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7
8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE

11 Lawrence Garvey, an individual; and Robert
Payton, an individual;

12 *Plaintiffs,*

13 vs.

14 CLUB TAHOE RESORT OWNERS
ASSOCIATION, INC., a Nevada non-profit
15 corporation; KEITH WILSON, GLORIA
DEALBA; DONALD WALL; ROBERT
16 VERMELTOORT; CHRISTINA BECKER ;
KEITH OGDEN AND MARK PEARL
17 (Association Board Members Sued In Their
Individual Capacity); and DOES 1 through 10,
18 inclusive and ROE CORPORATIONS I
through X, inclusive

19 *Defendants.*

Case No.: CV25-02319
Dept.: 9

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
MODIFICATION OF ORDER
APPOINTING SPECIAL MASTER**

20
21 Defendants, Club Tahoe Resort Owners Association (the "Association") and individual
22 Defendants Keith Wilson, Marc Pearl, Donald Wall and Gloria DeAlba (the Association's
23 "Former Board" of Directors) respectfully oppose Plaintiffs' Motion to Modify Order
24 Appointing Special Master. Plaintiffs' Motion should be denied because this Court's Order that
25 the parties split the costs of the Special Master accurately reflects the equities and the requested
26 modification of that Order is unwarranted given Plaintiffs' conduct since that Order was entered.

27 This Opposition is made and based on the following Memorandum of Points and
28 Authorities, the Declaration of Whitney Selert (attached as **Exhibit A**) all other exhibits attached

1 hereto and all papers and pleadings of record herein.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 Plaintiffs' motion suffers from several flaws in its factual premise and legal reasoning.
4 Specifically, there was no trial on the merits and there is no judgment-related award of costs or
5 fees to be modified under NRCP 52(b) or NRCP 59(e). Neither rule provides a basis for
6 Plaintiffs' requested relief. This Court's Order requiring the parties to split the costs and fees of
7 the Special Master appointed to conduct the Association's next board election is both fair and
8 specifically supported by NRCP 53(g). The "equities" do not dictate modification. While
9 Plaintiffs are representing their commitment to a full, fair, transparent and rule compliant
10 election to the Special Master and this Court, on the one hand, they are actively undermining the
11 integrity of that process on the other, by attempting to litigate their unfounded claims in the
12 media, releasing misleading communications to the Association's membership and overtly
13 offering bribes for financial and other support in the election (and this litigation) while
14 simultaneously refusing to hold the NRCP 16.1 conference so Defendants can commence
15 discovery to test their remaining claims, which they refuse to dismiss.

16 **I. FACTUAL AND PROCEDURAL BACKGROUND:**

17 The individuals comprising the Association's last recognized Board of Directors were
18 elected on April 25, 2025. The Association's By-Laws specifically require that an Annual
19 Meeting be held on the last Saturday of April each year for that purpose. *See* By-Laws, Art. IV,
20 Sec. 3 (excerpt attached as **Exhibit B**).

21 In November 2024, six months before that election, the Association's Board fired its
22 former management company, Tricom, due to perceived mismanagement. Tricom immediately
23 sued the Association for breach of contract, but also refused to vacate the Association's
24 premises, return its property, or relinquish control of the Association's accounts so the
25 Association's Board could hire a new management company. On March 9, 2025, a month before
26 the scheduled Annual Meeting and board election, an Emergency Measures Arbitrator of the
27 American Arbitration Association ("AAA") ordered Tricom to cease and desist, specifically to
28 avoid irreparable harm in advance of the Annual Meeting and election. Rather than comply,

1 Tricom initiated litigation in this Court to set aside that Order. *See Tricom Management, LLC v.*
2 *Club Tahoe Resort Owners' Assoc., Inc.*, CV35-00772. The issues were extensively litigated and
3 this Court upheld the AAA Order in its entirety, dismissing Tricom's claims and allowing the
4 Association to retain a new professional management company. *See* Aug. 27, 2026 Order
5 Granting Motion to Dismiss (attached as **Exhibit C**).

6 Because of the Tricom litigation, the Association's Board was forced to conduct the
7 Annual Meeting and board election on April 25, 2025 without assistance of a professional
8 management company. That election resulted in expanding the number of board positions from 5
9 to 7 and the addition of two new Directors, Keith Ogden and Christina Becker.

10 As demonstrated, *infra.*, Plaintiffs are part of a group calling themselves Save Club
11 Tahoe, and filed this action claiming also to be upset at Tricom's prior mismanagement, but also
12 faulting the Board for firing Tricom, then getting sued by Tricom, and for perceived errors in the
13 conduct of the April 25, 2025, which was done without professional assistance through no fault
14 of their own. *See* Complaint at paras. 62-69 (Tricom allegations); *see also id.* at paras. 21-27
15 (criticizing April election).¹

16 Plaintiffs and Save Club Tahoe apparently started their effort to recall and replace the
17 Association's newly elected Board almost immediately after the April 25, 2025 election.² The
18 Association's By-Laws specify the required procedure for replacing any Director or the full
19 Board before the expiration of their terms. *See Exhibit B* (By-Laws) at Art. IV, Sec. 3 ("Annual
20 Meeting"); Art. IV, Sec. 4 ("Special Meetings"); Art. V, Sec. 3 ("Removal of Directors").

21 On September 18, 2025 Plaintiffs' counsel sent formal correspondence demanding the
22 Board call a Special Meeting for purposes of holding a recall election. *See* Haskin Corresp.
23 (attached as **Exhibit D**). That letter referenced a supporting petition by the percentage of verified
24 members required by the by-laws, which was one of three ways a Special Meeting could be

26 ¹ Notably, one of Plaintiffs' main unfounded allegations is that the Board improperly cast votes on behalf of the
27 Interval Units owned by the Association, which the Special Master has now found was authorized under the
28 Association's by-laws. *See* May 6, 2026 Initial Report of Special Master at 6:2; *see also* Plaintiff's Amended
Complaint at paras. 21, 40.

² *See* Declarations of Dusk Bennett and Mona Lynch (attached to Plaintiff's cross motion for preliminary
injunction).

1 called. *See id.*; *see also* Ex. B (By-Laws) at Art. IV, Sec. IV (describing three ways to call
2 Special Meeting). But that petition was not attached to that letter.

3 On October 8, 2025, the two newest board members, Ogden and Becker, both of whom
4 are apparently working with Plaintiffs and their counsel,³ sent an email to the full board also
5 demanding a Special Meeting and also referencing the supporting member petition. *See Exhibit*
6 *E*. That demand also did not include a copy of the referenced petition.

7 Between October 8 and 25, 2025, the Association, through its independent outside legal
8 counsel, Gayle Kern, repeatedly asked Ogden and Becker for a copy of the supporting member
9 petition, promising immediately to evaluate and call a Special Meeting if that petition met the
10 requirements of the governing documents. *See e.g.*, Kern Petition Requests (attached as *Exhibit*
11 *F*). No copy was provided.

12 On October 16, 2025, Ogden and Becker, having ignored Kern's requests for a copy of
13 the petition, unilaterally sent Notice to the Association membership scheduling a Special
14 Meeting for October 25, 2025 for the purpose of holding a recall election. *See* Ogden/Becker
15 Notice (attached as *Exhibit G*).

16 On October 17, 2025, the Association's independent outside counsel, Kern, wrote the full
17 board, including Becker, Ogden, and the Association's new management company, GPR,
18 advising that any election held on that date would be legally void because neither Ogden nor
19 Becker had authority to call that Special Meeting under the By-Laws and no supporting member
20 petition had yet been presented for evaluation. *See* Kern Analysis (attached as *Exhibit H*).

21 Plaintiffs, their counsel, and the Save Club Tahoe group held that unauthorized Special
22 Meeting on October 25, 2025 notwithstanding the defects identified by Association counsel
23 Kern,⁴ and claimed thereafter also to have held a recall election resulting in the "unanimous"
24 recall of the Association's entire Board that day (except Ogden and Becker). *See* Amended
25

26 ³ Ogden inadvertently copied other board members on his communications with Plaintiff's counsel prior to the
27 attempted recall election. *See* Defendants' Jan. 26, 2026 Motion for Preliminary Injunction at Exhibit A-3. Ogden is
also married to Mona Lynch, whose declaration was attached to Plaintiff's countermotion for injunctive relief.

28 ⁴ Based on Kern's analysis, the Association's manager, GPR, declined to allow that group to use the Association's
premises for an unauthorized and non-rule compliant special election. *See* Exhibit L (April 1, 2026 hearing
transcript) at 26-30.

1 Complaint. Plaintiffs have yet to produce any evidence of exactly where, how, or by whom
2 voting membership was verified and votes cast or certified. *See Exhibit A* (Selert Dec) at paras.
3 11 and 12.

4 Two days before the recall election, Plaintiffs served the Association with the Complaint
5 in this action, alleging that the Association’s sitting board was improperly elected on April 25,
6 2025, and accusing that Board of various forms of negligence in its prior management,
7 supervision and termination of Tricom, and their management of the Association after April 25th,
8 2025. *Id.*

9 On November 3, 2025, the Association offered to hold a rule compliant election as soon
10 as practicable to cure any concerns or defects in either election and to ensure the Association was
11 properly represented. *See* 11.3.25 Selert Correspondence (attached as **Exhibit I**). Plaintiffs
12 rejected that opportunity. *Id.*; *see also* 11.6-20.25 email string (attached as **Exhibit J**).

13 On November 3, 2025, Plaintiff’s counsel, on behalf of the recall board and the Save
14 Club Tahoe group wrote the Association’s outside counsel, Kern, and its professional
15 management company, GPR, advising that the recall board was now in charge. A true and
16 correct copy of the letter to Kern is attached as **Exhibit K**).

17 The parties do not dispute that the competing claims of authority thereafter effectively
18 paralyzed further management of the Association by GPR, resulting in widespread member
19 confusion and irritation. Plaintiffs actively stoked and are continuing to stoke those concerns, as
20 discussed, *infra*.

21 Because Plaintiffs had yet to produce a copy of the member petition on which the alleged
22 validity of the recall election was premised and had not produced any evidence of how that
23 election was conducted, verified or certified, the Association was forced to move for a
24 preliminary injunction, which it filed January 26, 2026. *See Exhibit A* (Selert Dec) at paras. 11-
25 13. The Association specifically asked this Court to preserve the sitting Board’s authority as the
26 status quo so an interim election could be held “as soon as practicable and no later than April 25,
27 2026” the date of the Annual Meeting required by the governing documents. *Id.*

28 Plaintiffs opposed and filed a countermotion, arguing that their recall election was valid,

1 but did not attach a copy of the member petition on which that claim was based. Plaintiffs waited
2 until their Reply brief in support of their counter-motion to attach what they claim was that
3 petition, effectively precluding any briefing or analysis on the merits of whether that petition
4 complied with the governing document (which it does not). *Id.*; *see also* **Exhibit L** (attached
5 hereto)(April 1, 2026 hearing transcript at 22:24-25:21.

6 On April 1, 2026, this Court held a hearing on both motions. During that hearing the
7 parties agreed to appoint a Special Master for purposes of holding a fully rule compliant, fair,
8 and transparent election as soon as possible. This Court made that agreement its Order and
9 further ordered the parties to split the costs of the Special Master. *See* Transcript of Proceeding
10 (attached hereto as **Exhibit L**) at 25:3. No evidence was taken and no ruling made on the merits
11 of the parties' competing claims. *Id.* at 20:12,

12 In its Order, this Court pointedly advised both parties that neither the Association's
13 Former Board nor the "recall board" were to take any further action in the name of the
14 Association, holding that all power to manage the Association was now vested in the Special
15 Master and neither party was to interfere with that process. *See id.* at 42:5 ("...there'll be nothing
16 affirmative done by the current board or the recall board. There is no board as far as I'm
17 concerned at this time.").

18 A. Plaintiffs Refuse To Dismiss Or Conduct Discovery:

19 On April 8, 2026, Plaintiffs voluntarily dismissed Defendants Becker and Ogden as
20 Defendants from this suit.

21 On April 14, 2026, undersigned counsel inquired of Plaintiffs' counsel whether Plaintiffs
22 were going to dismiss this Complaint against the remaining defendants, since Plaintiffs admitted
23 during the hearing there are no monetary damages and the election issue is now moot. *See*
24 **Exhibit L** at 11:24 ("and there's no monetary damages that are involved in this case.").

25 Defendants further advised that if Plaintiffs were not going to dismiss their remaining claims,
26 Defendants were going to object to the voluntary dismissal of Ogden and Becker because both
27 were members of the April 25, 2025 Board, are indispensable parties to Plaintiffs' claims arising
28 after that date, as well as to Defendants' counterclaim, which may be amended to name them as

1 counter-defendants.

2 Undersigned counsel further requested that if Plaintiffs were not dismissing, they
3 immediately schedule the mandatory early case conference required by NRCP 16.1 and provide
4 dates for the depositions of the Plaintiffs and the declarants whose statements were attached to
5 Plaintiffs' cross motion for injunctive relief, including Keith Ogden, his wife Mona Lynch, and
6 Dusk Bennett. *See* Exhibit A (Selert Dec) at paras. 1-3, 15; *see also* 4.14.26 Selert email
7 (attached as **Exhibit M**). To date, despite several follow up requests, including before the
8 Special Master, Plaintiffs have neither dismissed nor scheduled the early case conference so
9 Defendants can conduct discovery. *Id.*

10 On April 14, 2026, undersigned counsel raised with the Special Master the fact that the
11 Tricom litigation is still continuing in front of AAA, that this firm still represents the Association
12 in that active litigation but is concerned as to how it can provide or seek advice or direction from
13 the Special Master, who now stands in the Association's shoes, without violating this Court's
14 directive against *ex parte* communications. *See* 4.13.26 Selert email (attached as **Exhibit N**).

15 The Special Master responded that he would prefer the new board handle issues related to
16 the Tricom litigation. A true and correct copy of that email is attached as **Exhibit O**. The
17 Special Master's most recent estimate is that the election will not be conducted until October
18 2026. *See* Exhibit A (Selert Dec) at paras. 16-17; *see also* Special Master's April 6, 2026 Initial
19 Report. The Special Master's preference to defer defense of the Tricom litigation (or this
20 litigation) could unfairly prejudice the Association's defense in that case. Likewise, deferring
21 defense of this litigation on behalf of the individual Former Board members may unfairly
22 prejudice their defense, since the "recall board" (who brought these disputed claims) is actively
23 seeking election to the next board, is doing so unfairly, as discussed *infra.*, and if successful,
24 would effectively stand in control of both their own claims and the defense of those claims, a
25 clear conflict of interest. *See id.*

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1 B. Plaintiffs Are Conducting A Concerted Misinformation Campaign To Taint The Integrity
2 And Fairness Of The Next Election

3 On April 13, 2026, the Association's Former Board began receiving multiple media
4 inquiries requesting comment on allegations made by the Recall Board both as to alleged
5 misconduct by the Former Board and the status of this litigation and recent court ruling.
6 Plaintiffs and the Recall Board, aka Save Club Tahoe group, actively contacted multiple media
7 outlets to litigate in the media their unfounded and disputed allegations that they are a "duly
8 elected New Board" as well as disputed allegations of wrongdoing against the individual Former
9 Board members, allegations that comprise the remaining claims in this litigation, which Plaintiffs
10 refuse to dismiss. *See Exhibit A* (Selert Dec) at paras. 18-20. Undersigned counsel raised to the
11 Special Master and Plaintiffs' counsel whether those actions violate the letter and spirit of this
12 Court's April 1, 2025 Order. *See id.*; *see also* 4.13-14.26 email string (attached as **Exhibit P**).
13 Plaintiffs' counsel responded that there is "absolutely nothing wrong" with his clients litigating
14 this case in the media. *Id.*

15 On April 30, undesignated counsel was notified that Plaintiffs Payton and Garvey have
16 been knocking on Club Tahoe unit doors leaving flyers repeating their disputed allegations and
17 falsehoods, misrepresenting the status of this litigation, overtly slandering the individual
18 defendant Former Board members, and actively encouraging members to "Revoke Their
19 Proxies" in advance of the upcoming election. *See Exhibit A* (Selert Dec) at paras. 21-23; *see*
20 *also* April 30, 2026 email string (with copy of flyer)(attached hereto as **Exhibit Q**).

21 Defendants also brought *that* matter to the attention of the Special Master, requesting
22 guidance as to whether it was appropriate for Defendants to respond in kind, and further
23 requesting he alert this Court to the necessity of a status conference to address whether Plaintiffs'
24 actions violate this Court's Order or are otherwise interfering with and undermining the
25 upcoming election. *Id.* Plaintiffs' counsel dismissed Defendants' concerns as "nonsense." *Id.* The
26 Special Master responded that Plaintiffs' activities are concerning and could interfering with the
27 perceived fairness of the upcoming election, but he declined to respond directly to the
28 Associations' membership to address Plaintiffs' activities or request a status conference with this

1 Court as requested by Defendants. *Id.*

2 On May 5, 2026, the day after Plaintiffs filed this Motion, Defendants discovered that
3 Plaintiffs and the Save Club Tahoe group have set up a Gofundme account and various other
4 social media group chat sites holding implying they are the victorious “New Board” and
5 soliciting monetary contributions to fund this litigation and their efforts to re-elect themselves.
6 *See* Exhibit A (Selert Dec) at paras. 24-28. In addition to encouraging members again to “revoke
7 their proxies” in advance of the upcoming election, that group is actively bribing members for
8 their support by promising unauthorized “gifting” of Association owned assets, including 1, 2 or
9 4 bonus weeks at Club Tahoe, an account statement credit, and even a “deeded unit” in exchange
10 for monetary contributions, promises they describe as “contingent on the Save Club Tahoe group
11 prevailing in the governance matter ... and achieving a majority opposition on the newly elected
12 board.” *Id.*

13 **II. ARGUMENT: THIS COURT SHOULD NOT FORCE THE ASSOCIATION**
14 **TO FUND PLAINTIFFS’ SHARE OF THE SPECIAL MASTERS’ COSTS**
15 **AND FEES WHEN PLAINTIFFS ARE ACTIVELY DISREGARDING THIS**
COURT’S ORDER AND BRIBING MEMBERS TO INFLUENCE THE
OUTCOME OF THE ELECTION

16 As demonstrated by the foregoing, the Association through its Former Board has
17 attempted at every turn to cure and moot these proceedings, first by identifying obvious defects
18 in the attempted recall election before it was even held, then by offering last November to
19 immediately hold a rule compliant interim election to resolve any issues regarding the proper
20 composition of the board, which Plaintiffs refused.

21 The Association was ultimately forced to seek injunctive relief, not simply to push that
22 ball forward, but to avoid the irreparable harm caused by Plaintiffs’ competing claims to board
23 authority. And while Defendants argued to preserve the Former Board’s authority as the *status*
24 *quo*, they did so only to ensure a rule compliant election could be held on or before the April
25 deadline required by the governing documents. That election, due in large part to Plaintiffs’
26 actions, will now not be held until October of 2026.

27 In the interim, Plaintiffs have dismissed their Complaint against the two members of their
28 Save Club Tahoe group who were also elected to the Former Board on April 25, 2025, but refuse

1 to dismiss the remaining defendants despite admitting there are no monetary damages. Plaintiffs
2 refuse to schedule the NRCP 16.1 conference so Defendants can conduct discovery to test the
3 merits of their allegations, while simultaneously waging a concerted campaign to litigate those
4 disputed claims in the media and influencing and bribing Association members to support their
5 election and continuation of this litigation.

6 Plaintiffs' present motion is nothing more than a naked attempt to shift to the Association
7 the costs of Plaintiffs' concerted, unnecessary and malicious misinformation and re-election
8 campaign, the ultimate goal of which appears to be to take control of Club Tahoe and position it
9 for termination and sale as part of a "Sunset Clause" vote in 2028, a process they very clearly
10 want to manage. *See Exhibit A* (Selert Dec) at paras. 21-27; *see also Exhibit Q* (bottom of
11 center back page of Plaintiffs' foldout flyer).

12 On the merits, none of the rules cited by Plaintiffs provide for the relief requested. As
13 discussed, *supra*, there was no trial on the merits or final judgment. Consequently, there is no
14 judgment or judgment related award of costs and fees subject to modification pursuant to NRCP
15 52(b) or NRCP 59(e). Both rules are wholly inapposite as are the cases applying those rules. In
16 that regard, Plaintiffs have not been adjudicated to have conducted a lawful recall election. This
17 Court specifically avoided resolving that claim on the merits in favor of what it rightly perceived
18 as the more efficient path to resolution and mooted of this action, i.e., the conduct of a fully rule
19 compliant election, which the Association had offered last November.

20 Ultimately, Plaintiffs' present motion devolves to little more than a plea to equity under
21 NRCP 53(g). But that rule fully supports this Court's Order requiring the parties to split the costs
22 and fees of the Special Master. Plaintiffs' pleas to modify that Order in the name of "equity," are
23 undermined by their own actions. Specifically, Plaintiffs initiated and choose to persist with their
24 claims instead of dismissing this litigation, a measure that would immediately reduce their costs
25 and fees. Their refusal is an absurd and self-inflicted wound, particularly considering all parties
26 have agreed to a rule compliant election, which has been ordered by this Court, and Plaintiffs
27 admit there are no money damages. The Special Master's costs and fees are undoubtedly going
28 to be unnecessarily increased by Plaintiffs' concerted misinformation campaign, attempts to

1 litigate their claims in the media, encouraging Association members to “revoke their proxies” in
2 advance of the litigation (which may undermine the Special Master’s ability to establish the
3 required quorum for the election) and bribing members to support them in that election. NRCP
4 53(g) but does not provide for awarding or allocating one party’s costs and fees as part of the
5 Special Master’s compensation.

6 That said, Defendants do not object to the normal costs of any election, i.e., those
7 associated with managerial verification of membership and voter eligibility, solicitation and
8 vetting of nominations, providing notice, and using a vendor to conduct and certify the election,
9 being allocated to the Association, as those costs would have been incurred in April 2026 by the
10 Association in due course but for this litigation. All other costs and fees associated with the use
11 of the Special Master, whose presence is required only because of Plaintiffs’ competing and
12 unproven claims, which they refuse to dismiss, should be born equally by the parties as
13 previously and correctly ordered.

14 CONCLUSION

15 Plaintiffs Motion should be denied. The notion that Plaintiffs have acted for the benefit of
16 the Association as a whole is a dubious and disputed proposition, unsupported by any evidentiary
17 hearing, finding, or judgment in their favor. Indeed, Plaintiffs have avoided having to defend
18 their unfounded and untested allegations on the merits by refusing to conduct the NRCP 16.1
19 case conference. There is no final judgment warranting modification in Plaintiffs’ favor under
20 NRCP 52 or 59 and there is no equitable basis under NRCP 53(g) to shift to the Association the
21 costs and fees of the Special Master which are necessitated only because of Plaintiffs’ claims,
22 unproven allegations, questionable litigation tactics and motives.

23 ///

25 ///

27 ///

1 Pursuant to NRS 239B.3030, the undersigned does hereby affirm that the preceding
2 document filed in the above-entitled case does not contain the social security number of any
3 person.

4 Dated this 11th day of May, 2026.

5 O'HAGAN MEYER PLLC
6

7 By /s/ Whit Selert

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of O'HAGAN MEYER, and that on this 11th day of May 2026, I electronically filed and served the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR MODIFICATION OF ORDER APPOINTING SPECIAL MASTER** upon the following through the EFlex Filing system:

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