matter was taken under advisement.

LEGAL STANDARD

Defendants cited no rule in support of their motion for reconsideration; however, they are presumably relying on IRCP 52(b) and 11.2(b). "On a party's motion filed no later than 14 days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly." IRCP 52(b). "A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment." IRCP 11.2(b)(1). "The purpose of a motion for reconsideration is to reexamine of the correctness of an order." *Int'l Real Estate Sols., Inc. v. Arave*, 157 Idaho 816, 819, 340 P.3d 465, 468 (2014). "On a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order." *See PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 635, 200 P.3d 1180, 1184 (2009) (citation omitted). However, a party is not required to present new evidence. *Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100, 104 (Ct. App. 2006). The moving party bears the burden of either bringing new facts to the attention of the court or "drawing the trial court's attention to errors of law or fact in the initial decision." *Id*. at 473, 147 P.3d at 105. "When deciding the motion for reconsideration, the district court must apply the same standard of review that the court applied

when deciding the original order that is being reconsidered." *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). Thus, whatever standard applied to the underlying motion also applies to the motion for reconsideration. Here, Defendants seek reconsideration of this Court's Findings of Fact and Conclusions of Law. The standard was set forth in this Court's Order and will not be repeated again.

ANALYSIS

Defendants argue the Court erred by (1) entering a preliminary injunction, (2) finding North Ridge lot owners are not Subscribers, (3) finding that voting by mail is permissible, (4) ordering Defendants pay the cost of a Special Master, (5) declining to appoint a Special Master for elections, (6) disregarding Defendants' financial contributions to the Company, (7) finding Defendants' conduct was improper for their failure to hold annual meetings, and (8) "criticizing" defense counsel regarding their request for a jury trial. Before addressing Defendants' arguments, the Court addresses Defendants' written brief on reconsideration, which is full of baseless accusations that the Court's Order was motivated by an improper purpose.

Defendants state on a couple of occasions that "it is disturbing" that the Court's decision omits certain facts or "harshly criticizes" Johnson.[5] They claim the Court has "slapped Ilene Johnson and her family in the face[.]"[6] They state the Court's findings were "hostile" and "unwarranted" toward the Defendants and that the "Court could not help but criticiz[e] Defendants[']s counsel."[7] They allege the Court "has simply chosen not to face legitimate issues raised by the Defendants

[5] Defs.' Mem in Supp. of Mot. for Reconsideration pp. 2, 3, 4 n.1 (filed April 14, 2022).
[6] *Id*. at p. 3.
[7] *Id*. at p. 4.

in their filings, in favor of only focusing on the issues raised by the Plaintiffs."[8] They state numerous times that the Court's decision will be appealed and demand, in less than professional terms, this Court to explain its decision.[9] They go so far to suggest that this Court's decision was improperly motivated by Johnson's letter to Subscribers stating that a "lazy judge . . . did not read the [Bylaws] . . ."[10] Defendants state they "have cause for concern as to whether the Court's entry of attorney fees in the Original Law Suit (which is being appealed)[11] after the Court was provided the March 26, 2021 letter in this case and the findings in this case to date are due to Ilene Johnson's vocal and public criticism of the Court itself."[12] Later in the brief, the Defendants speculate as to the Court's personal opinion (of which they have no factual basis) that this Court did "not like" that "Ilene Johnson testified that she turned over all the records of the Water Company that she had[.]"[13] They conclude the Court showed "utter disrespect" toward Johnson and her family's contribution and creation of the water company.[14] They noted that while Defendants have not appealed the merits of the first case they "believe" it was a "terrible preliminary ruling on the part of the Court."[15]

Clearly, Defendants are dissatisfied with the Court's decision. This Court has endeavored to fully address their legitimate arguments on reconsideration herein. However, their rebukes and baseless accusations impugning the Court's integrity are unwarranted and unprofessional.

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[8] *Id*. at p. 5.
[9] Interestingly, most of Defendants' requests for explanation are thoroughly answered in this Court's prior Order. This decision will specifically point out where those explanations are and provide further explanation for the benefit of the parties and their eventual appeal.
[10] Defs.' Mem in Supp. of Mot. for Reconsideration at n.4.
[11] Since the hearing on this matter, Defendants dismissed that appeal.
[12] Defs.' Mem in Supp. of Mot. for Reconsideration at n.4. The Court's Order did not even refer to the March 26, 2021 letter as it was irrelevant to the issues to be decided. Defendants' "concern" is entirely speculative and without any factual basis.
[13] Defs.' Mem in Supp. of Mot. for Reconsideration at p. 12.
[14] *Id*. at p. 14.
[15] *Id*. at p. 15, n.7.

"All persons involved in the judicial process—judges, litigants, witnesses, and court officers—owe a duty of courtesy to all other participants. The necessity for civility in the inherently contentious setting of the adversary process suggests that members of the bar cast criticisms of the system in a professional and civil tone." *In re Snyder*, 472 U.S. 634, 647 (1985). In *In re Wilkins*, 782 N.E.2d 985, 986 (Ind. 2003), the Supreme Court of Indiana held that a reprimand was warranted under Professional Rule of Conduct 8.2(a)[16] for an attorney's statement in a brief in a footnote that a court's decision was "so factually and legally inaccurate that one is left to wonder whether the Court of Appeals was determined to find for Appellee Sports, Inc., and then said whatever was necessary to reach that conclusion (regardless of whether the facts or the law supported its decision)." The court noted that while a litigant is free to argue that a decision is factually or legally inaccurate, the statement at issue went "further and ascribes bias and favoritism to the judges authoring and concurring in the majority opinion of the Court of Appeals, and it implies that these judges manufactured a false rationale in an attempt to justify their pre-conceived desired outcome. These aspersions transgress the wide latitude given appellate argument, and they clearly impugn the integrity of a judge in violation of Professional Conduct Rule 8.2(a)." *Id*.

Similarly, in *Idaho State Bar v. Topp*, the Idaho Supreme Court held that public reprimand was warranted for an attorney who violated IRPC 8.2(a) for making the false statement that a judge's ruling in a case was politically motivated. Because the statement necessarily implied that the judge based his decision on completely irrelevant and improper considerations, it impugned his

[16] Indiana Professional Rule of Conduct 8.2(a) is identical to Idaho's: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge[.]" IRPC 8.2(a).

integrity. 129 Idaho 414, 418, 925 P.2d 1113, 1117 (1996); *see also id*. (Schroeder, J., dissenting) (noting that attorney's comments were "a matter of social indecency to impugn the judge's character by speculation").[17]

While Defendants are free to argue the factual and legal conclusions this Court made were erroneous, their briefing goes beyond that and is steeped with improper, inflammatory criticism and lacking any factual basis as to this Court's motives or personal opinions on the case.[18] The suggestion of judicial bias impugns the integrity of this Court and does not go unnoticed. Defense counsel's brief falls outside the boundaries of proper advocacy and violates Rules 3.1 and 8.2(a) of the Idaho Rules of Professional Conduct. However, ethical violations should be addressed by the Idaho State Bar.[19] The Court now turns to the merits of the motion for

[17] Other courts have noted that sanctions under Professional Rule of Conduct 3.1 may be warranted where an attorney makes frivolous assertions unsubstantiated by the record. "Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record." *United States v. Brown*, 72 F.3d 25, 29 (5th Cir. 1995) (noting that a court could sanction an attorney for a violation of the rule of professional conduct (IRPC 3.1) that a "lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous" should an attorney "question how the court's behavior at trial may have affected the jury without a basis for the allegation").

[18] Defendants stated in their Reply brief, "In *Westby v. Schaefer*, the Idaho Supreme Court criticized a district court judge for failing to seriously consider a motion for reconsideration after the district court judge had entered a protective order, which is exactly what this Court has done." Apparently, by this statement, the Defendants assume this Court has not "seriously considere[ed]" its motion for reconsideration or prior arguments. However, that claim is entirely baseless and speculative. This Court thoroughly reviewed Defendants' arguments in the first instance and again on reconsideration. As evidenced by the various written orders in this case and its predecessor case, the Court has carefully reviewed the evidence submitted and applied it to the law. In *Westby v. Schafer*, the trial court entered a protective order prohibiting the plaintiffs from deposing the defendants' experts even though the discovery deadline had not yet passed. 157 Idaho 616, 619, 338 P.3d 1220, 1223 (2014). The plaintiffs filed a motion for reconsideration of that decision, which the court denied. On appeal, the Supreme Court held the trial court abused its discretion by denying the motion to reconsider because it "(1) did not follow applicable legal standards when it terminated discovery without citing facts that showed good cause and (2) did not reach its decision through an exercise of reason." *Id*. at 622, 338 P.3d at 1226. It is unclear exactly what this Court did that is "exactly" like the trial court in *Westby*. Unlike in *Westby* where the trial court issued an oral ruling from the bench, this Court has taken matters under advisement to fully and carefully consider the evidence, the law, and its conclusions. Thus, the Court finds Defendants, again, lodge speculative, conclusory, and unfounded allegations regarding this Court's actions and decisions.

[19] There may be circumstances where the Court can initiate proceedings for sanctions under IRCP 11 for an attorney's violation of a Rule of Professional Conduct. *See* IRCP 11(b), (c)(3); *Kosmann v. Dinius*, 165 Idaho 375,

reconsideration.

(1) Whether the Court erred in entering a preliminary injunction.[20]

Defendants argue that neither the order from the predecessor lawsuit nor Idaho law prohibited Johnson or other Defendants from participating in water company matters, calling for a special meeting to hold a new election, and criticizing the new Board or this Court. As such, they claim the Court erred in entering any findings that "Johnson or the other Defendants somehow violated their duties after the settlement of the Original Law Suit subjecting her to the newly enacted injunctive findings of the Court in this case."[21] They claim the Court "has simply chosen not to face legitimate issues raised by"[22] them and to only focus on Plaintiffs' claims. They argue that since they will most certainly appeal this case, the Court has "an obligation" to respond.

Defendants' arguments ignore the Order, which addresses these claims and provides the facts and reasons for the decision to enter a preliminary injunction. However, here is a summary. This Court entered a limited preliminary injunction to preserve the status quo, pending a trial on the fraud claim. It prohibits Defendants from calling for a Special Meeting and attempting to remove the current Board until the meris of this case are finally decided. Prior to this Order, neither Johnson nor the other Defendants were prohibited from calling for a Special Meeting in compliance with the Bylaws. However, the Court's conclusion that a preliminary injunction was proper to maintain the status quo was based on Defendants, particularly Johnson's, repeated

385, 446 P.3d 433, 443 (2019) (finding district court did not abuse its discretion in declining to impose sanctions for an alleged ethical violation of IRPC 4.2 because the issue was not preserved for appeal but emphasizing that it is the Idaho State Bar's responsibility to review the ethical performance of the attorneys).

[20] This Section addresses Defendants questions 1—4 in their initial brief.

[21] Defs.' Mem in Supp. of Mot. for Reconsideration at p. 7.

[22] *Id*. at at p. 5.

attempts to call for a Special Meeting in ways that violated the Bylaws and State Order in the preceding case. The Court inferred Johnson's purpose was improper based on her communications to Subscribers, which contained numerous lies (*see* Findings at ¶ 46),[23] coupled with her actions of altering demands for a meeting and violating the stipulation and Court order to turn over Company records within 10 days. To be sure, she can communicate whatever she wants to other Subscribers. However, the evidence of her communications together with her actions demonstrated a disregard for following rules and doing whatever it takes to reinstall herself in a position of power over the Company.[24] Because this happened multiple times—December 2020, May 2021, and June 2021—the Court found a limited preliminary injunction was proper to determine the merits of this case and allow the current Board to address the issues it needed to address without the continued interference from Defendants.

Despite Defendants' contention this Court has not addressed their arguments, the Court's Order shows otherwise. As discussed in the Conclusions of Law:

> Defendants maintain they did not violate the Stipulation and Court Order requiring them to hand over company records. They sling numerous insults at Plaintiffs and their attorney arguing it is their incompetence in using QuickBooks that has made it difficult for them to follow the financials of the Company. Defendants' argument ignores the plain language of the Stipulation and Court Order which required them to transfer "all" Company books and records. It is unimportant whether or not Plaintiffs can ascertain the state of the Company's finances from QuickBooks alone. Defendants were obligated to ensure all Company books and records were transferred to the Plaintiffs. The undisputed evidence is the Company books and records have been slowly handed over to Plaintiffs over the course of several months since this litigation began. Defendants provide no explanation for their late disclosures. The evidence undercuts their disingenuous argument that everything has been transferred.
> . . .

[23] Notably, Defendants have not challenged any particular factual finding made by the Court.
[24] Again, had she done so in compliance with the Bylaws and not altered demands for meetings and not violated a State Order, this finding would have been different.

> Defendants argue that Johnson did nothing wrong because she cannot remove the Board or take over the Company alone – that it requires a vote to do so, and she is merely trying to have an election to make that happen. To be sure it takes a 10% of Subscribers to call a Special Meeting and a vote of Subscribers to remove a Director. Johnson has repeatedly violated the Bylaws by the way in which she has attempted to call for Special Meetings and preside over elections when she is no longer on the Board. She has represented she has a sufficient amount of Subscribers to call for a meeting; however, she includes person(s) who are not considered Subscribers under the Bylaws, and she has altered documents after individuals have signed them. Her behavior demonstrates a flagrant disregard for the rules she wrote.

Order pp. 20—21, n.13, n.14. The preliminary injunction was issued pursuant to IRCP 65(e)(1), (2), and (3) to preserve the status quo and was based on substantial evidence that "Johnson's behavior (as enabled by Bramon, Blakeslee, and Wardle) demonstrates a repeated disregard for the Company Bylaws and a willingness to alter and conceal documents. The stated reason is to retain power and control of the Company and these actions demonstrate a willingness to do whatever it takes, however improper, to achieve that end." Order p. 22. The preliminary injunction was issued based on the substantial evidence that Johnson had improperly undertaken efforts to usurp the Board and would likely continue to do so in the future. The preliminary injunction only prohibits Defendants from organizing or calling for a Special Meeting pending the outcome of the jury trial in this case. It is no way restricts the Defendants in other respects. The Court's discussion was as follows:

> The issues in this case arose after Johnson called for a meeting in 2020 to elect a new board of directors. Defendants had not held an annual meeting for at least six years and failed to observe other proper corporate formalities set forth in the Bylaws. The Subscribers subsequently elected a new board of directors. Johnson did not like the results, and/or believed the election (which she called for) was invalid. She unilaterally issued a notice for a special meeting and held a new election at which time she was elected to the Board. However, she did so after the Board elected in the first instance filed suit and requested she hold off on holding a new election pending a court determination on the issue. She disregarded the reasonably filed lawsuit and held the election regardless. This Court subsequently held that the first election was valid, Johnson's attempt at a second election was invalid. Johnson then agreed that Largent, Cordova and Steele were the legitimate

> Board of Directors and agreed to hand over all Company records to the Board within 10 days.
>
> Instead of following the Stipulation, Defendants withheld Company documents from the current Board. Johnson's assurances that everything has been handed over lack credibility given the undisputed evidence that Company documents have slowly been handed over in the months following the Stipulation and Court Order.
>
> In addition, Johnson engaged in a malicious campaign to undermine the current Board.[25] While there is nothing preventing her from communicating with Subscribers or expressing her personal opinion as to the character of the Board members, she improperly and in violation of the Bylaws called for a Special Meeting to remove the entire Board and re-elect herself. Her actions violated the Bylaws she wrote, because she gathered signatures from North Ridge lot owners who do not (yet) have the right to vote on Company matters and she altered signed requests for the meeting without authorization from the individuals who signed them. She failed to show that both times she tried to have a Special Meeting, in April of June 2021, 10% of the Subscribers called for a Special Meeting as required by Section 2.5 of the Bylaws. Her behavior has substantially impaired the current Board from managing the Company and sorting out the mess created by prior mismanagement. Her continual attempts to overthrow the Board while simultaneously withholding Company documents violated the Stipulation and Order entered in the previous case. While this Court will not weigh in on the ultimate merits as to whether her actions amount to equitable or constructive fraud, the Court finds that Plaintiffs have made a sufficient showing that preliminary injunctive relief is necessary to prevent further harm. Plaintiffs requested injunctive relief preventing Defendants from attempting to remove them from the Board, without Court oversight, for a period of three years. The Court will not enter this "permanent" relief; however, the Court finds preliminary injunctive relief is necessary to preserve the status quo pending an adjudication on the merits of the equitable fraud claim.

Order pp. 19—21. In sum, Defendants' argument that the Court needs to reconsider its decision because the order in the other case was not violated is not well taken. Substantial evidence showed that it was. In addition, although it did not prohibit Defendants from calling a Special

[25] Defendants argue this Court's finding that Johnson engaged in a malicious and improper campaign to remove the Board members was a "clear and egregious violation," because Johnson and the other Defendants were clearly entitled to publicly criticize the new board members and run for re-election if they chose. Defs.' Reply at pp. 3—4. Nowhere in this Court's decision did this Court imply or state she was not so permitted. Instead, the finding that Johnson's conduct was malicious and improper was based on her repeated attempts to admittedly re-gain control of the water company in ways that violated the Bylaws, State Order, by altering demands for meetings, by failing to hand over Company records as required by Court order. *See* Findings ¶¶ 23—36, 38—46, 50—51. Her communications to Subscribers coupled with her testimony at trial goes to her state of mind, and thus, the Court's findings and conclusions.

Meeting, the evidence showed that Johnson repeatedly improperly tried to call for Special Meetings, altered demands for meetings, and demonstrated a clear disregard for proper nonprofit corporate formalities as set forth in the Bylaws. Reconsideration on this basis is not warranted.

(2) Whether the Court erred in finding North Ridge lot owners are not Subscribers.

Defendants again argue that nothing in the Articles, Bylaws, or Idaho law requires that new members of a nonprofit can only be approved by amendment of the Bylaws. They argue the evidence showed that the prior Board "accepted" North Ride lot owners as Subscribers, despite no evidence that they met the requirements to be a Subscriber as set forth in Section 2.1 of the Bylaws or that a vote was ever taken to admit them as Subscribers.

This Court already considered, and rejected, Defendants' argument:

> Defendants argue that although North Ridge lot owners were not included in the Bylaws, they were "accepted" by the Subscribers and former Board of Directors. They claim this Court has no "right to retroactively reject those already approved." What is interesting is how Defendants insist on following the letter of the Bylaws in some instances, but in the case of North Ridge, they completely ignore the plain language of them. The Bylaws are plain and unambiguous in defining who is an eligible voter, and North Ridge lot owners are not included. The Bylaws are plain and unambiguous in defining how they can be amended. Defendants never undertook any effort to amend them to include North Ridge. That is their failure.

Order p. 24 n.19. As the Court explained:

> The Bylaws define who is eligible to vote. Section 2.2 provides that "[e]ach Subscriber shall have one (1) vote for each Lot eligible to have water delivered to it." "Subscribers" are defined as "[e]ach Owner of a Lot in a Subdivision[.]" *Id*. at § 2.1. "Owner" means "the person or persons or other legal entity or entities, including Grantor, holding the fee simple interest in a Lot." *Id*. at § 1.3. "Lot" is defined as lots within the Terrace Lakes subdivision. **Lots within the North Ridge subdivision are not included in the definitions.**

Id. at p. 27 (emphasis added). There was no evidence the Bylaws were ever amended to include

Northridge lots as "Lots" within the Bylaws. As noted by this Court:

> There is a process to amend the Articles of Incorporation and Bylaws. It requires a vote of 75% of Company Subscribers. Defendants never did this, and North Ridge is not included in them. The Defendants' failure to follow corporate formalities led to the current mess. The evidence shows that Johnson and Bramon worked to provide water to North Ridge and benefitted financially from doing so. Johnson unilaterally, and without any approval from Company Board members or Subscribers, waived connection fees to generate sales. Bramon knew this and acquiesced in this. Defendants have provided no authority that the Bylaws were amended by "course of conduct." The Bylaws specifically require any amendment be made by "approval of 75% of the Subscribers present in person or by proxy at an Annual or Special Meeting of Subscribers at which a quorum is present." Bylaws § 8.2. Further, they require the Company to maintain certain books and records, including the "original or a copy of its Bylaws, including amendments to date[.]" *Id*. at § 8.3. Defendants provided no evidence of any amendment.

Id. at pp. 24—25. It is undisputed that (a) there has never been a vote of Subscribers to make North Ridge lot owners Subscribers of the Company, (b) North Ridge lot owners are not Subscribers under the Company Bylaws or Articles, and (c) neither the Bylaws nor the Articles have been amended to include them.

Defendants make the same argument and again have failed to provide any authority that North Ridge lot owners can become Subscribers by mere acquiescence without following any of the rules delineated in the Bylaws. They claim that under Idaho Code § 30-30-401(1) it is up to the nonprofit to decide how to admit new members and that because the Bylaws were silent as to how to admit a new member, the old Board had "carte blanche" authority to recognize any new Subscriber they wanted.[26]

In *Soap Lake Rod & Gun Club v. Zeoli*, 2003 WL 1996301, 116 Wash. App. 1058 (2003) (unreported), elected officers of a non-profit corporation unilaterally decided to accept 26 new

[26] Defs.' Reply at p. 5.

members to their club without seeking existing members' approval. The nonprofit's articles were silent as to the admission of new members. Although it did not have any bylaws, a motion had been passed by previous officers that membership be capped at 47. The trial court considered this resolution to be an informally adopted bylaw. The new members paid dues, which were accepted by the nonprofit, and they attended regular membership meetings. Existing members filed a declaratory action challenging the acceptance of the 26 new members. The trial court found that the admission of the 26 new members was void, because it exceeded the officers' authority. The Washington Court of Appeals affirmed the trial court. It noted that the elected officers of the nonprofit "have no more authority than that specifically conferred or implied." *Id*. at *3. "The officers' authority may be implied from the express powers granted by statute, charter, bylaws, or the board of directors. Authority may also be implied from the express powers, from usage or custom, or from the nature of the Club's business. The scope of their authority, as officers, is a question of fact." *Id*. The appellate court found the officers' action violated the nonprofit's resolution capping membership at 47, and thus the admission of the new members was void.

Similarly, here, when Defendants were Company officers and made up the Board of Directors their power was limited to those expressly granted in the Bylaws and those implied. Idaho Code § 30-30-401(1) provides: "The articles or bylaws may establish criteria or procedures for admission of members." While the Bylaws were silent as to admission of new members, they specifically define who qualifies as a Subscriber and set forth requirements for Subscribers to receive water and services. These requirements include paying a connection fee, agreeing to be bound by the Articles, Bylaws, agreeing to pay dues, fees, etc., and agreeing to be bound by regulations governing water use. There was no evidence that North Ridge lot owners paid

connection fees or made the required agreements.[27] The Bylaws contain certain requirements to be a Subscriber. While they are silent as to the admission of new members, there is no evidence, North Ridge Lot owners have met the requirements to be Subscribers as defined in the Bylaws, nor that there was ever a proper vote by the Board or a quorum of Subscribers to include North Ridge as Subscribers. Reconsideration on this basis is not warranted.

(3) Whether the Court erred in finding that voting by mail is permissible.

Defendants argue this Court erred in finding that elections could be held by mail, because Idaho Code § 30-30-508(1) only allows for mail in votes for actions of a nonprofit when a meeting of members is not held.

Defendants' position misstates the plain language of Idaho Code § 30-30-508(1), which provides:

> Unless prohibited or limited by the articles or bylaws, **any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.** The articles or bylaws may provide that the members may vote by mail or by absentee ballot on any corporate action that may be taken at any annual, regular or special meeting of members.

(Emphasis added). Under this Section, "any action that may be taken at any" annual or special meeting "may be taken without a meeting" if the Company delivers written ballots to all its

[27] At oral argument, defense counsel, James Donoval, represented that he is legal counsel for Tamarack and if families want to be a part of that organization, they just have to donate to become members. While that may be the case for Tamarack, that is not the same here. Here, the Bylaws define the Subscribers and set forth requirements for Subscribers to receive water and services. Regardless, there was no evidence that North Ridge lot owners paid connection fees or made the required agreements as required by Section 2.1 of the Bylaws, which plainly state that "no water or other services shall be supplied to a Subscriber until the Subscriber: (1) pays the connection fee; (2) agrees to be bound by the terms of the Articles, Bylaws, and Policies and Procedures, as amended from time to time; (3) agrees to pay dues, fees, and other assessed costs for operating the System in accordance with these Bylaws and the Policies and Procedures; and (4) agrees to be bound by the regulations governing water use promulgated from time to time." Bylaws § 2.1.

voting members. The plain language refers to "any action." Thus, an annual meeting could be held **and** votes for "any action," including electing a Board, could be gathered by mail. Defendants argue that voting has to be in person and proxies are the only alternative to voting in person. However, the plain language of Section 30-30-513 regarding proxies is similar to the plain language of the previous statute regarding voting by mail: "Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact." I.C. § 30-30-513. Both statutes give the nonprofit flexibility to decide how to handle and vote on various actions, unless it is specifically limited or prohibited by the articles or bylaws. Neither mail in voting nor proxies are specifically prohibited nor limited in the Company Bylaws or Articles.

This Court held that the current Board could choose to hold any election by mail or in person pursuant to Idaho Code §§ 30-30-106 and -508. In addition, Section 3.11 of the Bylaws provides as follows:

> Any action required or permitted by INCA to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if the action is consented to by all members of the Board. The action must be evidenced by one or more written consents describing the action taken, signed by each member of the Board of Directors, or of the committee, as the case may he, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this Section is effective when the last Director signed the consent, unless the consent specifies an earlier or later effective date. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document.

The Bylaws also do not require Annual or Special Meetings to be "in person," *see* Bylaws § 2.5, 3.9.1, whereas a vote to dissolve the Company or to amend the Articles and Bylaws must be "in person," *see* Bylaws § 7.1, 8.1, 8.2. Here, neither the Bylaws nor the Articles prohibit or limit voting by mail, and Section 3.11 of the Bylaws sets forth parameters for actions to be taken

without a meeting. The Court's decision held it was possible for the Board to hold an election by mail. Defendants have not shown that the Court erred in this regard. Reconsideration is not warranted.

(4) Whether the Court erred in ordering Defendants pay the cost of a Special Master.

Defendants argue it is unfair to require them to pay for a Special Master, because defense counsel previously declined to have a Special Master appointed for this purpose and to share in the costs. At the hearing on this matter, defense counsel conceded that if the cost for the special master is limited to meeting with Johnson and going through what she needs to turn over, Defendants are "fine" with paying the costs.[28]

In *State v. Dist. Ct. of Fourth Jud. Dist*., 143 Idaho 695, 700, 152 P.3d 566, 571 (2007), the Supreme Court addressed whether a judge properly ordered the State to pay the special master's (who was appointed under IRCP 53) costs during the pendency of the litigation. In that case, the order appointing a special master and requiring the State to pay costs was issued prior to entry of a final judgment; however, the Supreme Court noted that "neither the rules nor relevant statutes prevent the award of costs on an interim basis before the entry of final judgment. I.C. § 12–101[29] and Rule 53 do not differentiate between awards entered prior to final judgment and awards made as part of the final judgment."

> Moreover, I.C. § 1–212 recognizes the inherent power of this Court to make rules governing the procedure to be followed in all Idaho courts. The statute directs, "Costs shall be awarded by the court in a civil trial or proceeding to the parties in the manner and in the amount provided for by the Idaho Rules of Civil

[28] This concession was in response to Plaintiffs' assertion that they have only ever sought documents and records that were ordered pursuant to the parties' stipulation and order in the predecessor case.

[29] "Costs shall be awarded by the court in a civil trial or proceeding to the parties in the manner and in the amount provided for by the Idaho Rules of Civil Procedure." I.C. § 12-101.

> Procedure." I.C. § 1–212. As already noted, Rule 53 permits the assessment of special master fees "as the court may direct." The State concedes special master fees are classified as costs. *Inland Group of Companies, Inc. v. Obendorff*, 131 Idaho 473, 475, 959 P.2d 454, 456 (1998). Under Rule 54(d)(1)(E), "the Court may assess and apportion as costs between and among the parties to the action, in the sound discretion of the court, all fees and expenses of masters ... appointed by the court in the action." Rule 54(d)(1)(E).[30] In *Rickel v. Bd. of Barber Examiners*, 102 Idaho 260, 629 P.2d 656 (1981), this Court held that the award of costs and fees against the State Board of Barber Examiners in an action brought by an apprentice barber candidate was within the trial court's discretion under I.C. §§ 12–101 and 12–121. Id. at 261, 629 P.2d at 657. Under *Rickel*, a court may award costs against a litigant when that is permitted by the Rules of Civil Procedure. *Id*. . . .
>
> Idaho Code section 12–101 provides clear statutory authority for the award of costs for the special master. Moreover, Rule 53 is clear in permitting the district court the authority to appoint a special master and to award costs in the district court's discretion. Special master fees are simply costs—regardless of whether they were incurred during the fact-finding or "remedial" phase of the litigation—and should not be treated differently from other costs that are on occasion awarded against the State. We affirm the district court's assessment of special master fees against the State.

State v. Dist. Ct. of Fourth Jud. Dist., 143 Idaho 695, 701, 152 P.3d 566, 572 (2007). Here, the Court imposed the Special Master's costs on Defendants because it was their failure to timely turn over all documents as previously required by Court order that necessitated the appointment of a Special Master. Defendants' claim this Court did "not like" that Johnson testified that she turned over all company records. The Court has no personal like or dislike of any matter or issue in this case. Rather, the Court found the appointment of a Special Master was warranted under the facts and circumstances of this case because Johnson testified inconsistently with respect to what she has turned over, when, where, and how. The Court found her testimony that she handed everything over lacked credibility given her inconsistent statements with respect to what was turned over and her lack of recollection on the matter. The evidence suggested she had still not

[30] IRCP 54(d)(1)(E) currently differs slightly, but not materially: "The Court may assess and apportion as costs, between and among the parties to the action, all fees and expenses of masters, receivers or expert witnesses appointed by the court in the action."

turned everything over, given the late disclosures of material prior to trial and well beyond the 10-day time limit set forth in this Court's order. Thus, reconsideration on this basis is not warranted.

(5) Whether the Court erred in declining to appoint a Special Master for elections.

Defendants argue the Court erred in failing to appoint a Special Master to oversee elections. However, they have failed to demonstrate one is necessary for this purpose at this time. As held by this Court, there are numerous issues that need to be dealt with prior to an election. And an election could be held by mail. Should a Special Master be necessary for this purpose when the time comes, the matter can be re-visited. However, it is presently unnecessary. Reconsideration is not warranted.

(6) Whether the Court erred in disregarding Defendants' financial contributions to the water company.

Defendants argue the Court "blatantly" disregarded Johnson and her family's financial contribution and efforts to establish the Company. They argue the Court should have "applauded" her efforts to install the water infrastructure, guaranty loans on behalf of the water company, and provide water to over 400 homes.

Defendants do not point out the relevance of these supposed disregarded facts. However, the Court found the following facts (pertinent to Johnson and her family's contributions) were established at trial:

- (1) Terrace Lakes Recreation Ranch, Inc. was created by Johnson and is run by Johnson and her two children, Lonnie Bramon ("Bramon") and Val Wardle ("Wardle").

- (5) From 2005 to about 2010, Johnson and Bramon worked with engineers and the DEQ to upgrade the water system and meet various requirements.
- (6) As part of this process, Johnson, on behalf of the Company, secured various loans totaling over $1 million.
- (13) In 2005, Bramon, purchased 48 acres that he developed into lots to be sold. The area is known as the North Ridge subdivision.
- (14) The upgrades to the Terrace Lakes water system also included the installation of a well and water system for the anticipated North Ridge subdivision effectively "connecting" North Ridge into the same water system that serves the Terrace Lakes subdivision.

Defendants argue that it is "disturbing" the Court does not include information as to the "extensive financial and operational support" provided by Johnson and her family since 2006. Why this is disturbing is unclear. Defendants have not argued how the Johnson family's financial contributions are relevant to the issues at hand, which were namely whether Defendants were entitled to a jury trial on the equitable fraud claim, whether a preliminary injunction was warranted to prevent Defendants' interference with Plaintiffs' management of the Company, the process for voting, elections, and calling meetings, and whether a Special Master should be appointed. Additional findings of facts relating to Johnson family's financial contributions were irrelevant to the issues at hand as they did not have any tendency to make a fact more or less probable than it would be without the evidence nor were they facts of consequence in determining the action. *See* IRE 401. Thus, the Court concludes it did not err by not including additional facts pertaining the Johnson and her family's financial contributions.

(7) Whether Johnson's, and other former Board members', conduct was improper for their failure to hold annual meetings.

Defendants argue that it is again "disturbing" that this Court supposedly "harshly" criticized Johnson and other former board members for their failure to hold annual meetings. They argue the failure to hold annual meetings did not violate Idaho law or the Bylaws.

The Bylaws address annual meetings in Section 2.4, which provides as follows:

> Annual Meeting. An Annual Meeting of the Subscribers of the Company shall be held on such date and at such time which may, from time to time be designated by the Board of Directors and shall he held in the County of Boise, State of Idaho.
>
> 2.4.1 *Order of Business*. The Annual Meeting of the Subscribers shall be held:
>
> (a) for the purpose of adopting new provisions or amending the existing provisions of the Policies and Procedures which establish a set of rules to administer and operate the Company to insure that the System will provide adequate water supply that meets all public health and safety standards; and
>
> (b) for the President to report on the activities and financial condition of the Company.
>
> 2.4.2 *Notice of Meetings*. Notice of the date, time. and place of the Annual Meeting of the Subscribers shall be delivered at least ten (10) days prior to the meeting.

Idaho Code § 30-30-501(1) requires a nonprofit corporation to hold a membership meeting annually; however, the failure to hold an annual meeting does not affect the validity of any corporate action. I.C. § 30-30-501(6). The Bylaws plainly require an annual meeting be held: "An Annual Meeting of the Subscribers of the Company ***shall*** be held on such date and at such time which may, from time to time be designated by the Board of Directors[.]" (Emphasis added). Thus, the Court made a finding that the Bylaws require annual meetings, which Johnson and previous Board members failed to hold. Findings ¶ 24. This finding was not in error and was consistent with the plain language of the Bylaws.

Defendants argue that Idaho Code § 30-30-501(6) expresses the legislature's recognition that there may be times when annual meetings are unnecessary. While that may be true, in this case, an annual meeting was not held for more than six years. In addition to the lack of annual meetings (which the Bylaws require), there was substantial evidence presented at trial that Johnson and former Board members failed to follow other proper corporate formalities, such as waiving connection fees without approval from the Board or Subscribers, failing to properly amend the Bylaws and maintain copies of amendments to date, failing to maintain proper Company books and records, and failing to hold elections for Board of Directors seats. In addition, the Court explained the other actions taken by Defendants, particularly Johnson, from 2020 to 2021, that were improper, contrary to the Bylaws, the law, and violative of this Court's order and the parties' stipulation. *See* Order pp. 20—21. All these facts combined led to this Court's determination that a preliminary injunction, to preserve the status quo, was proper. Defendants have failed to demonstrate that this Court's finding was improper, namely that the failure to hold annual meetings, among all the other facts, was erroneous or that the Court was "hostile" toward the Defendants by making such finding based on the substantial evidence presented at trial.

(8) Whether the Court erred in "criticizing" defense counsel regarding the request for a jury trial.

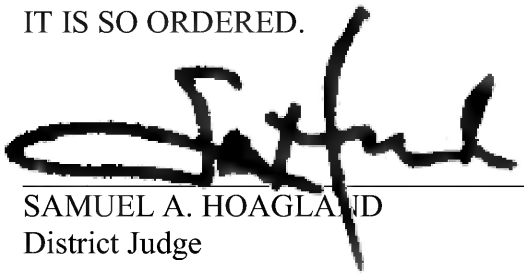
In continuing with the Defendants' claim that the Court was "hostile" toward them, they argue the Court "could not help but" criticize defense counsel regarding the request for a jury trial and that such "criticism" was unwarranted and inaccurate. Defendants have not cited to any specific portion of the order that is "critical" of defense counsel. One of the main issues argued and disputed by the parties was whether Defendants were entitled to a jury trial on Plaintiffs' claim

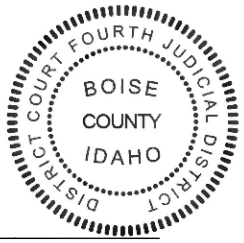
for equitable fraud. As such, the Court set out the pertinent facts including that both Terri Pickens Manweiler (defense counsel) and Michael Kane (plaintiffs' counsel) affirmed at the June 18, 2021 hearing that no jury trial was requested. Finding ¶ 54(c). In analyzing Defendants' right to a jury trial, the decision later stated, "After the June 18, 2021 hearing, where Pickens Manweiler represented that no jury was requested, Defendants filed an Answer demanding a jury trial on the equitable fraud claim." Order pp. 15—16. This was not a criticism, but a stated procedural fact. Defendants have not demonstrated that the Court erred in finding that defense counsel represented no jury trial was requested at the June 18, 2021 hearing.

CONCLUSION

For the reasons stated herein, Defendants' Motion for Reconsideration is DENIED.

IT IS SO ORDERED.





8/2/2022 11:02:58 AM

SAMUEL A. HOAGLAND
District Judge

Date

CERTIFICATE OF MAILING

I hereby certify that on 8/4/2022 04:07 PM, I served a true and correct copy of the within instrument to:

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By Angel O'Brien
Deputy Court Clerk