IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.
72261

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, JUDY CODDING, AND MICHAEL WROTNIAK, Petitioners, *vs.* THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE ELIZABETH GONZALEZ, District Judge, Department 11 Respondents, and JAMES J. COTTER, JR., Individually And Derivatively on Behalf of READING INTERNATIONAL, INC., Real Party in Interest.	District Court No. A-15-719860-B, coordinated with No. P-14-082942-E and No. A-16-735305-B

APPENDIX TO WRIT PETITION
VOLUME 8
PGS. 1751-2000

H. STAN JOHNSON, ESQ. (SBN 00265)
COHEN|JOHNSON|PARKER|EDWARDS
255 E. Warm Springs Road
Suite 100
Las Vegas, Nevada 89119
(702) 823-3500
sjohnson@cohenjohnson.com

CHRISTOPHER TAYBACK, ESQ.*
MARSHALL M. SEARCY, ESQ.*
QUINN EMANUEL URQUHART & SULLIVAN LLP
865 South Figueroa Street,
10th Floor
Los Angeles, CA 90017
213-443-3000
christayback@quinnemanuel.com
marshallsearcy@quinnemanuel.com
**Admitted Pro Hac Vice*

TABLE OF CONTENTS TO APPENDIX

Exhibit 21

Exhibit 21

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs.	)	Case No. A-15-719860-B
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	)	Case No. P-14-082942-E Related and Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

FRIDAY, APRIL 29, 2016

VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER 305149

(Exhibit 82 was marked for identification.)

THE WITNESS: Yes, I remember this.

BY MR. KRUM:

Q. You recognize Exhibit 82?

A. Yes.

Q. This is an email exchange you had with Mr. Kane on May 18 and 19?

A. Yes.

Q. During the telephone conversation you had with him on May -- Sunday or Monday, May 17 or 18, did the two of you discuss other motions?

A. Evidently not.

Q. What was your understanding as of the date of -- as of May 18 and 19, what the other motions were or might be?

A. Well, there were like two other motions. One was the removal of Jim Junior as CEO and president. Another motion -- there were three motions. One of them was to -- if you remove the CEO, you have to appoint an interim CEO. And there was a third motion which, I apologize, for the life of me, I can't remember what it is. There must be a board agenda or something with those items.

Q. The subject of interim CEO, where did

that stand as of May 19th?

A. Ellen, Margaret and Ed and Doug McEachern were of the opinion, yes, on an interim basis.

Q. Yes what?

A. Yes to Guy Adams being the interim CEO on a short-term basis.

Q. What about Ed Kane?

A. As interim?

Q. Okay. I'm sorry.

So how did you know that each of Ellen, Margaret, Ed Kane and Doug McEachern were agreeable to you being appointed CEO on an interim -- interim CEO or a short-term basis?

MR. TAYBACK: Objection to the extent it's asked and answered.

You can answer.

THE WITNESS: My recollection -- and I can't remember if it was Ellen or Ed Kane -- one of them told me and I followed up with a phone call to Doug McEachern to confirm it. So that's how I knew.

BY MR. KRUM:

Q. Okay. When did you have the follow-up phone call with Doug McEachern?

A. Help me -- what was the date of the meeting, that meeting? We're up to May 19. What

A. No.

Q. Did you have a practice of sitting down and chatting with Ellen when you were in the office?

A. Yes, when she'd come in my office.

Q. So directing your attention to those three or four conversations when you were in RDI's offices and you spoke to Ellen about the status of the CEO search, doing them sequentially, if you're able to do so, who said what in the first conversation?

A. That's a real test of my memory but I'll try.

I remember when she was -- we talked about how we were paying for it and there was like a psychological profile they would do in addition. Since we weren't hiring the real estate guy, there was some things about the financial arrangement there. And she told me about that. That was one conversation, probably one of the earlier ones.

Then the -- I had another conversation with her about the candidates that were -- the résumés that were coming in, and she commented to me about the, quote, Some of them want more than a million dollars.

And then maybe the third conversation we had about it was, I'm not on the committee, it's not my business, but I gave her my thoughts about it, as I mentioned yesterday in my testimony, that the only concern I had was the person we get would be with us for a while and not just looking to make a notch on his belt, come aboard -- for example, come aboard, stay for a year or two, sell an asset, do something to jazz the stock up and then he would leave and go to a bigger company; we'd be his training ground.

And I just suggested to her that she look for a candidate who would have longevity of these candidates that she was looking at. When I had that conversation, I had no notion she was putting her name in the hat at the time. That was the last conversation I had with her.

I'm sorry. Then a period of time, which I don't remember, went by and she says, You know, I'm looking at these people and I think I can do the job. I want to put my name in the hat.

I said, Well, you can't be on the committee if you do that. She says, Yeah, I'm going to resign. I said, Okay, it's up to the committee.

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
)SS:
COUNTY OF LOS ANGELES)

I, Lori Raye, a duly commissioned and licensed court reporter for the State of California, do hereby certify:

That I reported the taking of the deposition of the witness, GUY ADAMS, commencing on Friday, April 29, 2016 at 9:10 a.m.;

That prior to being examined, the witness was, by me, placed under oath to testify to the truth; that said deposition was taken down by me stenographically and thereafter transcribed; that said deposition is a complete, true and accurate transcription of said stenographic notes.

I further certify that I am not a relative or an employee of any party to said action, nor in anywise interested in the outcome thereof; that a request has been made to review the transcript.

In witness whereof, I have hereunto subscribed my name this 2nd day of May 2016.

LORI RAYE
CSR No. 7052

Exhibit 22

Exhibit 22

From: Kane <elkane@san.rr.com>
Sent: Tuesday, May 19, 2015 12:27 AM
To: Guy Adams
Subject: Re:

which are?

From: Guy Adams
Sent: Monday, May 18, 2015 3:26 PM
To: Kane
Subject: RE:

Ok.
Can you second the other motions?

From: Kane [mailto:elkane@san.rr.com]
Sent: Monday, May 18, 2015 3:16 PM
To: Guy Adams
Subject:

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

EXHIBIT
82
Adams

GA00005501

Exhibit 23

Exhibit 23

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Reading International, Inc.

(Name of Issuer)

(Exact Name of Issuer as Specified in its Charter)

Class B Voting Common Stock
(Title of Class of Securities)

755408200
(CUSIP Number)

James J. Cotter Living Trust
6100 Center Drive
Suite 900
Los Angeles, CA 90045
(213) 235-2240
(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

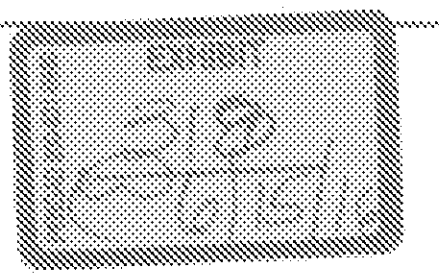
September 13, 2014
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. ☐

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the "Act"), or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).



EC00002564

CUSIP No. 755408208

1.	Name of Reporting Person. I.R.S. Identification Nos. of above persons (entities only) **James J. Cotter Living Trust**	
2.	Check the Appropriate Box if a Member of a Group (See Instructions) (a) ☒(1) (b) ☐	
3.	SEC Use Only	
4.	Source of Funds (See Instructions) OO	
5.	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e) ☐	
6.	Citizenship or Place of Organization California	
Number of Shares Beneficially Owned by Each Reporting Person With	7. Sole Voting Power 0	
	8. Shared Voting Power 636,088	
	9. Sole Dispositive Power 0	
	10. Shared Dispositive Power 636,088	
11.	Aggregate Amount Beneficially Owned by Each Reporting Person 636,088	
12.	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) ☐	
13.	Percent of Class Represented by Amount in Row (11) 41.4% (2)	
14.	Type of Reporting Person (See Instructions) OO – Trust	

(1) The James J. Cotter Living Trust (the "Trust") is a member of a group for purposes of Schedule 13D. The other members of the group are the Estate of James J. Cotter, Sr. (the "Estate"), Ms. Margaret Cotter and Ms. Ellen Cotter. The Trust is separately filing this report on Schedule 13D from the other members of the group.

(2) Based upon 1,680,598 shares of Class B voting common stock, $0.01 par value per share (the "Voting Stock"), outstanding, which consist of (i) 1,580,598 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

ITEM 1. SECURITY AND ISSUER

The common stock of Reading International, Inc., a Nevada corporation (the "Issuer" or the "Company"), is divided into two classes, Class A non-voting common stock, $0.01 par value per share (the "Non-Voting Stock"), and Class B voting common stock, $0.01 par value per share (the "Voting Stock" and together with the Non-Voting Stock, the "Shares"). This Schedule 13D (this "Schedule 13D") is being filed by the James J. Cotter Living Trust (the "Trust" or the "Reporting Person") with respect to the Voting Stock by Ms. Ellen Cotter and Ms. Margaret Cotter, two of the three co-trustees of the Trust. The shares of the Voting Stock and the shares of the Non-Voting Stock are listed on NASDAQ.

The address of the principal executive offices of the Issuer is Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

ITEM 2. IDENTITY AND BACKGROUND

The Trust is a trust organized under the laws of California. During the lifetime of Mr. James J. Cotter, Sr., the Trust was revocable by Mr. James J. Cotter, Sr., but the Trust became irrevocable upon the death of Mr. James J. Cotter, Sr. on September 13, 2014. The Trust serves as a vehicle for the management and distribution of the assets of Mr. James J. Cotter, Sr. According to a purported Amendment to the Trust signed on June 19, 2014 ("2014 Amendment"), the children of Mr. James J. Cotter, Sr., including Mr. Ellen Cotter, Ms. Margaret Cotter and Mr. James J. Cotter, Jr., serve as co-trustees of the Trust and therefore may be deemed to share voting and investment power over the shares of the Voting Stock directly beneficially owned by the Trust. In litigation filed in the Superior Court of the State of California, County of Los Angeles, captioned *In re James J. Cotter Living Trust dated August 1, 2009* (Case No. BP159788) ("Trust Litigation"), Ms. Ellen Cotter and Ms. Margaret Cotter have challenged the validity of the 2014 Amendment, according to the pre-existing trust agreement, only Ms. Ellen Cotter and Ms. Margaret Cotter were named as co-trustees. The extent of any pecuniary interest in the Voting Stock owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter as co-trustees of the Trust is dependent upon the outcome of the Trust Litigation. The Trust's principal business office address is c/o Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

During the last five years, the Reporting Person has not been (a) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (b) a party to any civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of which such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws, or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The Trust was established by a Declaration of Trust, dated August 1, 2009, as amended from time to time, and was initially funded with the shares of the Voting Stock owned by Mr. James J. Cotter, Sr. Mr. James J. Cotter, Sr. passed away on September 13, 2014, and the Trust became an irrevocable living trust.

ITEM 4. PURPOSE OF TRANSACTION

The Reporting Person is deemed to have acquired beneficial ownership of 696,980 shares of the Voting Stock as a result of Mr. James J. Cotter, Sr.'s death, as described in Item 3 of this Schedule 13D. Such shares of the Voting Stock were deemed to have been owned by Mr. James J. Cotter, Sr. through the Trust during his lifetime and, upon Mr. James J. Cotter, Sr.'s death and the Trust's conversion into an irrevocable trust, are now deemed to be directly beneficially owned by the Trust, of which the children of Mr. James J. Cotter, Sr. serve as co-trustees. The shares of the Voting Stock directly beneficially owned by the Trust ultimately will be held in further trust for the benefit of the descendants of Mr. James J. Cotter, Sr., and such shares will be held for investment purposes and the co-trustees of the Trust are directed to retain such shares for as long as possible and are relieved from any obligation to diversify the Trust's investments.

On September 21, 2015, the Estate exercised vested stock options and received 108,000 shares of Voting Stock. On April 8, 2015, Ms. Margaret Cotter exercised vested stock options and received 12,500 shares of Non-Voting Stock. On April 17, 2015, Ms. Margaret Cotter exercised vested stock options and received 35,100 shares of Voting Stock. On April 16, 2015, Ms. Ellen Cotter exercised vested stock options and received 30,000 shares of

Voting Stock. Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to hold my shares of Voting Stock directly beneficially owned by them for investment purposes.

Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to vote all of the shares of Voting Stock that they control, including all of the shares of Voting Stock owned by them individually, by the Estate and by the Trust, at the Company's 2013 annual meeting of stockholders.

Each of Ms. Ellen Cotter and Ms. Margaret Cotter, as a co-trustee of the Trust, has been in the past and will be in the future involved on behalf of the Company in their respective capacities as senior executive officers of, directors of and/or consultants to the Company, as applicable, in reviewing and evaluating possible transactions involving the Company and identifying candidates to serve on the Company's board of directors, including transactions of the sort described in clauses (a) through (f) of Item 4 of Schedule 13D. In light of their responsibilities to the Company, Ms. Ellen Cotter and Ms. Margaret Cotter do not anticipate making any disclosures in connection with their participation in the transactions and activities of the Company separate and apart from relevant disclosures by the Company.

The Reporting Person intends to review its investment in the Issuer on a continuing basis and may from time to time and at any time in the future depending on various factors, including, without limitation, the requirements of the Trust, the Issuer's financial position and strategic direction, actions taken by the board of directors of the Issuer, price levels of the Shares, other investment opportunities available to the Reporting Person, conditions in the securities market and general economic and industry conditions, take such actions with respect to the investment in the Issuer as the Reporting Person deems appropriate, including: (i) acquiring additional Shares and/or other equity, debt, notes, other securities, or derivative or other instruments of the Issuer that are based upon or relate to the value of the Shares or the Issuer (collectively, "Securities") in the open market or otherwise; (ii) disposing of any or all of their Securities in the open market or otherwise; (iii) engaging in any hedging or similar transactions with respect to the Securities; or (iv) proposing or considering one or more of the actions described in subsections (a) through (j) of Item 4 of Schedule 13D.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

As of the date hereof, the Trust directly beneficially owns 696,980 shares of the Voting Stock, representing 41.4% of outstanding Voting Stock of the Issuer. Because the children of Mr. James J. Cotter, Sr. serve as co-trustees, the children may be deemed to be indirect beneficial owners of 696,980 shares of the Voting Stock directly beneficially owned by the Trust. The extent of any pecuniary interest in the Voting Stock directly beneficially owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees, is dependent upon the outcome of the Trust Litigation. As of the date hereof, the Trust also directly beneficially owns 1,857,649 shares of the Non-Voting Stock, representing 8.7% of outstanding Non-Voting Stock of the Issuer.

Because Ms. Ellen Cotter and Ms. Margaret Cotter (two of the three children of Mr. James J. Cotter, Sr.) also serve as co-executors (the "Co-Executors") of the Estate, each of them may be deemed to share indirect beneficial ownership of 427,898 shares of the Voting Stock directly beneficially owned by the Estate, representing 25.5% of outstanding Voting Stock of the Issuer. All of the Voting Stock held by the Estate will be transferred to the Trust after a reasonable period of administration. As of the date hereof, the Estate also directly beneficially owns 326,868 shares of the Non-Voting Stock, representing 1.5% of outstanding Non-Voting Stock of the Issuer. As of the date hereof, the Co-Executors of the Estate disclaim beneficial ownership of the Voting Stock and Non-Voting Stock directly beneficially owned by the Estate, except to the extent of their respective pecuniary interest therein.

As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 50,000 shares of the Voting Stock, representing 3.0% of outstanding Voting Stock of the Issuer, and (2) Ms. Margaret Cotter directly beneficially owns 35,161 shares of the Voting Stock subject to stock options, representing 2.1% of outstanding Voting Stock of the Issuer. As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 818,765 shares of the Non-Voting Stock (which amount also includes currently exercisable options to acquire an additional 20,000 shares of the Non-Voting Stock), representing 3.8% of outstanding Non-Voting Stock of the Issuer, (2) Ms. Margaret Cotter also directly beneficially owns 804,177 shares of the Non-Voting Stock, representing 3.7% of outstanding Non-Voting Stock of the Issuer and (3) Mr. James J. Cotter, Jr. (the third child of Mr. James J. Cotter, Sr.) also directly beneficially owns 856,426 shares of the Non-Voting Stock, representing 4.0% of outstanding Non-Voting Stock of the Issuer, according to Mr. James Cotter, Jr.'s public filings.

Ms. Margaret Cotter also serves as a co-trustee of the James J. Cotter Grandchildren Trust, a trust for Mr. James J. Cotter, Sr.'s grandchildren, which holds 289,390 shares of the Non-Voting Stock, representing 1.3% of outstanding Non-Voting Stock of the Issuer. Ms. Ellen Cotter and Ms. Margaret Cotter also serve as co-trustees of the James J. Cotter Foundation, which holds 120,751 shares of the Non-Voting Stock, representing 0.5% of outstanding Non-Voting Stock of the Issuer.

The percentages reported in this Item 5 are based upon 21,707,938 shares of the Non-Voting Stock outstanding and 1,680,590 shares of the Voting Stock outstanding, which consist of (i) 1,580,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

(b) See rows 7-10 of the cover page for information regarding the power to vote or direct the vote and the power to dispose or direct the disposition of the shares by the Reporting Person. The Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have separately filed a Schedule 13D on the date hereof.

(c) Except as described herein, none of the Reporting Person, the Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have acquired, or disposed of, any shares of the Voting Stock of the Issuer during the past 60 days.

(d) No persons other than Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees of the Trust, and the beneficiaries of the Trust have the right to receive, or the power to direct the receipt of dividends from, the proceeds from the sale of the shares to which this Schedule 13D relates.

(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Except as described in Item 3, Item 4 and Item 5, the Reporting Person has no contracts, arrangements, understandings or relationships (legal or otherwise) with any person with respect to any voting securities of the Company, including, but not limited to, the transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies.

ITEM 7. MATERIALS TO BE FILED AS EXHIBITS

None.

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: October 8, 2015

JAMES J. COTTER LIVING TRUST

By: /s/ Margaret Cotter
Name: Margaret Cotter
Title: Co-Trustee

By: /s/ Ellen Cotter
Name: Ellen Cotter
Title: Co-Trustee

Exhibit 24

Exhibit 24

From: Tim Storey <tim.storey@prolex.co.nz>
Sent: Tuesday, May 19, 2015 7:30 PM
To: Kane; Gould Bill
Cc: Guy Adams; Cotter Ellen; Cotter Margaret; Cotter Jr. James; McEachern Doug (US - Retired)
Subject: RE: Thursday board meeting

My apologies for my delay in response – I have been travelling. (And my apologies in advance for a lengthy comment!)

I am surprised by the tone and possible implications of this email. I think we need to take time to carefully consider the legal position and our clear duties as directors.

My understanding was that this Thursday we were to have a meeting of the independent directors to hear from the CEO as to progress, and also from each of the Cotters separately so they can express their views to us (I am not sure in what capacity/on what basis this is being done, but I have no objection to hearing from people). I was also to make some comments, as requested when I was appointed to the independent committee (and following on from my prior comments and my brief emails reporting progress). All this to keep the independent board members informed as to the current position, and perhaps/likely in preparation for a further review of the position.

But I have heard from Bill Gould that it may be that someone will propose a resolution on Thursday morning that the CEO be removed from office with immediate effect. I have just seen an agenda for the meeting – while preparing this note at about 1130 am – and that simply has an agenda item captioned "Status of CEO and President"), otherwise I have not heard directly from anyone in this regard.

With respect, I think as directors we need to ensure we are acting in an appropriate manner, following an appropriate path. I have no doubt whatever way all this turns out litigation will likely ensure so we should be very concerned about the manner in which we act.

As directors, we have to act properly – with deliberation and reason – we can't act arbitrarily, capriciously etc. You will recall we also resolved/reconfirmed some months ago that we would all act in accord with best governance principles. All this imposes duties on us as directors; as directors we can't just do what a shareholder asks – or do what we think a shareholder might want (not to mention that at the moment there remains significant uncertainty as to the (ultimate) identity of some shareholders).

If we are to look at the position of the CEO and whether he should be removed, then we should do so properly – with proper notice, having determined the basis on which we are conducting this review (presumably based on his performance to date as CEO) and following due enquiry. We should also take into account the implications for the company – and that I think would include a clear view as to an alternative way forward.

We also need to look at the proper way to conduct this review. My recollection is that we have previously resolved that the removal of any Cotter needs to be approved by a majority of the independent directors, so presumably this may not be a full board issue.

I think the issue may be further complicated as when we talked to the CEO in April (I think) we advised the CEO we all agreed that the committee approach was short term and said that we would look to review his progress as CEO in June and at which point we would evaluate how he and the company were performing, and what other steps may need to be taken.

In my view, we need to get our procedure correct. This is a separate issue to the merits of a decision before us. We should be clear between us as to the proper procedure – and I think given the importance of the issues – and our differing views on procedure – we should get independent legal advice from Neal as to how to proceed.

This is a matter of urgency; I for one don't want to take part in a kangaroo court (or what might appear to be a kangaroo court).

To be clear, my concern here is we act with appropriate procedure. The merits of the matter (whether the CEO should be removed, I assume) are a separate issue to be considered with care – and one concluded following an appropriate procedure.

Of course, I am not a US native so perhaps some of my views may be off key – perhaps Bill Gould as an experienced US corporate and board adviser can comment!

Happy to discuss.

Tim Storey
Director

Prolex Advisory

PO Box 2978 Shortland Street, Auckland
Phone +64(0)21 633-089

From: Kane [mailto:elkane@san.rr.com]
Sent: Tuesday, 19 May 2015 7:24 a.m.
To: Gould Bill
Cc: Adams Guy; Cotter Ellen; Cotter Margaret; Cotter Jr. James; McEachern Doug (US - Retired); Tim Storey
Subject: Thursday board meeting

As a follow-up to yesterday's phone conversation, I strongly suggest that the "independent" committee not meet before the 11:00 AM Board meeting scheduled by the Chairperson. We are all fully aware of the topics to be discussed and there is nothing to be gained by hashing them over before the Board meeting and then again at the Board meeting. Some of the items are obviously contentious and nothing can be gained by double exposure. We are all adults – I assume – so let's get right to the major issues. If, after the formal Board meeting, you feel we should have a meeting of the "independents" I will not be opposed to staying and discussing topics of your choosing.

Exhibit 25

Exhibit 25

Message

From: Gould, William D. [WGould@troygould.com]
Sent: 5/20/2015 4:54:07 PM
To: Tim Storey [tim.storey@prolex.co.nz]
Subject: FW: Agenda - Board of Directors Meeting - May 21, 2015
Flag: Follow up

From: Kane [mailto:elkane@san.rr.com]
Sent: Tuesday, May 19, 2015 8:21 PM
To: Gould, William D.
Subject: Re: Agenda - Board of Directors Meeting - May 21, 2015

As of now and after your astonishing and ridiculous assertion that Margaret cost this company $20 million I see no reason to meet. I think you have self anointed and self appointed yourself as some kind of person in charge of the so-called independent committee and in my opinion you are certainly not independent. I know full well that a couple of years ago Jim Cotter had dinner with you to remove you from the Board and told you we had to "get younger"; that you said Al was older than you and Jim was caught and then terminated Al. You know this and I know this and we both know that if Jim could rise again he would likely through you out the 9th floor window. He never intended for you to have this kind, or any kind, of authority. You have desecrated his memory and you are not the Bill Gould I knew for so many years. You have become an embarrassment to all. The die is cast and we will meet as a full Board and if you don't like it don't show up.

From: Gould, William D.
Sent: Tuesday, May 19, 2015 5:56 PM
To: Ellen.Cotter@readingrdi.com ; margaret.cotter@readingrdi.com ; james.j.cotter@readingrdi.com ; elkane@san.rr.com ; dmceachern@deloitte.com ; tim.storey@prolex.co.nz ; Guy Adams
Cc: William Ellis
Subject: FW: Agenda - Board of Directors Meeting - May 21, 2015

All:

Tim and I are personally requesting this meeting of the independent directors before the formal meeting. We feel that the independent directors might face possible claims for breach of duty if the Board takes action without following a process designed to insure that the Board members have properly fulfilled their fiduciary duties.

We would not be addressing the merits of the action scheduled to be taken but rather the process to be followed in reaching a decision to take such action.

Also we would like to discuss a proposal which might be acceptable to all parties.

I would find it quite surprising and disappointing if the other independent directors would refuse our personal request to meet privately.

Bill

TroyGould

William D. Gould
(310) 789-1338 - Fax (310) 201-4746

EXH 107
DATE 5-3-16
WIT KANE
PATRICIA HUBBARD

wgould@troygould.com
TroyGould PC
1801 Century Park East, Suite 1600
Los Angeles, CA 90067-2367
www.troygould.com

From: Kane [mailto:elkane@san.rr.com]
Sent: Tuesday, May 19, 2015 4:54 PM
To: Gould, William D.; Ellen.Cotter@readingrdi.com; margaret.cotter@readingrdi.com; james.j.cotter@readingrdi.com; dmceachern@deloitte.com; tim.storey@prolex.co.nz; Guy Adams
Cc: William Ellis
Subject: Re: Agenda - Board of Directors Meeting - May 21, 2015

It is not my understanding that the meeting commence with only the independent directors. We all know what matters are to be discussed and I, for one, see no need for an independent director meeting Thursday nor any other day going forward.

From: Gould, William D.
Sent: Tuesday, May 19, 2015 3:23 PM
To: Ellen.Cotter@readingrdi.com ; margaret.cotter@readingrdi.com ; james.j.cotter@readingrdi.com ; Kane ; dmceachern@deloitte.com ; tim.storey@prolex.co.nz ; Guy Adams
Cc: William Ellis
Subject: FW: Agenda - Board of Directors Meeting - May 21, 2015

All:

With respect to the agenda that Ellen sent out, it is my understanding that the proceedings will commence with a meeting of the independent directors. The purpose of this meeting will be to make certain that independent directors are fully informed of the matters to be discussed at the formal board meeting.

Bill

William D. Gould
(310) 789-1338 - Fax (310) 201-4746
wgould@troygould.com
TroyGould PC
1801 Century Park East, Suite 1600
Los Angeles, CA 90067-2367
www.troygould.com

From: Ellen Cotter [mailto:Ellen.Cotter@readingrdl.com]
Sent: Tuesday, May 19, 2015 11:38 AM
To: Margaret Cotter; James Cotter JR; Kane (ekane@san.rr.com); dmcecchini@icloud.com; Tim Storey; Guy Adams (GAdams@gwacap.com); Gould, William D.
Cc: William Ellis
Subject: Agenda - Board of Directors Meeting - May 21, 2015

Dear All: Below is the agenda for Thursday's Meeting of the Board of Directors. Please note that Bill Gould asked that the Meeting begin at 11.15am.

Reading International, Inc.
Meeting of the Board of Directors
May 21, 2015 – 11.15am

1. Status of President and CEO
2. Directors' Compensation
3. Tim Storey's Compensation
4. Nevada Interpleader Action
5. Proposed By Law Amendments
6. Status of Craig Tompkins and Robert Smerling
7. Status of Ellen Cotter and Margaret Cotter
8. Director of Real Estate Candidate Search
9. Stomp Litigation Update
10. Review of Operations

Chairperson of the Board
Ellen M. Cotter

Exhibit 26

Exhibit 26

READING
INTERNATIONAL

June 15, 2015

James J. Cotter, Jr.
311 Homewood Rd
Los Angeles, CA 90049

Dear Jim:

As you are aware, your Employment Agreement (the "Agreement") with Reading International, Inc. (the "Company"), and your employment with and position as President and Chief Executive Officer of the Company, has been terminated effective Friday, June 12, 2015. Pursuant to Section 11 of your Agreement, this termination obligates you to resign immediately from the Board of Directors of the Company. This letter shall serve as notice that your failure to resign from the Board of Directors places you in material breach of your Agreement. You have 30 days from today to cure this breach by submitting your written resignation from the Board of Directors. Failure to do so within 30 days will result in you forfeiting any compensation or benefits you might otherwise have been entitled to under your Agreement.

You must also immediately return any Company property, documents, or data that you may have in your possession. You may arrange for the return of these items, as well as for your personal belongings at the office to be collected, by having your attorney contact the Company's attorney, Gary McLaughlin at Akin Gump Strauss Hauer & Feld (310-728-3358).

This letter is without prejudice to any of the Company's rights or remedies, all of which are expressly reserved.

Very Truly Yours,

Ellen M. Cotter

Reading International, Inc.
6100 Center Drive, Suite 900
Los Angeles, California 90045

t: 213.235.2240 f: 213.235.2229

www.readingrdi.com

Exhibit 27

Exhibit 27

8-K 1 ndi-20150618x8k.htm 8-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

Current Report
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): June 12, 2015

READING INTERNATIONAL, INC.
(Exact Name of Registrant as Specified in its Charter)

Nevada	1-8625	95-3885184
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

6100 Center Drive Suite 900 Los Angeles, California	90045
(Address of Principal Executive Offices)	(Zip Code)

(213) 235-2240
(Registrant's Telephone Number, Including Area Code)

n/a
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12).

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)).

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).

EXH 347
DATE 6-28-16
WIT
PATRICIA HUBBARD

ITEM 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On June 12, 2015, the board of directors (the "Board") of Reading International, Inc. ("we," "our," "us," "Reading" or the "company") terminated the employment of James J. Cotter, Jr. as our President and Chief Executive Officer, effective immediately. The Company currently intends to engage the assistance of a leading executive search firm to identify a permanent President and Chief Executive Officer, which will consider both internal and external candidates.

On June 12, 2015, our Board appointed Ellen Marie Cotter, 49, Chairperson of the Board and the Chief Operating Officer of our Domestic Cinemas Division, to serve as our interim President and Chief Executive Officer. No new compensatory arrangements were entered into with Ms. Cotter in connection with her appointment as interim President and Chief Executive Officer.

Ellen Cotter has been a member of the Board since March 7, 2013, and on August 7, 2014 was appointed as its Chairperson. Prior to joining our company in 1998, Ms. Cotter spent four years in private practice as a corporate attorney with the law firm of White & Case in Manhattan. She is a graduate of Smith College and holds a Juris Doctorate from Georgetown Law School. Ms. Cotter is the sister of James J. Cotter, Jr. and Margaret Cotter.

Under Mr. Cotter, Jr.'s employment agreement with the company, he is entitled to the compensation and benefits he was receiving at the time of a termination without cause for a period of twelve months from notice of termination. At the time of termination, Mr. Cotter Jr.'s annual salary was $335,000.

Under his employment agreement, Mr. Cotter, Jr. is required to tender his resignation as a director of our company immediately upon the termination of his employment. After a request to do so, Mr. Cotter, Jr. has not yet tendered his resignation. The company considers such refusal as a material breach of Mr. Cotter, Jr.'s employment agreement, and has given him thirty (30) days in which to resign. If he does not do so, the company will terminate further severance payments, as permitted under the employment agreement.

No new compensatory arrangements were entered into with Mr. Cotter, Jr. in connection with his termination.

ITEM 8.01 OTHER EVENTS

On June 12, 2015, Mr. Cotter, Jr. filed a lawsuit against us and each of our other directors in the District Court of the State of Nevada for Clark County, titled James J. Cotter, Jr., individually and derivatively on behalf of Reading International, Inc. vs. Margaret Cotter, et. al. The lawsuit alleges, among other allegations, that the other directors breached their fiduciary duties in taking the actions to terminate Mr. Cotter, Jr. as President and Chief Executive Officer of the company and that

Margaret Cotter and Ellen Cotter aided and abetted the breach of such fiduciary duties of the other directors. The lawsuit seeks damages and other relief, including an injunctive order restraining and enjoining the defendants from taking further action to effectuate or implement the termination of Mr. Cotter, Jr. as President and Chief Executive Officer of the company and a determination that Mr. Cotter, Jr.'s termination as President and Chief Executive Officer is legally ineffectual and of no force or effect. The company believes that numerous of the factual allegations included in the complaint are inaccurate and untrue and intends to vigorously defend against the claims in this action. The company has been informed that the other directors intend to seek indemnification from the Company for any losses arising under the lawsuit, in which case the company will tender a claim under its director and officers liability insurance policy.

EX-99.1 2 rdi-20150618ex991400879.htm EX-99.1

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) The following exhibit is included with this Report and incorporated herein by reference:

Exhibit No.	Description
99.1	Press release of Reading International, Inc. of June 15, 2015

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: June 18, 2015 READING INTERNATIONAL, INC.

By: /s/ William D. Ellis

William D. Ellis

General Counsel and Secretary

Exhibit 99.1

Reading International Announces Appointment of Ellen Cotter as Interim Chief Executive Officer

Los Angeles, California, (Business Wire) June 15, 2015 – Reading International, Inc. (NASDAQ:RDI) announced today that its Board of Directors has appointed Ellen M. Cotter as interim President and Chief Executive Officer, succeeding James J. Cotter, Jr. The Company currently intends to engage the assistance of a leading executive search firm to identify a permanent President and Chief Executive Officer, which will consider both internal and external candidates.

Ms. Cotter is the Chairman of the Board of Directors of the Company and has served as the senior operating officer of the Company's US cinemas operations for the past 14 years. In addition, Ms. Cotter is a significant stockholder in the Company.

Ms. Cotter commented, "James Cotter, Sr., who served as our Company's Chairman and Chief Executive Officer for over 20 years, grew Reading International, Inc. to a major international developer and operator of multiplex cinemas, live theaters and other commercial real estate assets. I look forward to continuing his vision and commitment to these businesses as we move forward to conduct our search for our next Chief Executive Officer. I will work diligently to ensure that this transition is seamless to all of our stakeholders."

The Company plans to report its second quarter financial results on or before August 10, 2015.

About Ellen Cotter
Ellen M. Cotter has been a member of our Company's Board of Directors since March 2013, and in August 2014 was appointed as Chairman of the Board. She joined Reading International, Inc. in 1998 and brings to the position her 17 years of experience working in our Company's cinema operations, both in the United States and Australia. For the past 14 years, she has served as the senior operating officer of our Company's domestic cinema operations. Ms. Cotter is a graduate of Smith College and holds a Juris Doctorate from Georgetown Law School. Prior to joining our Company, Ms. Cotter was a corporate attorney with the law firm of White & Case in New York, New York.

About Reading International, Inc.
Reading International (http://www.readingrdi.com) is in the business of owning and operating cinemas and developing, owning and operating real estate assets. Our business consists primarily of:

- the development, ownership and operation of multiplex cinemas in the United States, Australia and New Zealand; and

- the development, ownership, and operation of retail and commercial real estate in Australia, New Zealand, and the United States, including entertainment-themed retail centers ("ETRC") in Australia and New Zealand and live theater assets in Manhattan and Chicago in the United States.

Reading manages its worldwide business under various different brands:

Exhibit 99.1

- in the United States, under the
  - Reading brand (http://www.readingcinemasus.com);
  - Angelika Film Center brand (http://www.angelikafilmcenter.com);
  - Consolidated Theatres brand (http://www.consolidatedtheatres.com);
  - City Cinemas brand (http://www.citycinemas.com);
  - Beekman Theatre brand (http://www.beekmantheatre.com);
  - The Paris Theatre brand (http://www.theparistheatre.com);
  - Liberty Theatres brand (http://libertytheatresusa.com/); and
  - Village East Cinema brand (http://villageeastcinema.com)

- in Australia, under the
  - Reading brand (http://www.readingcinemas.com.au); and
  - Newmarket brand (http://readingnewmarket.com.au)
  - Red Yard Entertainment Centre (http://www.redyard.com.au)

- in New Zealand, under the
  - Reading brand (http://www.readingcinemas.co.nz);
  - Rialto brand (http://www.rialto.co.nz);
  - Reading Properties brand (http://readingproperties.co.nz);
  - Courtenay Central brand (http://www.readingcourtenay.co.nz);
  - Steer n' Beer restaurant brand (http://steernbeer.co.nz);

Media Contact:
Andrzej Matyczynski
Tel: 213-235-2240

Exhibit 28

Exhibit 28

From:	Kane <ekane@sanjrr.com>
Sent:	Monday, May 18, 2015 10:38 PM
To:	Guy Adams

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

EXHIBIT
81
Adams

GA00005500

Exhibit 29

Exhibit 29

From: Guy Adams
Sent: Tuesday, May 19, 2015 2:45 AM
To: Kane
Subject: RE:

Ed,
I am sorry, as I know your relationship with the family started long before they were born. I also know – and now see for myself – why SR placed such a high value on you and your counsel. More than anyone else on the board, you worked behind the scenes attempting to bridge every problem with the kids. Lastly, I know that more than anyone else, you have been at SR's side at every turn as he built his empire. I think you and I share a obligation to the family….based upon our commitment to our friend, Jim, Sr.
I think things in general have deteriorated significantly within the company…and within the board, re: Bill Gould. Unfortunately, it seems that we have no choice but to choose a side. I know it was not what either one of us wanted, but I believe at this juncture we have little choice. At times, I try to console myself with the fact that JR brought this upon himself.

If I were lucky enough to have a friend to look after my kids and the business I had spent a life time building up after I was gone….I would consider myself fortunate to find someone like you. Everything that I have seen you do has been from the heart, instilled with wise counsel. I just hope they appreciate the privilege they have to call you "Uncle Ed".
I often think of SR…what would he want me/us to do. I think he would want me to do exactly this…no matter how hard is was.

You are a good man, Ed. I can well imagine how difficult this is for you.
Thank you for sharing.
Guy

From: Kane [mailto:ekane@san.rr.com]
Sent: Monday, May 18, 2015 7:05 PM
To: Guy Adams
Subject: Re:

Sure, unless he is reticent. Ellen has a candidate for the open Board seat, as you know. I had a very painful – for me – talk with Junior this afternoon.

EXHIBIT
85
Adams

CONFIDENTIAL

GA00005544

From: Guy Adams
Sent: Monday, May 18, 2015 5:47 PM
To: Kane
Subject: RE:

1) Motion for a new interim CEO
2) Motion to re-organize Executive committee with you, EC, MC and me. Currently the executive committee is Margaret, Jim, and me. Jim will not, obviously, going to be on this committee and Ellen wanted to be added. I thought you should be on it as well.
3) Motion for the Executive Committee to begin screening candidates for the open board seat currently open and making recommendations to the Board for filling such position.

Ed, I understand what you are saying….would you like for me to ask Doug to second these?
Guy

From: Kane [mailto:ekane@san.rr.com]
Sent: Monday, May 18, 2015 5:27 PM
To: Guy Adams
Subject: Re:

which are?

From: Guy Adams
Sent: Monday, May 18, 2015 3:26 PM
To: Kane
Subject: RE:

Ok.
Can you second the other motions?

From: Kane [mailto:ekane@san.rr.com]
Sent: Monday, May 18, 2015 3:16 PM
To: Guy Adams
Subject:

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

Exhibit 30

Exhibit 30

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Index No. A-15-179860-B
READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

VIDEOTAPED DEPOSITION OF ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

MR. TAYBACK: Objection. Asked and answered.

A No.

Q So when you use the same phraseology status to refer to the president and CEO in Item 1 as you use to refer to Craig Tomkins and Robert Smerling in Item 6, and yourself and Margaret Cotter in Item 7, were you attempting to obscure or conceal the fact that Item 1 was actually about terminating Jim Cotter as president and CEO?

MR. TAYBACK: Objection; argumentative, compound.

You can answer.

A I mean, there was no intention on my part to deceive anybody.

Q Well, in point of fact, prior to distributing Exhibit 338, you already had had discussions with Ed Kane, Guy Adams, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as president and CEO, correct?

A Prior to this meeting we did have discussions about whether Jim would remain as the CEO and president.

Q Well, you had discussions with each of -- Guy Adams, Ed Kane, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as CEO prior to distributing Exhibit 338 on May 19th, correct?

MR. TAYBACK: Objection. Asked and answered.

A Yes.

Q You had no such discussions with Tim Storey, correct?

A I did have discussions with Tim Storey.

Q What discussions did you have with Tim Storey and when did you have them?

A I had had discussions with Tim Storey about Jim and his performance.

Q Okay. The question is: What discussions did you have with Tim Storey, if any, prior to distributing Exhibit 338 on May 19, 2015, about terminating Jim Cotter, Jr. as president and CEO?

A I don't remember the specific discussion that I had with Tim.

Q Did you have any conversation with Tim Storey prior to distributing Exhibit 338 on May 19, 2015, in which the subject of

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

I, MICHELLE COX, a Notary Public within and for the State of New York, do hereby certify:

That ELLEN COTTER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June 2016.

MICHELLE COX, CLR

Exhibit 31

Exhibit 31

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Case No. P-14-082942-E Related and Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

time?

A. I strongly suspected she had spoken with Ed Kane.

Q. And had either you or Ed Kane spoken to Doug McEachern about that?

A. I haven't, no. I don't know if Ed did.

Q. Okay. When was the first time you spoke with Doug McEachern about either terminating Jim Junior as CEO or about a subject of -- the subject of an interim CEO?

A. That I talked to McEachern? I would say it was maybe -- again, I can only approximately guess. Maybe two weeks before the meeting.

Q. And you're referring to the May 18th -- May 21st meeting, it was, wasn't it?

A. Yes. I don't know the exact date, but yeah.

Q. So what else did Ellen say and what else did you say during this approximate hour-plus breakfast meeting?

A. My recollection, we talked about Jim Junior and the CEO position, and Ellen, I guess, talked to other people because she was feeling that there was support for Jim Junior to be removed.

Q. What did she say that caused you to

conclude she had talked to other people about Jim Junior being removed?

A. I don't know specifically what she said. Maybe it was innuendos that she maybe talked to McEachern, maybe. But it wasn't specific.

Q. Did you ever learn after the fact whether that was the case?

A. Considering McEachern, when I did call him, like two weeks before the vote, he said he was on board with that. I suspect she called and talked to him. I sure didn't. So I suspect -- I suspect she did or maybe Ed Kane did. I don't know.

Q. What else, if anything, did you discuss with Ellen Cotter at the breakfast meeting at the Peninsula in April?

A. Nothing further that I can remember at this time.

Q. What, if anything, did she say about why she wanted Jim Junior removed as CEO?

A. I think she felt he wasn't doing an adequate job as CEO.

Q. Excuse me. My question is, what did she say?

A. What did she say about -- I'm sorry.

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
)SS:
COUNTY OF LOS ANGELES)

I, Lori Raye, a duly commissioned and licensed court reporter for the State of California, do hereby certify:

That I reported the taking of the deposition of the witness, GUY ADAMS, commencing on Thursday, April 28,2016, at 10:13 a.m.;

That prior to being examined, the witness was, by me, placed under oath to testify to the truth; that said deposition was taken down by me stenographically and thereafter transcribed; that said deposition is a complete, true and accurate transcription of said stenographic notes.

I further certify that I am not a relative or an employee of any party to said action, nor in anywise interested in the outcome thereof; that a request has been made to review the transcript.

In witness whereof, I have hereunto subscribed my name this 2nd day of May 2016.

LORI RAYE
CSR No. 7052

Exhibit 32

Exhibit 32

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E

VIDEOTAPED DEPOSITION OF WILLIAM GOULD

TAKEN ON JUNE 8, 2016

VOLUME 1

JOB NUMBER 315485

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

Margaret on one hand and Jim Cotter, Jr., on the other hand, right?

A. Correct.

Q. And then somebody moved and seconded the motion to terminate Jim Cotter, Jr.; is that right?

A. Yes.

Q. And then a vote was had, and as among the non-Cotter directors, each of Messrs. Kane and Adams and McEachern voted to terminate?

A. That's correct.

Q. And you and Mr. Gould voted against?

A. Yes.

Q. And did Ellen and Margaret Cotter vote or did they recuse themselves?

A. I don't remember.

Q. And do you recall that at that meeting Ellen Cotter stated that it was -- Jim was required by the terms of his executive employment agreement to resign as a director if he were terminated as an officer?

A. At that meeting I -- I'm not sure I remember at that meeting, but I do remember that very well.

Q. And what did you say in response?

A. I said I didn't believe he was obligated

to resign as a director.

Q. And what was your explanation for that, if any?

A. Well, I drafted the -- I drafted the contract with -- with Jim. And it did say in there he would resign. But what we intended that to mean was his position as president.

He had been on this board for many years. I mean it had no bearing at all, in my opinion, on his requirement that he resign as a director.

Q. Did you communicate that view to -- you communicated that view at a directors meeting?

A. Yes.

Q. Did you ever communicate that view to Akin Gump lawyers?

A. Yes.

Q. Was that before or after Ellen Cotter on or about June 15 sent a letter to Jim Cotter, Jr., demanding his resignation as a director?

MR. HELPERN: Objection. Form, lacks foundation, assumes facts.

MR. SWANIS: Join.

THE WITNESS: Well, I want the -- I want to just correct one thing.

I may have -- I may have been too glossy on this one point. I communicated to Akin Gump, but not directly. I think it was through Ellen and Craig. They asked my opinion. And I told them what it was, that he was not obligated, in my opinion, to resign as a director.

BY MR. KRUM:

Q. Okay. Thanks.

And my question is --

A. Yes.

Q. -- when did that happen?

A. Shortly after the termination.

Q. Was it the same day?

A. I don't remember.

Q. Was it the following Monday?

A. I can't recall the exact day it was.

Q. Was it in person or by telephone?

A. I don't remember.

MR. KRUM: Okay. We're about out of tape, so why don't we adjourn for the day.

MR. RHOW: Thank you.

MR. KRUM: Thank you for your time.

THE WITNESS: Thank you.

VIDEOTAPE OPERATOR: This concludes the deposition of William Gould, volume one, June 8,

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

That I am a duly qualified Certified Shorthand Reporter in and for the State of California, holder of Certificate Number 3400, which is in full force and effect, and that I am authorized to administer oaths and affirmations;

That the foregoing deposition testimony of the herein named witness, to wit, WILLIAM GOULD, was taken before me at the time and place herein set forth;

That prior to being examined, WILLIAM GOULD was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

That the testimony of the witness and all objections made at the time of examination were recorded stenographically by me and were thereafter transcribed by me or under my direction and supervision;

That the foregoing pages contain a full, true and accurate record of the proceedings and testimony to the best of my skill and ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this 13th day of June, 2016.

PATRICIA L. HUBBARD, CSR #3400

Exhibit 33

Exhibit 33

DEC

MARK G. KRUM (Nevada Bar No. 10913)
MKrum@LRRC.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
(702) 949-8398 fax

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al.,

Plaintiffs,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive,

CASE NO. A-15-719860-B
DEPT. NO. XI
Coordinated with:
CASE NO. P-14-082942-E
DEPT. NO. XI
CASE NO. A-16-735305-B
DEPT. NO. XI
Jointly administered

DECLARATION OF PLAINTIFF JAMES J. COTTER, JR. IN OPPOSITION TO ALL INDIVIDUAL DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT *(AND GOULD JOINDERS)*

[Business Court Requested: [EDCR 1.61]

[Exempt From Arbitration: declaratory relief requested; action in equity]

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

I, James J. Cotter, Jr. hereby declare, under the penalty of perjury and the laws of Nevada, as follows:

1. I am over eighteen (18) years of age. I have personal knowledge of the facts contained in this declaration, except on those matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I am the Plaintiff in the above-captioned action. I am, and at all times relevant hereto was, a shareholder of RDI. I have been a director of RDI since on or about March 21, 2002. I have been involved in RDI management since mid-2005, I was appointed Vice Chairman of the RDI board of directors in 2007 and President of RDI on or about June 1, 2013. I was appointed CEO by the RDI Board on or about August 7, 2014, immediately after James J. Cotter, Sr. (JJC, Sr.) resigned from that position. I am the son of the late JJC, Sr., and the brother of defendants Margaret Cotter ("MC") and Ellen Cotter ("EC"). I presently own approximately 560,186 shares of RDI Class A non-voting stock and options to acquire another 50,000 shares of RDI Class A non-voting stock. I am also the co-trustee and beneficiary of the James J. Cotter Living Trust, dated August 1, 2000, as amended (the "Trust"), which owns 2,115,539 shares of RDI Class A (non-voting) stock and 1,123,888 shares of RDI Class B (voting) stock. The Trust became irrevocable upon the passing of JJC, Sr. on September 13, 2014.

3. I submit this declaration in support of the oppositions to all of the motions for summary judgment filed by one or more of the individual defendants in this action.

4. Nominal defendant Reading International, Inc. (RDI or Company) is a Nevada corporation and is, according to its public filings with the United States Securities and Exchange

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Commission (the "SEC"), an internationally diversified company principally focused on the development, ownership and operation of entertainment and real estate assets in the United States, Australia and New Zealand. The Company operates in two business segments, namely, cinema exhibition, through approximately 58 multiplex cinemas, and real estate, including real estate development and the rental of retail, commercial and live theater assets. The Company manages world-wide cinemas in the United States, Australia and New Zealand. RDI has two classes of stock, Class A stock held by the investing public, which stock exercises no voting rights, and Class B stock, which is the sole voting stock with respect to the election of directors. An overwhelming majority (approximately eighty percent (80%)) of the Class A stock is legally and/or beneficially owned by shareholders unrelated to me, EC or MC. Approximately seventy percent (70%) of the Class B stock is subject to disputes and pending trust and estate litigation in California between EC and MC, on the one hand, and me, on the other hand, and a probate action in Nevada. Of the Class B stock, approximately forty-four percent (44%) is held in the name of the Trust. RDI is named only as a nominal defendant in this derivative action.

5. I signed a verification of a Second Amended Verified Complaint (the "SAC") in this action. I stand by the substantive allegations of the SAC and incorporate them herein by reference.

The Position of CEO at RDI

6. Certain of the motions for summary judgment brought by the individual defendants in this action suggest that I was appointed CEO of RDI in August 2014 after what amounted to no deliberation by the Board of Directors. That is absolutely false. In fact, as early as 2006, James J Cotter, Sr. ("JJC, Sr."), then the CEO and controlling shareholder of RDI, had communicated to the RDI board of directors his proposed succession plan for the positions of President and CEO. That plan was for me to work under the direction of JJC, Sr. to learn the businesses of RDI, including by functioning in a senior executive role.

7. Since 2005, I was involved in most RDI executive management meetings and privy to most significant internal senior management memos. As mentioned above, I was appointed Vice Chairman of the RDI board in 2007. The RDI Board appointed me President of

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

RDI on or about June 1, 2013, and I filled those responsibilities without objection by the RDI board of directors.

8. Soon after I became CEO, my sisters, Ellen, who was an executive at RDI in the domestic cinema segment of the Company's business, and Margaret, who managed RDI's limited live theater operations as a third-party consultant, both communicated to me and to members of the RDI Board of Directors that they did not want to report to me as CEO. In fact, neither of them previously while working for or with the Company effectively had ever reported to anyone other than our father, JJC, Sr. Margaret in particular resisted and effectively refused to report to me until she no longer needed to do so, following my (purported) termination as President and CEO of the Company. They also co-opted at least one employee, Linda Pham, who claimed at some point in 2014 that I had created a hostile work environment for her, which accusation was not well-taken and, in any event, moot with the passage of time by Spring 2015, as director Kane acknowledged at the time.

Disputes With My Sisters

9. My sisters and I had certain disputes with respect to matters of our father's estate. The most significant and contentious dispute concerned who would be the trustee or trustees of the voting trust that, following our father's death, holds approximately 70% of the voting stock of RDI. According to a 2013 amendment to his trust documentation, Margaret was to be the sole trustee. Pursuant to a 2014 amendment to his trust documentation, Margaret and I were to serve contemporaneously as co-trustees. In early February 2015, Ellen and Margaret commenced a lawsuit in California state court challenging the validity of the 2014 amendment to our father's trust documents (the "California Trust Action").

10. My sisters and I also had certain disputes with respect to RDI. Most generally, they disagreed with my view and approach of running RDI like a public company, including hiring a senior executive qualified to oversee the development of the Company's valuable real estate and, more fundamentally, operating the Company to increase its value for all shareholders, not just its value to the Cotter family as controlling shareholders.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Threatened Termination and Termination

11. Late in the day on May 19, 2015, I received from Ellen, as the chairperson of the RDI Board of Directors, an agenda for a supposed special meeting of the RDI board on May 21, 2015, two days later. I learned that the benignly described first item on the agenda, "status of president and CEO," apparently referred to a secret plan of Ellen and Margaret, together with Ed Kane, Guy Adams and Doug McEachern, to vote to remove me as President and CEO of RDI. However, that meeting commenced and concluded without the threatened vote being taken.

12. Next, on or about May 27, 2015, the lawyer representing Ellen and Margaret in the California Trust Action transmitted to my lawyer in that action a document that proposed to resolve the disputes between my sisters and me, including with respect to who would be the trustee of the voting trust and whether Margaret and Ellen would report to me as CEO of RDI. (A true and correct copy of the May 27, 2015 document, which was marked as deposition exhibit 322, is attached hereto as exhibit "A.")

13. On Friday, May 29, 2015, the (supposed) special board meeting of May 21 was to resume. That morning, before the meeting, I met with Ellen and Margaret. At that meeting, they told me that they were unwilling to mediate or to negotiate any of the terms of the May 27 document described above. They also told me that if I did not agree to resolve my disputes with them on the terms set out in that document, that the RDI Board of Directors would vote at the (supposed) meeting that day to terminate me as President and CEO.

14. The (supposed) special board meeting commenced on May 29 and the issue of my termination as President and CEO was the subject. At this (supposed) special meeting, or another, McEachern pressured me to resign as President and CEO. Eventually, the non-Cotter members of the RDI Board of Directors met with my sisters separately from me. Following that, the majority of the non-cotter directors, namely, Messrs. Adams, Kane and McEachern, advised me that the meeting would adjourn temporarily and resume telephonically at 6 p.m. They further advised that, if I had not reached a resolution of disputes between me and my sisters by the time the (supposed) special meeting reconvened telephonically at 6 p.m. that day, they would proceed with the vote to

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

terminate me, meaning that the three of them would vote to terminate me as President and CEO of RDI.

15. That afternoon, Ellen and Margaret again refused to mediate and again refused to negotiate. Ultimately, I indicated a willingness to resolve disputes based on the document provided, subject to conferring with counsel. At or about 6 p.m., the (supposed) special RDI board meeting resumed telephonically, at which time Ellen reported to the five non-Cotter directors that we had reached an agreement in principle to resolve our disputes, subject to conferring with respective counsel. Ed Kane congratulated us and made a statement to the effect that he hoped that I was CEO of the Company for 30 years. No vote was taken on my termination.

16. On or about June 8, 2015, I communicated to my sisters that I could not agree to the document their lawyer had transmitted to my lawyer on or about June 2, 2015. Ellen called a (supposed) special board meeting for June 12, 2015, at which meeting each of Messrs. Adams, Kane and McEachern made good on their threat to vote to terminate me and did so.

Director Interest and Independence

17. One or more of the defendants' motions for summary judgment claim that SEC filings by RDI describe the non-Cotter directors as "independent," that I signed one or more of those SEC filings and that I therefore admit that those directors are independent for the purposes of this action. That is inaccurate. The term "independent" as used in RDI's SEC filings do not refer to matters of Nevada law. It referred usually to the fact that, pursuant to the terms of the Company's listing agreement with NASDAQ, the stock exchange on which RDI stock trades, directors meet the standard of independence of NASDAQ. None of the director defendants have ever suggested to me that they understood use of the term "independent" in RDI's SEC filings to communicate anything other than that non-Cotter directors were not members of the Cotter family which, in one manner or another, controlled approximately 70% of the voting stock of RDI. As among members of the RDI Board of Directors, the term "independent" was used historically to refer to directors who were not members of the Cotter family.

18. Ed Kane was a life-long friend of my father, having met when they were graduate students. Kane was in my father's wedding and was a speaker at my father's funeral. Over my

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

lengthy tenure as a director at RDI, I observed Kane as a director of RDI acting at all times as if his job as a director was to carry out my father's wishes. Kane admitted to me that he was not independent for purposes other than the NASDAQ listing agreement and suggested after I became CEO that the Company would benefit from independent directors knowledgeable about its two principal businesses, cinemas and real estate.

19. On the contentious issue between me and my sisters regarding who would be the trustee(s) of the voting trust, Kane communicated to me that his view was that it was my fathers' wishes that Margaret alone be the trustee, and he pressured me to agree to that. At one point in the context of discussions regarding terminating me as President and CEO of RDI, Kane said to me angrily that he thought I "f*#*ed Margaret" by the 2014 amendment to my father's trust documentation, which amendment made me a co-trustee with Margaret of the voting trust.

20. Kane remains very close with my sisters, who still call him "Uncle Ed"" (which I ceased doing after joining RDI). They continue to get together socially, including for family meals during holiday periods, which is what they admittedly did around the Christmas holidays in 2015.

21. Guy Adams is a long time friend of my father. After Adams effectively became unemployed, my father attempted to provide him work and income. Eventually, my father through a company he wholly-owned entered into an agreement with Adams to pay Adams $1000 per month. That company now is part of my father's estate, of which my sisters are executors, such that they are in a position to control whether Adams is paid that money or not. Adams also has carried interests in certain real estate in which my father invested. My sisters as executors of my father's estate are in position to see to it that Adams is or is not paid any monies he is owed on account of those carried interests.

22. Prior to on or about May 2015, Adam's financial condition and, more particularly, his dependence on or independence from my sisters, in terms of his financial situation, had not arisen as a subject. When I suspected that Adams had agreed with my sisters to vote to terminate me as President and CEO of RDI, that raised the issue of whether he was financially dependent on them. I now know that he is. I learned from Adams' sworn declarations in his California state court divorce case that almost all of his income comes from RDI and from one or more companies

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

that my sisters control. Adams is not independently wealthy. I asked him about his financial dependence or independence at the (supposed) May 21, 2015 special board meeting, at which time he refused to answer.

23. Michael Wrotniak's wife Trisha was Margaret's roommate in her freshman year of college at Georgetown University. Margaret and Trisha have been life-long best friends starting with their first year in college together. Michael also went to Georgetown University where he met his wife Trisha and also developed a very close friendship with Margaret in college. Given that Margaret only has a few friends, her relationship with Trisha and Michael is extremely important. Margaret has spent a lot of time with Michael and his wife over the years, as all three live in metropolitan New York City. Margaret became like an aunt to Trisha and Michael's children. My sister Ellen and mother also know Trisha and Michael very well, and they have all attended social events together in New York, such as birthday and cocktail parties my sister Margaret has hosted at her apartment in New York City. I believe Margaret's oldest child refers to Trisha and Michael as Aunt and Uncle. Michael's communication with me as a director has been very guarded, which I understand to reflect his knowledge of the lawsuit and his close relationship with Margaret.

24. Judy Codding has had a very close personal relationship with my mother for more than thirty years. (Ellen lives with our mother, who has chosen my sisters' side in the disputes between us.) Ms. Codding has become close with my sisters Ellen and Margaret. On October 13, 2015, over breakfast I had with her, she expressed to me that RDI is a family business and that the only people who should manage it should be one of the Cotters and that she would help make sure of that, whether it be Ellen or me. Her reaction to the offer to purchase all of the stock of the Company at a price in excess of what it trades in the market (the "Offer"), first made by correspondence dated on or about May 31, 2015, reflected Ms. Codding's unwavering loyalty to Ellen. Before the board meeting at which the Board was going to discuss the Offer, she indicated to me that there was no way that the Offer should even be considered (clearly having spoken to Ellen about it before the board meeting).

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

25. Bill Gould was a professional acquaintance and friendly with my father for years. Repeatedly since my termination as President and CEO, he has said to me that he has acquiesced as an RDI director to conduct to which he objects and/or to conclusions with which he disagrees, stating in words or substance that he must "pick his fights."

26. For example, at a board meeting at which the board was asked to approve minutes from the (supposed) special board meetings of May 21 and 29, 2015 in June 12, 2015, at which I objected because the minutes contained significant factual inaccuracies, at which I voted against approving the minutes and at which Tim Storey abstained, reflecting that he that too thought the minutes inaccurate (as he testified unequivocally in deposition in this case), Bill Gould voted to approve the minutes. When I asked him afterwards why he had voted to approve inaccurate minutes, he said that, although he could not remember the meetings well enough to state that the minutes were accurate, he thought the ultimate descriptions of action taken, meaning the termination of me, the appointment of Ellen as interim CEO and the repopulation of the executive committee, were accurate, and that he did not want to fight about them.

27. Also as an example, Bill Gould admitted to me that he thought the process deficient, and the time inadequate, to make a genuinely informed decision about whether to add Judy Codding to the RDI Board of Directors. At the board meeting when that happened, he described the decision to add her as a director as having been "slammed down," but he acquiesced.

28. It is clear to me that Bill Gould effectively has given up trying to do what he thinks is the proper thing to do as an RDI director, and is and since June 2015 has been in "go along, get along" mode. He first failed to cause any proper process to occur regarding my termination, and allowed the ombudsman process (by which then director Tim Storey as the representative of the non-Cotter directors was working with me and my sisters to enable us to work together as professionals, which process was to continue into June 2015) to be aborted. That, together with the forced "retirement" of Tim Storey, apparently so chastened Bill Gould that he became unwilling to take a stand on any matter in which doing so would place him in disagreement with my sisters. For example, he has acknowledged that Margaret lacks the experience and qualifications to hold the

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

highly compensated job she now holds at RDI, but Bill Gould did not object to it or the compensation being given to her.

The Executive Committee

29. My sisters first proposed an executive committee as a means to avoid reporting to me or, as a practical matter, to anyone, in the Fall of 2014. I resisted that executive committee construct, which was not implemented at that time. As part of the resolution of our disputes that they attempted to force me to accept in May and June 2015, described above, they included an executive committee construct that would have had them reporting to the executive committee that they, together with Guy Adams who is financially beholden to them, would control. As part of their seizure of control of RDI, in addition to terminating me as President and CEO, they activated and repopulated RDI's Board of Directors executive committee. That executive committee previously had never met and never made a decision. After it was activated and repopulated on June 12, 2015, it was used as a means to exclude me and then director Tim Storey, and to a lesser extent Bill Gould, from functioning as directors of RDI and, in some instances, even having knowledge of matters that were handled by the executive committee that historically and ordinarily were handled by RDI's Board of Directors.

The Supposed CEO Search

30. When RDI filed a Form 8-K with the SEC and issued a press release announcing the termination of me as President and CEO, RDI also announced that it would engage a search firm to conduct the search for a new President and CEO. The board empowered Ellen to select the search firm. Ellen selected Korn Ferry ("KF"). She explained to the RDI Board of Directors the she selected KF because KF offered a proprietary assessment tool, which would be used to assess the three finalists for the position of President and CEO, which assessment she asserted would "de-risk" the search process. The Board agreed. Ellen also told the Board that the three final candidates would be presented to the Board for interviews. The Board agreed. Ellen selected herself, Margaret, Bill Gould and Doug McEachern to be members of the CEO search committee, which the Board accepted without substantive discussion.

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

31. After the CEO search committee was put in place and KF engaged, the full board received effectively no information about whether and how the CEO search was proceeding. In the time frame from August through December 2015, Ellen for the CEO search committee provided approximately two reports, the latter of which was in mid-December which, as it turned out, was after the process had been aborted and Ellen selected, at least preliminarily. Tim Storey objected to the full board not being apprised of the status of the CEO search, prior to his forced "retirement."

32. Ultimately, in early January 2016, the CEO search committee presented Ellen as their choice for President and CEO. They did not offer, much less present, three finalists to the Board for interviews. They did not have KF perform its paid for, proprietary assessment of the finalists, or of anyone. Before that Board meeting, at which Ellen was made President and CEO, the material provided to the Board effectively amounted to a memorandum prepared by Craig Tompkins, which memorandum claimed to summarize the reasons for the CEO search committee selecting Ellen. The stated reasons are reasons thay no outside candidate could have met. The stated reasons are reasons that do not approximate, much less match, the criteria that the CEO search committee created and KF memorialized as the criteria to identify candidates and ultimately select a new President and CEO. The stated reasons for selecting Ellen were, as I heard them explained at the January board meeting, effectively distilled into a single consideration, namely, that Ellen and Margaret were controlling shareholders.

33. Although I did not agree with the termination of me as President and CEO, and thought and maintain that it was improper, I had hoped that the CEO search committee would conduct a bona fide search and provide to the board for interview three qualified finalists, as had been agreed. I now know that not only did that not happen, but that the CEO search committee terminated the search, and effectively terminated KF, after meeting with Ellen as a declared candidate for the positions of President and CEO. Independent of the results of that process, which at the time I asserted did not serve the interests of the Company, that the process was manipulated and/or aborted in my view amounts to abdication of the board's responsibilities.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Actions to Secure Control and Use It to Pay those Who Have It

34. In April 2015, I learned that Ellen and Margaret had exercised options they held personally to acquire RDI class B voting stock and that, with the advice and assistance of Craig Tompkins, a lawyer who was a consultant to the Company, they sought to exercise a supposed option in my father's name to acquire 100,000 shares of RDI Class B voting stock. The factual context for the effort to exercise the supposed 100,000 share option is that a majority of the voting stock controlled by my father was held in the name of his Trust, of which the three of us were trustees. Because of that, Ellen and Margaret could not properly vote that stock without my agreement. The stock that was held—not owned—in my father's estate, which was controlled by Ellen and Margaret as the executors, approximated the amount of RDI class B voting stock held by third parties, including Mark Cuban. The point of the effort to exercise the supposed 100,000 share option was to ensure that Ellen and Margaret as executors would have more class B stock then third parties, including Mark Cuban.

35. There were a host of issues faced by the Company due to the request of Margaret and Ellen to exercise these supposed 100,000 share option. For example, one threshold question the Company would have needed to have answered was whether the option was legally effective. That question was not answered. Another threshold question was whether the supposed 100,000 share option automatically had transferred to my father's trust upon his death. That also was not answered, to my knowledge. Possibly due to such unanswered questions, the compensation committee of the Board did not authorize the exercise of the supposed 100,000 share option in April. Margaret and Ellen therefore delayed to the 2015 annual shareholders meeting. After the executive committee (at Ellen's request) had set the annual shareholders meeting for November (meaning that as a board member I had no say on the subject) and the record date for it in October 2015, Ellen had Kane and Adams as two of three members of the compensation committee authorize the request to exercise the supposed 100,000 share option, which was done in September shortly before a hearing in the Nevada probate case. I understand they did so so that the 100,000 shares supposedly could be registered with the Company in the name of Ellen and Margaret as executors prior to the record date. The Company received no benefit from this, in fact suffered the

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

injury from replacing outstanding liquid class A stock with effectively illiquid class B stock and, I am informed and believe, from covering the tax obligation that belong to the person or entity exercising the option.

Monetary Rewards to Margaret, Ellen and Adams

36. In March 2016, the Board approved giving Margaret employment at the Company as the senior executive in charge of development of the Company's valuable New York real estate. That is a position Margaret had sought since my father passed. It is a position that I refused to give her, with the then support of all of the non-Cotter directors, because she was unqualified to hold it. She has no prior real estate development experience. What was discussed during my tenure as President and CEO was providing Margaret employment at the Company, so that she could have health benefits for herself and her two children, in a position in which she would continue to be responsible for the modest live theater operations and in which she could work in connection with any development of the Company's New York real estate, but not as the senior executive responsible for the development of the Company's New York real estate. In other words, Margaret could have a position, but she would not have a position that called upon her to do that which she had no experience doing and that which she was unqualified to do. That is the position Margaret was given in March. It is a highly compensated position that reflects its responsibilities. But Margaret has neither the prior experience nor the qualifications to hold it. Nevertheless, she is paid as if she does. Which, in my view, amounts to waste of Company monies. Additionally, the $200,000 paid to Margaret, ostensibly for concessions Margaret previously was willing to make for free to become an employee of the Company, and reportedly for prior services rendered which the Board year after year had not chosen to pay her, is simply a gift, presumably because Margaret made less money in 2015 due to the Stomp debacle.

37. The compensation package provided to Ellen in March 2016, like the one provided to Margaret, is a departure from the Company's practices, in terms of the amount paid relative to the skill and experience of the person being paid. Ellen now is the CEO of what basically is the same company of which I was CEO, but she has a compensation package that could pay her twice to three times as much. No board member has ever explained to me why they think this is

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

appropriate, except to the extent they have alluded to the fact that they view Ellen and Margaret as controlling shareholders.

38. Adams in March 2016 was awarded what amounted to a $50,000 bonus for being a director. As a director, I have not seen him provide extraordinary service that warrants a payment such as that, which is a material departure from past practices at the Company, in which extra cash payments to Directors typically were $10,000. The sole notable exception was the $75,000 paid to Tim Storey for his work as ombudsman, but the amount of time and effort he put in that role, including travel between New Zealand and Los Angeles, exceeded by a multiple the amount of time Adams has devoted to being a director in 2015 and 2016. I have no doubt that Adams was paid $50,000 for what amounted to exemplary loyalty to Ellen.

The Offer

39. Ellen shared with the full Board, in or about early June, an offer by third parties to purchase all of the outstanding stock of RDI for cash consideration at a price of approximately 33% above the prices of which RDI stock then traded (i.e., the "Offer"). The Board met on June 2, 2016 regarding the Offer. At that time, Ellen proposed to have management prepare documentation regarding the value of the Company to be provided to Board members for their review and consideration in advance of another board meeting to consider the Offer. I objected, suggesting that an independent person or company be charged with preparing such documentation for review by the Board. My objection was noted and overruled, and the Board agreed to proceed in the manner Ellen suggested. Additionally, board members inquired what Elllen and Margaret as controlling shareholders wanted to do in response to the Offer.

40. On or about June 7, 2016, in view of the Offer, I asked Ellen to provide me the Company's business plan. I understood that there was none and her failure to respond confirmed that.

41. The Board reconvened on June 23, 2016, regarding the Offer. No materials had been delivered to Board members prior to that meeting. At that meeting, Ellen made an oral presentation regarding the supposed value of the Company. I found it difficult to follow her oral presentation with no prior or contemporaneous documentation. I cannot imagine how outside

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

directors less familiar with the details of the Company followed it. Not one of the directors other than Ellen indicated that they had taken any action at all, whether reviewing Company documentation, speaking with experts such as counsel or bankers or doing anything else at all, to prepare to discuss the Offer. At that meeting, Ellen also indicated that she and Margaret would oppose any response other than rejecting the Offer, and added that it was their belief that the Company should proceed on its course as an independent company. No director asked questions about whether and how the Company could ever actualize the supposed value Ellen claimed it had. None asked questions about whether management was preparing a business plan to do so or, for that matter, simply preparing a long-term or strategic business plan. None exists. Instead, the non-Cotter directors simply ascertained that Ellen and Margaret wanted to reject the Offer and agreed that the price offered was inadequate. They all voted to proceed in the manner Ellen recommended.

I declare under penalty of perjury under the laws of the State of Nevada, that the foregoing is true and correct.

DATED this 13th day of October, 2016

James J. Cotter, Jr.

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Tab 17

ELECTRONICALLY SERVED
10/13/2016 02:13:35 PM

COHEN|JOHNSON|PARKER|EDWARDS
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400

QUINN EMANUEL URQUHART & SULLIVAN, LLP
CHRISTOPHER TAYBACK, ESQ.
California Bar No. 145532, *pro hac vice*
christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter,
Ellen Cotter, Douglas McEachern, Guy Adams, and Edward Kane

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc.,

Plaintiffs,

v.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Case No.: A-15-719860-B
Dept. No.: XI

Case No.: P-14-082942-E
Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF JAMES J. COTTER JR.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: November 1, 2016
Time of Hearing: 8:30 a.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As set forth in the Individual Defendants' Motion for Partial Summary Judgment No. 1, the material undisputed facts require judgment in favor of the Individual Defendants on Plaintiff's claims arising from the Board of Directors' of Reading International, Inc. ("RDI" or "the Company") termination of him as the Company's CEO and President on June 12, 2015. Plaintiff has filed a cross-motion for partial summary judgment in his favor on the same aspect of his claims. The Individual Defendants' motion should be granted, and Plaintiff's motion denied.

As a matter of law, Plaintiff's arguments challenging his termination and seeking reinstatement are meritless. He cannot identify a single case in which a board's decision to terminate an officer was subjected to *any* "fairness" review (be it fairness to the corporation on behalf of which Plaintiff purports to sue, or anyone else). Nor does he cite any case in which the firing of an officer was determined to be a breach of fiduciary duty. And he has located no case in which a former CEO was *reinstated* as a remedy for a purported breach of fiduciary duty.

Plaintiff ignores both the operative bylaws and Nevada law. RDI's Bylaws specifically provide that the CEO may be terminated *at any time*, *for any reason*, *by a majority of the entire Board* (not just the "non-Cotter" or "independent" Directors). That alone dooms his claim. Moreover, Plaintiff disregards the heightened standard for director liability that under NRS 78.138(7), requiring that he establish "intentional misconduct, fraud, or a knowing violation of the law" to prevail. Indeed, Plaintiff only once cites to *any* of the governing Nevada statutes at issue (NRS 78.138(3), the business judgment rule, cited at Pl's Mem. at 22), which he proceeds to rewrite based on inapplicable Delaware law. Consequently, Plaintiff's entire motion is premised on a requirement that does not exist in Nevada law—that the decision of a corporate board to terminate an executive is ever subject to an "entire fairness" test.

Factually, Plaintiff casts aside the most relevant facts by attempting to confine the record to the period between May 19, 2015 and June 12, 2015. In so doing, he seeks to avoid the many months in which the Board tried to ameliorate the deficiencies of a young, inexperienced CEO who rose to power on an emergency basis, could not work well with key executives, was abusive

to fellow employees and Board members, and displayed a lack of understanding of important aspects of RDI's businesses. That the Board began to openly consider Plaintiff's removal on May 21, 2015 was neither surprising nor improper.

Plaintiff's description of the reasoned review process by which the Board evaluated his continued employment, which took place over three meetings, lasted over 13 hours, and provided Plaintiff with ample opportunities to defend his tenure (and continue as President and/or CEO under certain circumstances), is also woefully incomplete. So too is Plaintiff's skewed description of a potential settlement between him and his sisters, Ellen and Margaret Cotter, that was considered by the Board prior to its termination vote. Indeed, Plaintiff hides from the Court that he specifically sought assistance from Director Kane in "brokering" that "agreement-in-principle." The complete undisputed facts show that the potential negotiated resolution between Plaintiff and his sisters was an appropriate business consideration by the RDI Board because it (1) alleviated the "dysfunction" and "thermonuclear hostility" between Plaintiff and his sisters, who were *all* Board members and key executives, and (2) circumscribed Plaintiff's authority as CEO. Once that agreement fell through, the Board was left with the same intractable problems as before, and properly acted to protect the interests of RDI by ending Plaintiff's brief, ineffective, and divisive tenure.

Ultimately, Plaintiff's motion should be denied, and summary judgment granted in favor of the Individual Defendants, in light of the following flaws in Plaintiff's termination and reinstatement claims, each of which is independently fatal:

First, the Board's termination of Plaintiff cannot support a breach of fiduciary claim as a matter of law. Courts regularly reject attempts by former officers to utilize fiduciary duty law to challenge the propriety of their removals, especially where (as here) a bylaw authorized a majority of the entire Board to fire him "at any time, with or without cause." Plaintiff's attempted expansion of fiduciary duty law to cover purely managerial decisions by a board is bad policy and contrary to settled precedent.

Second, Plaintiff lacks standing to serve as a derivative plaintiff. Economic antagonisms exist between Plaintiff and other stockholders. In fact, the remedy of reinstatement sought by

Plaintiff is *entirely personal*; neither RDI nor its stockholders share Plaintiff's interest in regaining his positions. Other litigation is pending regarding Plaintiff's firing and ultimate control of the Company, and Plaintiff's conduct—both before and after the filing of this suit—indicates that he is simply using his purported derivative claims as vindictive leverage to obtain a favorable global settlement. Not surprisingly, stockholders unrelated to the Cotters have stated that they would not "reinstate" Plaintiff and that he is not "the best adequate representative."

Third, even if the termination of an employee could *theoretically* constitute a breach of a fiduciary duty under RDI's bylaws and Nevada law (which it cannot) *and* Plaintiff had derivative standing (which he does not), Plaintiff's claims still fail. In his motion, Plaintiff has not argued, let alone established, any damages *to RDI* resulting from his termination—an essential element of breach of fiduciary duty. Further, Plaintiff does not contest that, if the business judgment rule were applied, it would be fatal to his action. And here, it clearly does. Under Nevada law, the business judgment rule *always applies* in the context of an employee termination.

Even if Nevada allowed the possibility of a "fairness" review in the context of an officer's removal (which it does not), here it would not be appropriate since no non-Cotter director derived any financial benefit from it "in the sense of self-dealing" or was so "beholden" to Ellen and Margaret Cotter that their discretion was sterilized. Plaintiff has provided no evidence that the RDI Board—which had appointed him as CEO previously—was not vested with the same discretion to terminate him and replace him with another. Indeed, the months-long process in which the Board attempted to train Plaintiff, provided him with an "ombudsman," creatively thought of ways to continue his employment while rectifying his inadequacies, and gave him notice and opportunity to defend his tenure was unquestionably fair as to the Company (and even to Plaintiff, which would be irrelevant in any event since he sues derivatively on behalf of RDI and not in his personal capacity).

Fourth, the relief demanded by Plaintiff—reinstatement—is not available. Equity jurisdiction does not lie where that Plaintiff was removable without cause under both RDI's Bylaws and his own Employment Contract (which Plaintiff is not suing upon in this case in any event). Further, there are strong practical impediments and policy reasons against compelling

the Board to reinstate Plaintiff (and fire Ellen Cotter as CEO) against its wishes. Plaintiff had no vested right to remain President and CEO and, even if reinstated, could simply be terminated again. More time has elapsed since Plaintiff's termination than he served as CEO, and the Company has moved on, which also counsels against reinstatement. Finally, in light of the "irreparable animosity" between Plaintiff and other directors, reinstatement would do nothing more than harm RDI's business.

II. FACTUAL BACKGROUND

A. Plaintiff Had Glaring Deficiencies in His Temperament, Managerial Skills, and Knowledge of RDI's Corporate Affairs

In construing the events leading up to his June 12, 2015 termination as CEO and President of RDI, Plaintiff starts the clock on May 19, 2015—just prior to the first meeting at which the Board formally debated his employment status. (*See* Pl.'s Mem. at 5-8.) Plaintiff has attempted to divert the Court's focus from the events of the previous eight months for good reason; during that time, major problems in Plaintiff's temperament, managerial skills, and knowledge of RDI's business became obvious, forcing RDI's Board to spend innumerable hours trying to rectify his inadequacies through coaching, the use of an ombudsman, and additional training. (Ind. Defs.' MSJ No. 1 at 5-9.)[1] As Director McEachern testified, Plaintiff "knew that his position as CEO was in jeopardy for a longer period of time than just May 21." (HD#1 Ex. 7 at 176:1-9.) Plaintiff avoids the following facts, each of which invalidates his motion:

- Plaintiff Could Be Removed at Any Time, For Any Reason: Plaintiff was elected as CEO pursuant to the RDI's Amended and Restated Bylaws, which provide, *inter alia*, that, as an officer, Plaintiff served "at the pleasure of the Board of Directors," and could "be removed at any

---

[1] Given the exact overlap between Plaintiff's Motion for Partial Summary Judgment and the Individual Defendants' Motions for Summary Judgment (No. 1) on Plaintiff's Termination and Reinstatement Claims and (No. 2) on the Issue of Director Independence, the Individual Defendants will refer to the applicable pages (and exhibits cited) in their September 23, 2016 motions where appropriate. Citations to "HD#1" will refer to exhibits attached to the Declaration of Noah S. Helpern in Support of the Individual Defendants' Motion for Summary Judgment No. 1, and citations to "HD#2" will likewise refer to exhibits attached to the Helpern Declaration in Support of the Individual Defendants' Motion for Summary Judgment No. 2. Citations to "HDO" will refer to any new exhibits attached in support of this opposition.

time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof." (HD#1, Ex. 19; *see also* Ind. Defs.' MSJ No. 1 at 4-5.)[2] Plaintiff's Employment Contract, signed in 2013 when he became the Company's President, similarly contemplated that he could be terminated without cause, in which case he was entitled to receive his usual compensation and benefits for 12 months, or "for cause," in which case he would receive nothing. (HD#1 Ex. 20 § 10; *see also* Ind. Defs.' MSJ No. 1 at 4.)

- Plaintiff Was Elected Only Because of an Emergency Vacancy, and Lacked Significant Experience in Areas Critical to RDI: Plaintiff was elected as CEO on August 7, 2014 to fill an emergency vacancy caused by the health-related resignation of his father. (*Id.*) The Board hoped that Plaintiff would develop on the job. (*Id.* at 5.) As Director Adams noted, Plaintiff "was young" and "didn't have that much experience." (HD#1 Ex. 4 at 462:14-25.) Director McEachern similarly recognized that Plaintiff "had no real estate experience, no international experience, no management experience, no cinema experience and no live theater experience" (HD#1 Ex. 7 at 49:25-50:7), while Director Storey believed that "if his last name wasn't Cotter, he wouldn't be CEO." (HD#1 Ex. 4 at 460:12-24.) Given that Storey and others recognized "holes in" Plaintiff's "expertise or ability to function as CEO and where he needed further handling" (HD#1 Ex. 7 at 177:5-11; HD#1 Ex. 32 at 2), RDI's Board—as Plaintiff has conceded—began discussing "the possibility of getting an interim CEO . . . as early as October 2014" to ameliorate his shortcomings. (HD#1 Ex. 11 at 528:9-529:20.)

- Teamwork and Morale Was Poor Under Plaintiff's Abusive Leadership: By early February 2015, Director Storey recognized that under Plaintiff, "morale" within RDI was "poor and needs to be improved," Plaintiff "need[ed] to establish teamwork," and required even more

---

[2] Plaintiff's focus on the Board's January 15, 2015 resolution—in which all five non-Cotter directors agreed that in order to terminate "the CEO" (and/or Ellen and Margaret Cotter), a majority of the non-Cotter directors would be required to vote in favor of doing so (Pl.'s Mem. at 1, 4-5)—is misguided. Not only it is black-letter law that bylaws trump board resolutions, *see* 18A Am. Jur. 2d *Corporations* § 253 (2016), a majority of the non-Cotter directors—all of whom were independent and disinterested—ultimately voted to remove Plaintiff as RDI's CEO and President.

"help to lead/develop leadership role." (HD#1 Ex. 33 at 3.) Plaintiff's management style was perceived as "closed door" and unengaged, and the Board saw Plaintiff as being "very reluctant and slow to make decisions." (HD#1 Ex. 3 at 451:25-454:25; HD#1 Ex. 7 at 52:2-5, 285:23-286:11.) Moreover, as Plaintiff admitted, the Board was aware of a "perception at Reading by employees" that he had "a volatile temper" and "an anger management problem." (HD#1 Ex. 11 at 481:24-483:5.) The Board was troubled by Plaintiff's "behavior," "temperament," and "anger issues" (HD#1 Ex. 15 at 55:21-57:5), because Plaintiff's outbursts had caused several female employees or outside workers to be "physically afraid" of Plaintiff and concerned for their "actual physical safety" around him, such that at least one was "carrying mace to the office." (HD#1 Ex. 3 at 419:17-421:23; HD#1 Ex. 5 at 134:1-135:22, 137:12-140:15; HD#1 Ex. 7 at 112:18-113:24, 114:6-15.) As a result, some Board members considered sending Plaintiff to a "psychologist or psychiatrist" or to anger management classes in early 2015. (HD#1 Ex. 6 at 529:22-530:2; HD#1 Ex. 35 at 3.)

- Plaintiff Lacked an Understanding of Key Components of RDI's Business: As CEO, Plaintiff also demonstrated a lack of understanding with respect to costs and margins highly critical to RDI's cinema business. (Ind. Defs.' MSJ No. 1 at 7.) For instance, in a presentation to the Board on which he had worked "for months," Plaintiff failed to adjust his analysis to account for lower film rentals in Australia and New Zealand when comparing margins in those territories to U.S. theaters. (HD#1 Ex. 2 at 84:20-86:1.) Moreover, Plaintiff failed to comprehend the different treatment used in each region when accounting for labor cost allocations. (*Id.* at 86:1-87:23.) As a result, Director Adams and others questioned Plaintiff's "knowledge about the business," whether he "properly investigated" claimed issues in the Company before bringing them before the Board, and whether he was "really learning the business" and "leading us forward." (*Id.*) As CEO, Plaintiff admittedly never presented a business plan before the Board (HD#1 at 198:19-21, 205:19-206:6, 235:18-21), even after it was placed on the agenda (at his request) when the Board began discussing his potential termination. (HD#1 Ex. 29 at 1.) And, during his time as CEO, Plaintiff chose not to visit RDI's operations in Australia and New Zealand, despite their importance (HD#1 Ex. 7 at 292:6-24), preferring

instead to conduct a wasteful trip in which he went incognito to a few cinemas in Hawaii in an effort to embarrass his sister, Ellen Cotter, who was the long-standing executive responsible for that aspect of the business. (HD#1 Ex. 7 at 50:19-51:152:1.)

B. Plaintiff Could Not Work With Key RDI Executives

While Plaintiff in his motion ignores these problems with his managerial skills and temperament as CEO, he recognizes that during his entire tenure he was "at odds with" and had difficulties working alongside his sisters, Ellen and Margaret Cotter. (Pl.'s Mem. at 8-14.) Ellen and Margaret Cotter were key executives at or contractors with RDI, and each were members of the Company's Board. (Ind. Defs.' MSJ No. 2 at 4-5.) During this period, Ellen Cotter served as RDI's Chairman of the Board, had been a RDI employee since March 1998, and had run the day-to-day operations of the Company's domestic cinema operations since 2002. (*Id.*) Margaret Cotter served as the Board's Vice Chairman and, while an outside consultant at the time of Plaintiff's firing, had run RDI's live-theater operations for at least 13 years, managed the underlying real estate issues relating to those theaters (and certain cinemas) for the same period, and was actively involved in the Company's redevelopment of its New York properties for the previous five years. (*Id.*; *see also* Ind. Defs.' MSJ No. 6 at 3-4.)

Almost immediately after becoming CEO, Plaintiff became mired in a dispute with, and ultimately litigation against, Ellen and Margaret Cotter over an amendment to the James J. Cotter Living Trust, purportedly executed on their father's deathbed, which affected whether Margaret alone or Margaret and Plaintiff together controlled a trust into which the majority of RDI's voting shares would ultimately pour. (Pl.'s Mem. at 9-10; Ind. Defs.' MSJ No. 1 at 7.) Plaintiff further alienated the Board when he tried to undermine Ellen Cotter by conducting a secret one-man examination of RDI's cinema operations in the fall of 2014, without any input from or the knowledge of Ellen Cotter (or any other member of RDI's management), and later when he unilaterally tried to hire a food and beverage manager without involving her (despite the fact that he had no experience in food or beverage matters). (Ind. Defs.' MSJ No. 1 at 6.) In addition to these steps, which engendered criticism from the Board both for Plaintiff's duplicity and wasteful spending of his time on matters best left to consultants (HD#1 Ex. 7 at 50:19-51:12),

Plaintiff became further estranged from Margaret Cotter when, rather than work productively with her once the producers of STOMP threatened to vacate RDI's Orpheum Theater, he "attack[ed]" Margaret and attempted to use the dispute to "embarrass" her before the Board—a step that Director Kane felt was "not what a CEO should do when you have two experienced executives." (HD#1 Ex. 4 at 161:4-162:11; HD#1 Ex. 9 at 304:5-23.) Similarly, Director McEachern believed that Plaintiff refused to "mend fences and move forward" with Margaret Cotter, and instead "thr[ew] hand grenades" into their relationship, when he advocated against making Margaret a full RDI employee (HD#1 Ex. 7 at 288:19-289:8), despite the fact that she had long been performing the responsibilities for which she would be hired. (Ind. Defs.' MSJ No. 6 at 3-7.)[3]

As a result of Plaintiff's inability to cooperatively work with these individuals, who were integral to RDI's success, Director Gould and others determined that RDI was faced with "a dysfunctional management team" in which there was "'thermonuclear' hostility" between the Cotters. (HD#1 Ex. 35 at 2-3.) Plaintiff did not disagree; as he testified, the tensions between

---

[3] In his motion, Plaintiff makes a host of factual allegations regarding Ellen and Margaret Cotter that are utterly irrelevant to the legal merits of his termination dispute. (Pl.'s Mem. at 10-14.) Not only is this attempt to color the record improper, Plaintiff's half-truths and distortions are undermined by the record. For instance, while Plaintiff notes that his sisters "sought to report to an executive committee of RDI's Board of Directors rather than to" him (*id.* at 10), he omits that this was because they "were having issues with" Plaintiff and "wanted to figure out a way to have a structure in place that would be almost transitional that would help us work together so we could work through any issues we would have." (HDO Ex. 8 at 65:7-13.) The sisters also shared the valid concern that Plaintiff, based on his pattern of conduct, "would color [their] reporting and would put [them] in a bad light." (*Id.* at 92:18-21.) Similarly, while Plaintiff criticizes Ellen Cotter for wanting a new job title, he ignores that her present title did "not reflect" her actual responsibilities, and the "nominal" president was actually just a "senior advisor." (HDO Ex. 11 at 2; HDO Ex. 2 at 14:21-15:13.) In fact, Plaintiff "agreed in principal" that Ellen Cotter should be given the revised title. (HD#1 Ex. 37 at 2.) Nor does he identify why it was improper that Ellen and Margaret Cotter sought employment contracts. Plaintiff had one, and Director Gould recognized that, "given the fact of the factions" in RDI's management, each rightfully "felt their jobs may have been in jeopardy" and that absent such a contract Plaintiff may "take steps to have [them] terminated" irrespective of performance. (HDO Ex. 10 at 79:21-81:3.) And the request by Ellen and Margaret Cotter to have their below-market compensation rectified was consistent with the recommendation of an external industry expert and was subsequently approved by RDI's Compensation Committee. (*See* Ind. Defs.' MSJ No. 6 at 6-9.)

Plaintiff and his sisters had become so intense that RDI was unable to function, such that drastic reform in behavior or potential termination(s) were required to get beyond the current paralysis. (HD#1 Ex. 12 at 696:22-700:3, 704:7-22.) Director Storey specifically informed Plaintiff that RDI needed to operate "more harmoniously," any more "back sliding" was "not acceptable," and "things need to improve and that improvement has to be sustained, otherwise the board will need to look to other steps to protect the company's position." (HD#1 Ex. 37 at 1-2.)

C. The Board Engaged in a Months-Long Reasoned Review Under Which It Evaluated Plaintiff and Sought to Ameliorate His Inadequacies

With respect to Plaintiff, the RDI Board had "an individual who we're very concerned about" such that its "process or evaluation" of him was "constantly going on." (HD#1 Ex. 7 at 219:2-24.) The Board considered engaging an outside consultant to improve Plaintiff's "management and corporate governance" (HD#1 Ex. 11 at 354:23-357:24), and ultimately decided to appoint Director Storey as an "ombudsman" in March 2015—over Plaintiff's initial objections—to work with and coach Plaintiff, and mediate any disputes between him and other executives. (Ind. Defs.' MSJ No. 1 at 8; Pl.'s Mem. at 5 n.1; HD#1 Ex. 11 at 315:22-317:16.) Storey made clear to Plaintiff that "he needs to make progress in the business with Ellen and Margaret quickly, or the board will need to look to alternatives to protect the interests of the company." (HD#1 Ex. 37 at 2-3.) Indeed, Storey emphasized to Plaintiff, "if things don't work out in an acceptable manner, then the [B]oard is resolute in the view that it will then act in the best interests of the company in changing things." (*Id.* at 3.) While some directors wanted the ombudsman process to continue through the end of June 2015 (Pl's Mem. at 6 n.3), the Board "never set a date of June 30 for our intervention" and Director Kane and others felt that "there was no reason for us to wait until June 30" without progress. (HD#1 Ex. 6 at 532:12-533:15.)

The necessary improvement did not take place. While Adams had hoped that Plaintiff "could learn on the job and get up to speed quickly," by April 2015 he "was of the opinion that wasn't working out," as the Board had "been working with [Plaintiff] all these months and I don't see progress." (HD#1 Ex. 2 at 78:18-21, 83:23-87:23.) Similarly, "sometime in mid to late May of 2015," McEachern concluded that Plaintiff had "an inability to operate as a manager,

an inability to create trust, [and] an inability to communicate with people" such that "we're not making progress that our shareholders expect us to make in this organization, and we [have] got to get somebody in here who can help us move the company forward." (HD#1 Ex. 7 at 71:2-18, 293:23-294:15.) Director Kane had not yet "made up my mind" by mid-May, and considered abstaining in the event a motion was made to terminate Plaintiff. (HDO Ex. 12; HDO Ex. 6 at 309:19-310:1 (Kane noting "I wouldn't have invited [Plaintiff] to come down to my house and talk about how he could stay" if he had made up his mind).)[4]

As various directors independently contemplated Plaintiff's removal, they began a series of emails, meetings, and informal straw polls as to a potential termination vote, and commenced discussing what to do on an interim basis in the event that Plaintiff was fired. (HDO Ex. 9 at 175:17-179:7; HDO Ex. 3 at 98:8-99:22; HDO Ex. 4 at 366:14-373:2.) None of this was improper, as Plaintiff suggests. (Pl.'s Mem. at 5-6.) Rather, the Board had to determine if it was even worthwhile to formally discuss Plaintiff's employment status during a Board meeting, and it had an obligation to plan ahead if he was ultimately removed. Given that there was sufficient support to begin an open debate, Plaintiff's continuing role as CEO and President was placed on the agenda for the Board's May 21, 2015 meeting as an item for discussion. (HD#1 Ex. 39.)

Plaintiff, by taking certain emails out of context and omitting the following events, implies that what happened next was a "kangaroo court" to which "Directors Gould and/or Storey objected." (Pl.'s Mem. at 6.) But the only emails cited by Plaintiff pre-date the Board's May 21, 2015 meeting, and merely evince Storey's disagreement with the "apparent view" of certain directors "that no discussion is necessary" and a simple vote on Plaintiff's employment would suffice. (*See, e.g.*, HDO Ex. 14.) Storey instead wanted to "define and address the issue,

---

[4] Plaintiff's citation to a May 19 email from Kane to Gould explaining that "the die is cast" is misleading to the extent that it implies Kane had made up his mind and wanted no debate. (Pl.'s Mem. at 6.) During his deposition, Kane explained that he did not mean that Plaintiff was going to be terminated without any discussion, but instead that "I was referring to the agenda . . . that was cast . . . . To me that meant the agenda is set, and that's what we'll discuss, and I see no reason to have a meeting beforehand" with Gould. (HDO Ex. 6 at 356:10-25, 360:5-12.)

discuss it, and come to a conclusion," which was "a separate issue [as] to the merits of the decision before us." (HDO Ex. 1 at 134:9-135:1; HDO Ex. 13 at 1-2.)

What Plaintiff leaves out is that the Board actually adopted and followed Storey's advice as to "proper procedure." The Board first met on May 21, 2015 to discuss potentially removing Plaintiff as CEO and President. (HD#1 Ex. 29.) Its discussion lasted nearly five hours, during which it utilized both outside counsel retained by the Company and additional outside counsel engaged by the non-Cotter directors. (*Id.*) That Plaintiff's employment was up for discussion was not a mystery to him, as Plaintiff hints. (Pl.'s Mem. at 5.) It was unambiguous that this was going to happen, as evidenced by the presence of Plaintiff's current litigation counsel at the May 21, 2015 Board meeting (HD#1 Ex. 29 at 1), and the fact that, in the days prior, both Plaintiff and his counsel had threatened to sue each director "and ruin them financially" if they voted for removal. (HD#1 Ex. 3 at 426:19-427:9; HD#1 Ex. 7 at 78:14-79:2.) At the May 21 meeting, Director Gould raised one possible solution to the problems being experienced by RDI under Plaintiff's leadership, which would be to have Plaintiff resign as CEO but "continue as President of the Company," with the Board to then "commence a search for a new Chief Executive Officer"—a proposal that Plaintiff "twice refused." (HD#1 Ex. 29 at 4.) Ultimately, after much debate in which Plaintiff was given the opportunity to discuss his performance (and actually did so "at length"), the Board chose not to terminate Plaintiff on May 21, 2015, and instead continued its deliberations for the next scheduled Board meeting. (*Id.* at 1-4.)

D. <u>The Board Properly Considered a Potential Settlement That Would Have Resolved the Trust Litigation and Reduced Plaintiff's Authority as CEO</u>

As planned, the Board discussed Plaintiff's performance and the possibility of his removal for another seven hours on May 29, 2015, once again in the presence of counsel. (HD#1 Ex. 30.) For a third time, Plaintiff refused the opportunity "to remain employed as President of the Company under the leadership of a new Chief Executive Officer." (*Id.* at 1-3.) Adams then made a motion, seconded by McEachern, to remove Plaintiff from his position as President and CEO, "principally based on Plaintiff's lack of leadership skills, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes." (*Id.* at 2.)

Plaintiff's defense was limited to an assertion "that it was the intention of his father . . . that he run the Company and the Board should observe his wishes." (*Id.* at 3.)

Prior to a final vote, the Cotters informed the Board of an important development: they had reached an "agreement-in-principle," subject to review by counsel, documentation to their mutual satisfaction, and approval by the Board as to certain issues, that (1) addressed "the structure of the senior management of the Company" (a fact that Plaintiff noticeably leaves out of his motion (*see* Pl.'s Mem. at 6-8)) and (2) would resolve their pending trust litigation. (HD#1 Ex. 30 at 3-4.) Under the agreement, Plaintiff would remain as CEO, but his decisions would be subject to oversight by an Executive Committee composed of Ellen Cotter, Margaret Cotter, and Guy Adams, to which certain decisions were delegated—such as the hiring, firing, and compensation of senior personnel. (HD#1 Ex. 40.)[5] The Board saw this as a positive step, as the agreement had the potential to assuage the performance concerns regarding Plaintiff, "resolve issues relating to the control of the Company," "provide certainty to management and stockholders," and "reduce or eliminate the tension and obstacles" that had prevented Plaintiff from working with his sisters. (HD#1 Ex. 30 at 3.) As such, the Board adjourned the May 29, 2015 meeting without a vote to allow the documentation of the potential settlement. (*Id.* at 4.)

Director Kane, who had been aware of the possibility of a negotiated resolution in the previous days, did not "pressure" Plaintiff to accept the settlement, as Plaintiff wrongly claims. (Pl.'s Mem. at 18-20.)[6] Instead, it is clear from the evidence that Plaintiff reached out to Kane first to involve him in the settlement discussions, telling Kane on May 22, 2015 that he was the

---

[5] The "agreement-in-principle" reached was not a "take-it or leave-it offer," as Plaintiff incorrectly claims. (Pl.'s Mem. at 7.) Indeed, the Cotters made revisions and exchanged drafts to the "Confidential Settlement Memo of Understanding" over the course of several days. (*See* HD#1 Ex. 40 (May 27, 2015 version); HDO Ex. 16 (June 3, 2015 revision).)

[6] To the extent that Plaintiff makes allegations challenging the independence of Directors Kane and Adams, those assertions are fully rebutted in the Individual Defendants' Motion for Partial Summary Judgment (No. 2) on the Issue of Director Independence and need not be repeated here. To the extent that Plaintiff relies on these distortions and inaccuracies to maintain that his summary judgment motion should be granted, Section III(C)(2)(b) below identifies the many factual and legal failings in Plaintiff's argument on the issue of director independence.

"most thoughtful director" who was the "only one I have now who can broker peace" (HDO Ex. 18 at 1), and begging Kane on May 27, 2015: "Is there anything you can do to broker this?" (HDO Ex. 15 at 2.) While Kane "strongly advise[d]" Plaintiff to come to a negotiated resolution (*id.* at 1), his encouragement was not motivated by a desire that Margaret Cotter remain the sole trustee of the Voting Trust, as Plaintiff asserts. (Pl.'s Mem. at 18-19.) Rather, the evidence is that, as of late May 2015, Kane had "not seen or heard the particulars" as to who would control the Trust (HDO Ex. 15 at 1), did not know that Margaret Cotter would be left as the sole trustee under the settlement, and "didn't want to know it." (HDO Ex. 7 at 597:9-22.) Rather, Kane told Plaintiff that he supported the general idea of a cooperative deal because it would "benefit you and your sisters and allow you to work together going forward," help end all "ill feelings," and allow Plaintiff to prove that he does "have the leadership skills to run this company." (HDO Ex. 15 at 1-2.) When Kane later learned that Margaret Cotter would control the trust under the proposed deal, he reemphasized to Plaintiff on June 11, 2015 that he would "much prefer that [Plaintiff] bend a bit and work it out between you to build the trust that is necessary so that you don't lose control of the company, as you presently have." (HDO Ex. 17.) Kane was well aware that "there were votes there to terminate [Plaintiff]" and that he himself would be "voting against him" by mid-June due to Plaintiff's deficiencies if they were not alleviated by the kind of further oversight and more harmonious management structure contemplated in the pending settlement. (HDO Ex. 7 at 596:13-25; HDO Ex. 5 at 193:3-195:2.)

Ultimately, the "agreement-in-principle" broke down by early June 2015 when the Cotters attempted to document its final form, and, there being no resolution of the ongoing management issues, Plaintiff's employment was placed back on the agenda for the Board's June 12, 2015 meeting. (Ind. Defs.' MSJ No. 1 at 11.) At that meeting, the Board once again discussed Plaintiff's management skills and experience, following which Directors Adams, Kane, and McEachern, as well as Ellen and Margaret Cotter, voted in favor of the pending motion to remove Plaintiff as the Company's CEO and President; directors Gould and Storey voted against the removal motion, while Plaintiff abstained. (HD#1 Ex. 31 at 1-2.) None of the directors—including Storey and Gould—believed that Plaintiff's failure to settle the trust and

estate litigation between him and Ellen and Margaret Cotter caused his termination as CEO and President of the Company. (Ind. Defs.' MSJ No. 1 at 11-12.) Instead, as both Storey and Kane testified, the majority felt that "things should be dealt with now," "[t]hey had come to a head and there was no point in delaying," "the current disharmony within the business was untenable going forward," "[t]here was a polarization in the office among the employees, and it had to be resolved one way or another." (HD#1 Ex. 1 at 119:25-120:12, 154:2-14; HD#2 Ex. 5 at 331:11-332:17.) As McEachern testified, "from August of 2014 until [Plaintiff's] termination, I cannot tell you one thing that we did that created value for the company, one thing that Jim Cotter, Jr. managed to do. Nothing." (HD#1 Ex. 7 at 292:2-5.) Following Plaintiff's removal, Ellen Cotter was elected interim and ultimately permanent CEO and President of RDI. (HD#1 Ex. 25.)

III. ARGUMENT

A. Plaintiff's Termination Cannot Support a Breach of Fiduciary Duty Claim

Plaintiff's motion fails because it has no basis in the law, ignores the relevant law, and focuses instead on inapplicable law and facts. Plaintiff avoids any mention of RDI's Bylaws, the governing Nevada corporate statutes (or even his own Employment Contract) on his fiduciary duty claims. Indeed, he does not identify *a single case* in which *any court* (let alone a Nevada court) has found members of a board liable for breaching fiduciary duties of care or loyalty by terminating a corporate officer. Every case cited by Plaintiff is inapposite—such as where a board is alleged to have breached its duties when faced with a corporate merger or sale, or where there is an accusation that corporate assets have been misused; noticeably absent is any case law in which the employment of an officer is at issue. *See, e.g.*, *McMullin v. Brand*, 765 A.2d 910, 917 (Del. 2000) (proposed sale of corporation); *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1163 (Del. 1995) (two-stage tender offer/merger transaction); *Paramount Commc'ns Inc. v. QVC Network*, 637 A.2d 34, 42 (Del. 1994) (merger); *Venhill Ltd. P'ship v. Hillman*, C.A. No. 1866-VCL, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008) (partner accused of improper investments and misuse of trust assets). Under the governing law and undisputed material facts, Plaintiff's claims related to his termination should be rejected.

1. RDI's Board Had the Undisputed Right to Remove Plaintiff at Any Time, With or Without Cause

First, pursuant to the RDI Bylaws, and the broad latitude afforded decisions by a board of directors under Nevada law, Plaintiff's claim fails.

Under Nevada law, officers such as Plaintiff "hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors," and may remain in office until the "expiration of his or her term" or "until the officer's resignation or removal before the expiration of his or her term." NRS 78.130(3)-(4). "[T]here is no vested right to retain one's office in the face of a properly executed removal." *Cooper v. Anderson-Stokes, Inc.*, 571 A.2d 786, 1990 WL 17756, at *2 (Del. 1989) (table). RDI's Amended and Restated Bylaws mirror NRS 78.130, and provide that Plaintiff could hold office as the Company's CEO and President only until the appointment of his successor, his death, or until he shall resign or "is removed in the manner as hereinafter provided for such term as may be prescribed by the Board of Directors." (HD#1 Ex. 19, Art. IV § 1.)

The Company's Bylaws expressly provide that Plaintiff served solely "at the pleasure of the Board of Directors," and that he could "be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof." (*Id.*, Art. IV § 10.) Plaintiff's Employment Contract similarly recognized that the Board had an undiminished right to terminate him "with cause," in which event he was owed no relief, or "without cause," in which case he was due a specified sum. (HD#1 Ex. 20 § 10.)

A corporation's charter and bylaws "are contracts among the shareholders of a corporation." *Centaur Partners, IV v. Nat'l Intergroup, Inc.*, 582 A.2d 923, 928 (Del. 1990). Here, because the Board had an *express, unrestricted right* to terminate Plaintiff's employment at any time, for any reason, under both Nevada law and RDI's Bylaws, as a matter of law it cannot be liable for breaching its fiduciary duties and violating any fundamental covenant between the Company and its stockholders. *See, e.g.*, *Nahass v. Harrison*, C.A. No. 15-12354, 2016 WL 4771059, at *6 (D. Mass. Sept. 13, 2016) (terminated officer could not maintain fiduciary duty claim where his termination was authorized under "the Bylaws"); *In re Eagle Corp.*, 484 B.R.

640, 654 (Bankr. D.N.J. 2012) (removal of officer and director could not be a breach of fiduciary duty where "Delaware General Corporation Law provides for removal . . . with or without cause"); *Goldstein v. Lincoln Nat'l Convertible Sec. Fund, Inc.*, 140 F. Supp. 2d 424, 438 (E.D. Pa. 2001) (plaintiff could not maintain fiduciary duty claim "[g]iven the express statutory authorization for the Board's action"), *vacated on other grounds*, 2003 WL 1846095 (3d Cir. Apr. 2, 2003); *Quadrant Structured Prod. Co., Ltd. v. Vertin*, C.A. No. 6990-VCL, 2014 WL 5465535, at *3 (Del. Ch. Oct. 28, 2014) (dismissing action, in part, because the company's "governing documents authorized" the challenged "strategy"); 2 Fletcher Cyc. Corp. § 360 (2015) ("a court has no right or jurisdiction to review the discretionary action of the board in removing an officer, unless the contract rights of the person removed are involved"); *id.* § 363 ("where a bylaw provided that any officer might be removed by a majority vote of the entire board whenever the best interests of the company require it, it was for the directors to determine what was in the best interests of the company; the courts will not interfere unless for fraud or illegality"). To hold otherwise would effectively rewrite the RDI's Bylaws and fundamentally alter the "contract" between Company and its stockholders. Given the clear authority of the Board to terminate him without cause, Plaintiff's motion should be denied.

2. <u>Courts Routinely Reject Attempts to Transform the Termination of an Officer's Employment Into a Breach of Fiduciary Claim</u>

<u>Second</u>, Plaintiff's inability to locate direct authority supporting the availability of a fiduciary duty claim in the context of an officer termination decision is not surprising. Most courts regularly reject attempts to use "an appeal to general fiduciary law" to transform cases involving the dismissal of an officer into claims that a company's directors "breached a fiduciary duty as corporate officers." *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 190 (1989) (rejecting effort by operating manager and minority shareholder, upon his firing, to assert fiduciary duty violations); *see also Hackett v. Marquardt & Roche/Meditz & Hackett, Inc.*, Civ. No. 02-990166881S, 2002 WL 31304216, at *2 (Conn. Sup. Ct. Sept. 17, 2002) (rejecting breach of fiduciary duty claim, and holding that "the law of employment relations seems to provide sufficient protection for any civil wrongs" in the event of a purportedly unlawful termination).

Such courts have found that claims of fiduciary breaches by terminated officers represent "novel argument[s]" for which there is "no case in support." *Carlson v. Hallinan*, 925 A.2d 506, 540 (Del. Ch. 2006) (plaintiff could not "articulate a theory as to how Carlson's removal as President . . . could be a breach of fiduciary duty"); *see also Datto Inc. v. Braband*, 856 F. Supp. 2d 354, 384 (D. Conn. 2012) (allegations of "breach of fiduciary duty" based on "allegedly wrongful termination . . . fail to state a claim").

These courts instead have barred breach of fiduciary duty claims against corporate directors arising from their decision to terminate the employment of an officer. *See, e.g.*, *Berman v. Physical Med. Ass'n, Ltd.*, 225 F.3d 429, 433 (4th Cir. 2000) (affirming dismissal of fiduciary duty claim that directors did not follow fair procedures in deciding to terminate stockholder/doctor's employment because "any injury caused by the termination decision itself would be an injury to his interests as an employee, not as a stockholder"); *In re Eagle Corp.*, 484 B.R. at 654 (a stockholder "who is also an employee cannot recover on a breach of fiduciary duty claim when the claim is grounded solely in an employment dispute"); *Wall St. Sys., Inc. v. Lemence*, No. 04 Civ. 5299, 2005 WL 2143330, at *8 (S.D.N.Y. Sept. 2, 2005) (dismissing third-party claims against directors because "they are essentially employment disputes that cannot sustain a claim of fiduciary breach under Delaware law"); *Dweck v. Nassar*, No. 1353-N, 2005 WL 5756499, at *5 (Del. Ch. Nov. 23, 2005) (finding that "[the shareholder's] allegations of wrongdoing in connection with her termination as President and CEO" by the Board of Directors "are insufficient to support a claim for breach of fiduciary duty").

In fact, "under Delaware law," which Plaintiff maintains is "persuasive authority" (Pl.'s Mem. at 22 n.6), courts are emphatic that "there can be no breach of fiduciary duty stemming from the termination of [an officer's] employment." *Kasper v. LinuxMall.com, Inc.*, No. Civ. A. 00-2019, 2001 WL 230494, at *3 (D. Min.. Feb. 23, 2001) (applying Delaware law in context of termination of president); *see also Riblet Prods. Corp. v. Nagy*, 683 A.2d 37, 39-40 (Del. 1996) (no liability for breach of fiduciary duty where stockholder/plaintiff was "an employee of the corporation under an employment contract with respect to issues involving that employment").

The Court need not proceed any further. Given that Plaintiff's termination was explicitly

authorized at any time, for any reason, under RDI's Bylaws by a simple majority "of the entire Board," and courts are virtually unanimous in rejecting attempted fiduciary duty claims arising out of an employee's termination, Plaintiff's fiduciary duty claims relating to his firing are not supportable. Plaintiff's motion should be denied, as summary judgment in favor of the Individual Defendants as to Plaintiff's termination claims is immediately warranted instead.

B. Even If the Termination of an Employee Could Constitute a Breach of Fiduciary Duty, Plaintiff Lacks Standing to Maintain His Derivative Action

Even assuming that, contrary to the great weight of established caselaw, it is theoretically possible for a plaintiff to maintain a viable breach of fiduciary duty claim relating to the termination of a corporate officer, Plaintiff himself lacks standing to derivatively assert breach of fiduciary duty claims against the Individual Defendants arising out of his termination. Elements of standing are not merely pleading requirements, but are an "indispensable part of the plaintiff's case" on which "the plaintiff bears the burden of proof" at each of "the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Plaintiff cannot meet his burden with respect to his standing now that discovery has occurred.

For the reasons set forth in detail in the Individual Defendants' Motion for Summary Judgment (No. 1), Plaintiff lacks the necessary standing to assert derivative claims on behalf of RDI and its stockholders relating to his termination because: (1) clear economic antagonisms exist between Plaintiff and RDI's stockholders; (2) the injury alleged to, and the remedy sought by, Plaintiff is entirely personal, and is not a harm suffered by RDI itself or its stockholders; (3) other significant litigation is pending covering the same conduct at issue, and the overlap indicates that Plaintiff is personally using this derivative suit to attempt to obtain a more favorable global settlement; (4) Plaintiff is clearly driven by vindictiveness; and (5) significant unaffiliated stockholders in RDI do not support Plaintiff's derivative action as it relates to his termination or to the extent it demands his belated reinstatement. (*See* Ind. Defs.' MSJ No. 1 at 23-28.) Plaintiff's inability to satisfy the standing requirements for his derivative action as it relates to his termination and reinstatement merits not only the denial of his partial summary judgment motion, but also the entry of summary judgment against him.

C. Even If the Termination of an Employee Could Constitute a Breach of Fiduciary Duty and Plaintiff Had Standing, Plaintiff's Claims Fail as a Matter of Law

Even assuming *arguendo* that the termination of an employee could *ever* support a breach of fiduciary duty claim *and* Plaintiff has standing to maintain a derivative action on behalf of RDI itself and its stockholders that asserts fiduciary duty claims relating to his termination, Plaintiff—to sustain his suit—must produce cognizable evidence showing (1) "the existence of a fiduciary duty"; (2) the decision by the Board to terminate him as CEO and President of the Company represented a "breach of that duty" to RDI itself as a matter of law; and (3) "that the breach proximately caused the damages" to the Company alleged. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008). Moreover, under NRS 78.138(7), in order for the Individual Defendants to be liable, Plaintiff must prove that the fiduciary breach "involved intentional misconduct, fraud or a knowing violation of the law." Yet Plaintiff cannot meet *any*—let alone all—of these requirements. His motion for partial summary judgment fails for four additional and independent reasons.

1. Plaintiff Has Not Argued, Let Alone Established, Any Damages to RDI as a Result of His Termination

In his Second Amended Complaint, Plaintiff has asserted claims on behalf of the Company relating to his termination against the Individual Defendants for the breach of the duty of care, the breach of the duty of loyalty, and aiding and abetting these alleged breaches. (Pl.'s Mem. at 1; SAC Counts I, II, IV.) An essential element to pleading (and establishing) each of these causes of action under Nevada law is the requirement that Plaintiff show that the purported breaches proximately caused damages to RDI. *See Olvera v. Shafer*, No. 2:14-cv-01298, 2015 WL 7566682, at *2 (D. Nev. Nov. 24, 2015) ("A claim for breach of fiduciary duty under Nevada law requires a plaintiff to demonstrate a fiduciary duty exists, that duty was breached, and the breach proximately caused the damages."); *In re Amerco Deriv. Litig.*, 127 Nev. 196, 225 (2011) (adopting the Delaware standard for "aiding and abetting a breach of a fiduciary duty," for which one of the "four elements" is "the breach of the fiduciary relationship resulted in damages"). In his motion for summary judgment, however, Plaintiff does not argue—let

alone provide any evidence—that the alleged breaches caused *any* damages, let alone proximately caused damages to the Company. This failure alone is immediately fatal to Plaintiff's motion.[7]

2. The Board's Decision to Terminate Plaintiff Is Protected by the Business Judgment Rule

In his motion, Plaintiff does not contest that, if the business judgment rule were to apply, his fiduciary duty claims arising out of his termination would automatically fail as a matter of law. (*See also* Ind. Defs.' MSJ No. 1 at 18-22 (establishing why the business judgment rule bars Plaintiff's action).) Instead, his sole argument is that "the business judgment rule has no application here" because certain Board members purportedly "had an interest in the challenged conduct" or lacked "independence" from those that had such an interest. (Pl.'s Mem. at 21-22.) According to Plaintiff, *Delaware's* "entire fairness test"—rather than Nevada law—should be applied when evaluating any breach of fiduciary duty relating to his termination. (*Id.* at 25-28.) Plaintiff's attempt to avoid the application of the business judgment rule fails for two reasons.

(a) Under Nevada Law, the Business Judgment Rule Applies in the Context of an Employee Termination

Plaintiff's entire argument rests upon his assumption that if either Director Kane or Director Adams was not "independent" with respect to the Board's decision to terminate his employment, then the Individual Defendants automatically lose the presumptive application of the business judgment rule. (*See* Pl.'s Mem. at 21-25.) But Plaintiff cites no Nevada law or statute in support of this assumption. Instead, he relies only on general Delaware common law principles focused on—as noted above—inapposite situations, such as merger transactions or corporate asset sales. (*Id.*) Plaintiff's complete avoidance of Nevada law is telling, because the text of Nevada's actual corporate statutes fatally undermines his unsupported analysis.

---

[7] Of course, Plaintiff cannot raise a new argument in his reply brief that was not made in his opening brief, and has waived his ability to argue damages for the purposes of his motion. *See Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 261 n.13 (Nev. 2012); *Leonard v. State*, 114 Nev. 639, 662 (1998); *United States v. Bez*, 740 F.2d 903, 916 (11th Cir. 1984).

NRS 78.138(3) codifies Nevada's business judgment rule, providing that "[d]irectors and officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." *Id.* (emphasis added). Under Nevada's corporate law, the presumptive application of the state's business judgment rule may be called into question in only two scenarios, both of which are inapplicable here (and neither are cited by Plaintiff).

Directors are "given the benefit of the presumptions established by subsection 3 of NRS 78.138" in "connection with a change or potential change in control of the corporation," but may lose that shield if they take certain actions "to resist a change or potential change in control of a corporation" and specified elements are not met. *See* NRS 78.139(1)(b), 2-4. *The Board's termination of Plaintiff as a corporate officer does not implicate this provision*, as it did not involve a change in the stockholder control of RDI.

NRS 78.140 sets forth the only other way that the benefit of the business judgment rule may be removed under Nevada law. NRS 78.140(1) provides that "[a] contract or other transaction is not void or voidable solely because the contract or transaction is between a corporation and one or more of its directors or officers; or another corporation, firm or association in which one or more of its directors or officers are directors or officers or are financially interested"—even if "a common or interested director or officer" is present, that director "authorizes or approves the contract or transaction," and the director's vote is counted—as long as certain conditions in NRS 78.140(2) are met. NRS 78.140 on its face *also is not implicated by Plaintiff's termination*; instead it is limited to so-called "related party transactions" in which potential "self-dealing" by the director or officer doing business with the corporation must be evaluated. *See Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 86 (1987) (NRS 78.140 is focused on when "a corporate officer or director may contract directly with the corporation"); *Pederson v. Owen*, 92 Nev. 648, 650 (1976) (applying NRS 78.140 to transaction between corporation and another entity owned by one of its officers); *Schoff v. Clough*, 79 Nev. 193, 196 (1963) (noting, under previous iteration of statute, "[a] contract between a corporation and an officer is not void or voidable except for unfairness or fraud"); *Foster v. Arata*, 74 Nev. 143,

153-54 (1958) (corporation's execution of an outside contract with one of its officers does not invalidate the contract, but subjects it to a close scrutiny as to the good faith of the deal); *Kruss v. Booth*, 185 Cal.App.4th 699, 710 (2010) (describing NRS 78.140 as addressing "self-dealing"); *In re Sec. Asset Capital Corp.*, 390 B.R. 636, 647-48 (Bankr. D. Minn. 2008) (applying NRS 78.140 to evaluate outside consulting contracts between company and directors).

The RDI Board's termination of Plaintiff clearly falls outside the scope of NRS 78.140. Plaintiff's firing was not a "related party transaction": it was a purely intra-company matter that did not involve a deal between RDI and another entity, or a relationship between RDI and Plaintiff acting outside of his role as an RDI employee. Plaintiff's termination was also not a "related party transaction" with respect to Director Kane or Director Adams (the only two Directors whose "independence" Plaintiff challenges in his motion) since they were not the subject of the decision and they "did not stand on both sides of the transaction or receive any personal financial benefit." *La. Mun. Police Emps.' Ret. Sys. v. Wynn*, No. 2:12-cv-509 JCM, 2014 WL 994616, at *4 (D. Nev. Mar. 13, 2014) (applying Nevada law).

Accordingly, the RDI Board's business decision to remove a divisive, poorly-performing officer is entitled to the Nevada statutory presumption of reasonable business judgment under NRS 78.138(3). *See Nahass*, 2016 WL 4771059, at *5 (questioning how the "entire fairness" doctrine ever "would apply to employment decisions or decisions of non-controlling shareholders," and rejecting fiduciary duty claim by officer terminated by company's directors). Because the business judgment rule applies as a matter of law, and Plaintiff has not even contested the availability of his termination claims under that rule, Plaintiff's motion should be denied and judgment entered against him.

(b) Directors Kane and Adams Were Both "Disinterested" and "Independent"

Even if the disinterestedness and/or independence of RDI's directors could have an impact on whether the business judgment rule applies to the Board's termination of a corporate

officer (which they do not), Directors Kane and Adams were clearly "disinterested" and "independent" with respect to their decisions to support Plaintiff's removal from office.[8]

First, with respect to disinterestedness, Plaintiff's motion misstates the law. Taking two quotations out of context, Plaintiff assumes that a director is "interested" and there is a "conflict of interest" that necessitates Delaware's "entire fairness" test anytime personal considerations might be among the many motivating factors behind a director's decision. (*See* Pl.'s Mem. at 22-23.) But that is not the test for whether there is directorial "interest" in either Delaware or Nevada. Rather, under both Delaware and Nevada law, "interest" is limited to meaning: (1) "directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally"; or (2) "a corporate action will have a materially detrimental impact on a director, but not on the corporation and the stockholders." *Orman v. Cullman*, 794 A.2d 5, 23 (Del. Ch. 2002) (summarizing Delaware law); *In re Amerco Deriv. Litig.*, 127 Nev. at 232 (applying same test); *Wynn*, 2014 WL 994616, at *4 (same).

Plaintiff does not—and cannot—satisfy these requirements. With respect to Director Kane, his only allegation is that Kane "acted as 'Uncle Ed' throughout to effectuate what he thought were JJC, Sr.'s wishes" with respect to the Cotter Voting Trust. (Pl.'s Mem. at 23.) There is no allegation (or evidence) that Kane somehow stood "on both sides of" Plaintiff's termination, or that he engaged in "self-dealing" such that he derived any "personal financial benefit" from Plaintiff's removal. Similarly, with respect to Adams, Plaintiff simply makes the unsupported assertion that he "separately stood to benefit" from Plaintiff's firing "in a manner not shared with other RDI shareholders." (Pl.'s Mem. at 14.) But Plaintiff is unable to identify a

---

[8] The Individual Defendants, for the purposes of this motion, do not contest the disinterestedness or independence of Ellen and Margaret Cotter as RDI directors with respect to Plaintiff's termination. (*See* Ind. Defs.' MSJ No. 2 at 14 n.2.) For the purposes of his motion, Plaintiff also does not contest the fact that Director McEachern "was disinterested and/or independent" (Pl.'s Mem. at 23 n.7)—a concession that Plaintiff had to make given his deposition testimony that McEachern is "independent" and has "no relationship" or "business relationship" with Ellen and/or Margaret Cotter that would lead him to question McEachern's independence. (HD#2 Ex. 7 at 84:21-86:4.)

single financial benefit to Adams resulting from Plaintiff's termination. Adams did not become interim CEO of RDI (instead, he voted for Ellen Cotter to assume that role (HD#1 Ex. 31 at 2)); his contractual financial ties to family entities controlled by Plaintiff and his sisters continued unchanged following Plaintiff's termination (as they had since 2012); and there is no evidence that Adams' ongoing relationship with the Cotter Family Farms or the contractual sums he was owed under his real estate ventures with James J. Cotter, Sr. were ever threatened by Plaintiff. As such, Adams did not have a disabling "interest" in Plaintiff's potential removal.

Second, with respect to independence, Plaintiff must overcome the "presumption that directors are independent," *In re MFW S'holders Litig.*, 67 A.3d 496, 509 (Del. Ch. 2013), and show that Kane and/or Adams are so "beholden" to Ellen and Margaret Cotter "or so under their influence that their discretion would be sterilized." *Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 639 (2006) (same). For the reasons set forth in the Individual Defendants' Motion for Partial Summary Judgment (No. 2) on the Issue of Director Independence, incorporated by reference hereto, Plaintiff cannot make this showing. (*See id.* at 6-10, 15-19, 22-27.) In sum:

- Plaintiff has conceded that director Kane does not have a business relationship with either Ellen or Margaret Cotter that would lead him to question Kane's independence. (HD#2 Ex. 7 at 85:2-5.) The "deep friendship" of which Plaintiff complains with respect to director Kane was actually between Kane and the now-deceased James J. Cotter, Sr.—not between Kane and the Cotter sisters. While Margaret and Ellen Cotter at times have called Kane "Uncle Ed," so has Plaintiff.[9] There is simply no evidence that the outside relationship between Kane and the Cotter sisters is of such "a bias-producing nature" that Kane would be more willing to risk his well-earned reputation rather than jeopardize his relationship with them. Instead, Kane has stressed that he does not "take into account the Cotter children" when evaluating what is best for

---

[9] Of course, as the Supreme Court of Nevada has noted, an actual "uncle/nephew relationship does not establish the parties as members of one another's immediate families" and is considered a "more remote family relationship[]" that is not disqualifying to a director. *See In re Amerco Deriv. Litig.*, 127 Nev. at 232-33.

RDI, and Plaintiff himself "reviewed" and approved materials filed by RDI with the SEC weeks prior to his termination that identified Kane as "independent." (*See* Ind. Defs.' MSJ No. 2 at 6-8, 15-19.) Moreover, Kane did not "extort" Plaintiff into resolving the trust litigation, as Plaintiff incorrectly asserts (Pl.'s Mem. at 25); rather Kane—who gave advice on the matter at Plaintiff's request—supported a negotiated compromise because it would "benefit you and your sisters and allow you to work together going forward," and he was aware that, due to Plaintiff's inadequacies as a CEO, there were sufficient votes to remove Plaintiff absent both the creation of an Executive Committee to oversee Plaintiff and demonstrable progress in Plaintiff's relationship with key RDI executives such as Ellen and Margaret Cotter. (*Supra* Section II(D).)

- The financial ties of which Plaintiff complains with respect to director Adams are clearly insufficient to render him "beholden" to Margaret and Ellen Cotter as a matter of law. There is nothing unusual about the fees that Adams has earned as an RDI director: the amounts paid to him by the Company are consistent with the compensation paid to all other non-employee directors who have spent substantial time in the past two years addressing the deficiencies in Plaintiff's performance as CEO, Plaintiff's ultimate termination, and the various challenges encountered by the Company in its normal course of business and as a result of Plaintiff's baseless personal attacks. To the extent that Adams has ties to certain Cotter family entities outside of his Board service, those dealings originated years before his election to the RDI Board, were the result of dealings with James J. Cotter, Sr. (rather than any of the Cotter siblings), were well-known to Plaintiff (who worked with Adams on some of these outside ventures), and the funds from those ventures are either contractually-owed to him (and thereby immune from present-day pressures) or immaterial to his overall economic situation. Plaintiff has identified no financial reason why Adams would be biased in favor of Margaret and Ellen Cotter and against him. Indeed, Adams is of retirement age, has a substantial net worth, and has been repeatedly found to be "independent" under the NASDAQ standards for the purposes of his general service as an RDI director, including in materials "reviewed" and approved by Plaintiff. (*See* Ind. Defs.' MSJ No. 2 at 8-10, 22-27 & n.7.)

Because there is no reasonable legal basis upon which the presumed disinterestedness or independence of Directors Kane and Adams can be questioned, not only must Plaintiff's summary judgment motion be denied, but judgment as a matter of law should be entered against him, as the business judgment rule applies and definitively acts to bar his termination claims.

3. The Board's Termination of Plaintiff Was Fair

Nevada law does not recognize Delaware's "entire fairness" standard and does not employ a "fairness review" outside of the inapplicable circumstances of NRS 78.140(2)(d), and specifically not for "employment decisions." *See also Nahass*, 2016 WL 4771059, at *5 (questioning whether a "fairness" review of employment decisions would ever be appropriate). Even assuming, *arguendo*, that this Court should evaluate the fairness of the process or decision, no colorable argument can be made that Plaintiff's removal was not "fair" to RDI (which is the actual "derivative plaintiff"). *See* NRS 78.140(2)(d) (a vote involving a transaction with an interested director is not void or voidable simply because of the vote of that director if "the contract or transaction *is fair as to the corporation* at the time it is authorized or approved" (emphasis added)).[10]

First, the process involved in Plaintiff's removal was clearly fair. (*See also* Ind. Defs.' MSJ No. 1 at 21-22.) Prior to formally discussing Plaintiff's removal at any Board meeting, the RDI Board worked cooperatively with Plaintiff over several months in an attempt to rectify and alleviate his many deficiencies, including appointing Director Storey as an "ombudsman" to help coach him. Storey had warned Plaintiff months prior to May 21, 2015 that he faced removal absent significant short-term improvement. Indeed, Plaintiff "knew that his position as CEO was in jeopardy for a longer period of time than just May 21," (HD#1 Ex. 7 at 176:1-9), and was aware that there was "the possibility of getting an interim CEO . . . as early as October 2014." (HD#1 Ex. 11 at 528:9-529:20.) Though it was not required and Plaintiff could be removed "at

---

[10] Because Plaintiff's claim is derivative, the only basis to evaluate "fairness" is fairness to the Company (which Plaintiff ignores). Indeed, the process of Plaintiff's termination under his employment contract is the subject of a separate arbitration proceeding. That said, the facts show that the process was fair to everyone—including Plaintiff.

any time" under RDI's Bylaws (as he recognized (HD#1 Ex. 12 at 705:13-706:9)), the Board gave Plaintiff advance notice on May 19, 2015 that his continued employment was going to be debated at the May 21 Board meeting. Far less notice has routinely been found "fair."[11]

Once the formal Board review process began, there was no "kangaroo court," as Plaintiff misleadingly claims. (Pl.'s Mem. at 27.) Rather, the Board took the advice of Storey and Gould, engaged outside counsel to assist it in its fiduciary duties, and rigorously debated the merits of Plaintiff's termination in three different Board meetings held over a three-week period that lasted a combined 13 hours. The Board gave Plaintiff the opportunity to speak "at length" regarding his tenure, and the chance to present a business plan (which he was unable to do). His response was an appeal to nepotism (*see* HD#1 Ex. 30 at 3 (plaintiff asserting "that it was the intention of his father . . . that he run the Company and the Board should observe his wishes") and an attempt to intimidate the Board by threatening to "ruin them financially" if RDI's directors challenged his entrenchment. (HD#1 Ex. 3 at 426:19-427:9.) The Board properly deferred a final termination decision when it appeared that Plaintiff agreed to a revised management structure, which would have created oversight over his responsibilities and had the potential to end his adversarial relationship with his sisters, who were key RDI employees and also sat on the Board. And the Board gave Plaintiff three separate chances to stay on as President under a new CEO so that he could better learn the business and gain the management skills he so sorely lacked. The extensive review process utilized by the Board went far above any "fair procedure" requirement.

Second, the decision to terminate Plaintiff was unquestionably fair on the merits. (*See* Ind. Defs.' MSJ No. 1 at 18-20). With respect to Plaintiff, the Board faced a CEO that was "young," chosen on "short notice," and lacked significant hands-on experience in numerous, highly-relevant business areas. RDI's Board and stockholders recognized that "nepotism" may

---

[11] *See Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043-44 (Del. 2014) (rejecting claim that CEO's firing was improper because of lack of agenda item giving advance notice); *OptimisCorp. v. Waite*, C.A. No. 8773-VCP, 2015 WL 5147038, at *66-67 (Del. Ch. Aug. 26, 2015) (rejecting argument that directors "breached their duty of loyalty by not advising [CEO] in advance of his potential termination"); 2 Fletcher Cyc. Corp. § 357.20 (2015) (board's failure to give CEO advance notice of removal plan does "not invalidate his termination").

have benefitted Plaintiff in his selection as CEO, but all hoped that he could grow into the role and develop on the job. Within two to three months, the Board saw that Plaintiff needed help, which it attempted to provide. But Plaintiff had significant weaknesses: he could not work well with certain key executives, and some Board members came to believe that he was more interested in undermining central figures within the Company rather than in addressing pending issues; he acted—or was perceived to act—in a manner that was violent and abusive to employees and fellow Board members; and he demonstrated a lack of understanding with respect to metrics critical to evaluating RDI's businesses.

Plaintiff's insinuation that his termination was somehow "improper" because he was fired after he ultimately declined to settle the Cotter trust litigation is baseless. (Pl.'s Mem. at 27.) The Board's support for and consideration of a potential deal between the Cotter siblings was far from "extortion"; rather, the accord made business sense because it could have (1) alleviated the admitted "dysfunction" and "thermonuclear' hostility" within the management ranks that was clearly affecting the Company and stockholder value; and (2) rectified some of the otherwise-terminal problems in Plaintiff's CEO tenure, while also providing him a structure within which to grow and gain experience. Once that agreement fell through, the Board was left with the same intractable problems as before. Given that it was faced with a CEO that could not perform adequately, lacked experience and expertise, required close supervision, did not process the requisite leadership skills, and could not work well with various directors or executives, the Board's decision to terminate Plaintiff on June 12, 2015 was objectively fair. Plaintiff's motion should therefore be denied, and judgment entered against him on his termination claims.

4. Plaintiff Cannot Show That His Termination Involved Intentional Misconduct, Fraud, or a Knowing Violation of the Law

Even if Plaintiff's termination was somehow unfair (it was not), another independent reason to deny Plaintiff's motion is that the Individual Defendants are statutorily immune from individual liability where, as here, any "breach" did not involve intentional misconduct, fraud, or a knowing violation of law. Under Nevada law, "directors and officers may only be found personally liable for breaching their fiduciary duty of loyalty if that breach involves intentional

misconduct, fraud, or a knowing violation of the law." *Shoen*, 122 Nev. at 640 (citing NRS 78.138(7)); *see also In re AgFeed USA, LLC*, 546 B.R. 318, 330-31 (Bankr. D. Del. 2016) (citing *Shoen* and concluding that "the second cause of action fail[ed] to state a claim for breach of the duty of loyalty because the complaint [fell] well short of alleging intentional misconduct, fraud, or a knowing violation of the law."). "As for the terms *knowing violation* and *intentional misconduct*," "both require knowledge that the conduct was wrongful." *In re ZAGG Inc. S'holder Deriv. Action*, No. 15-4001, 2016 WL 3389776, at *7, 11 (10th Cir. June 20, 2016).

Plaintiff again completely avoids any mention—let alone discussion—of NRS 78.138(7) in his motion. This is not surprising. There can be no "knowing violation" or "intentional misconduct" where the RDI Board weighed the propriety of Plaintiff's termination over several meetings, considered his attempted defense of his tenure, engaged outside counsel to assist it in exercising its fiduciary duties, and articulated a wide variety of business-specific reasons motivating its removal decision. Even the directors that voted not to terminate Plaintiff on June 12, 2015 recognized significant problems with his performance, and objected more to the timing of his removal than to the underlying basis. (*See* Ind. Defs.' MSJ No. 1 at 8-12, 19.) Plaintiff has not identified a single case anywhere in which directors have been held liable for breaching their fiduciary duties in the context of an employee termination, let alone under the strict requirements set forth in NRS 78.138(7). Because Plaintiff has not attempted to (and cannot) meet the showing required under NRS 78.138(7) to establish individual liability, his motion must be denied and judgment entered in favor of the Individual Defendants.

D. <u>Plaintiff's Reinstatement Demand Is Unsupportable and Untenable</u>

Even if the Board's removal of Plaintiff somehow constituted a breach of fiduciary duty, the relief sought by Plaintiff—an order that his termination "was and is of no legal force and effect" and full reinstatement (Pl.'s Mem. at 28)—is both unsupportable and untenable. Plaintiff has not identified a single case in any jurisdiction in which the firing of a corporate officer was reversed following a breach of fiduciary duty claim. Indeed, in *Kendall v. Henry Mountain Mines, Inc.*, 78 Nev. 408 (1962), the only Nevada case that Plaintiff cites for the general proposition that a conflict of interest can result in the voiding of a transaction, the court noted

that transactions involving a conflict of interest "are not absolutely void" and "are only voidable at the instance of the corporation . . . or its stockholders," who can "elect to confirm a transaction which could have been repudiated." *Id.* at 410-11. Thus, even if the decision to terminate Plaintiff was "voidable," RDI as a corporation (and Ellen and Margaret Cotter, who control a majority of its voting shares) could simply elect to "confirm" his firing. Indeed, the court in *Kendall* refused to void the challenged transaction at issue in that case.

For the reasons set forth in detail in the Individual Defendants' Motion for Summary Judgment (No. 1), Plaintiff's attempt to achieve, via this derivative action, a reinstatement remedy beyond what is available under his Employment Contract fails because: (1) equity will not assume jurisdiction for the purpose of reinstating a removed officer; (2) Plaintiff's remedy at law is adequate; (3) there are strong policy reasons against compelling a company to retain an employee against its wishes; (4) Plaintiff could simply be re-terminated if reinstated, as he has no vested right to the positions he seeks; (5) the fact that over 15 months have passed since Plaintiff's termination (far longer than he served as CEO) counsels against his reinstatement; and (6) reinstatement is not proper here given the irreparable animosity between the parties. (*See* Ind. Defs.' MSJ No. 1 at 28-30.) Accordingly, to the extent that Plaintiff's partial summary judgment seeks to void his termination and obtain reinstatement, it also fails as a matter of law.

///

///

///

///

///

///

///

///

///

IV. CONCLUSION

For the foregoing reasons, the Individual Defendants respectfully request that the Court deny Plaintiff James J. Cotter Jr.'s Motion for Partial Summary Judgment and grant both their Motion for Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims and their Motion for Partial Summary Judgment (No. 2) re: the Issue of Director Independence.

Dated: October 13, 2016

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400

QUINN EMANUEL URQUHART & SULLIVAN, LLP
CHRISTOPHER TAYBACK, ESQ.
California Bar No. 145532, *pro hac vice*
christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, and Edward Kane

DECLARATION OF COUNSEL NOAH S. HELPERN IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF JAMES J. COTTER, JR.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Noah Helpern, state and declare as follows:

1. I am a member of the Bar of the State of California, and am an attorney with the law firm of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), attorneys for the Individual Defendants. I make this declaration based upon personal, firsthand knowledge, except where stated to be on information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this Declaration, I am legally competent to testify to its contents in a court of law.

2. Attached hereto as Exhibit 1 is a true and correct copy of transcript excerpts from the deposition of Timothy Storey, taken on February 12, 2016.

3. Attached hereto as Exhibit 2 is a true and correct copy of transcript excerpts from the deposition of Timothy Storey, taken on August 3, 2016.

4. Attached hereto as Exhibit 3 is a true and correct copy of transcript excerpts from the deposition of Guy Adams, taken on April 28, 2016.

5. Attached hereto as Exhibit 4 is a true and correct copy of transcript excerpts from the deposition of Guy Adams, taken on April 29, 2016.

6. Attached hereto as Exhibit 5 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on May 2, 2016.

7. Attached hereto as Exhibit 6 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on May 3, 2016.

8. Attached hereto as Exhibit 7 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on June 9, 2016.

9. Attached hereto as Exhibit 8 is a true and correct copy of transcript excerpts from the deposition of Ellen Cotter, taken on May 18, 2016.

10. Attached hereto as Exhibit 9 is a true and correct copy of transcript excerpts from the deposition of Ellen Cotter, taken on June 16, 2016.

11. Attached hereto as Exhibit 10 is a true and correct copy of transcript excerpts from the deposition of William Gould, taken on June 8, 2016.

12. Attached hereto as Exhibit 11 is a true and correct copy of an email from Ellen Cotter to Guy Adams, Timothy Storey, and William Gould re: "Corporate Framework Notes," dated October 14, 2014, previously marked as Exhibit 61 during Guy Adams' deposition.

13. Attached hereto as Exhibit 12 is a true and correct copy of an email from Edward Kane to Guy Adams, dated May 18, 2015, previously marked as Exhibit 81 during Guy Adams' deposition.

14. Attached hereto as Exhibit 13 is a true and correct copy of an email from Timothy Storey to Edward Kane, William Gould, Guy Adams, Ellen Cotter, Margaret Cotter, Douglas McEachern, and Plaintiff, dated May 19, 2015, previously marked as Exhibit 116 during Edward Kane's deposition.

15. Attached hereto as Exhibit 14 is a true and correct copy of an email from Timothy Storey to Douglas McEachern re: "Reading," dated May 20, 2015, previously marked as Exhibit 131 during Douglas McEachern's deposition.

16. Attached hereto as Exhibit 15 is a true and correct copy of an email chain that includes emails from Plaintiff, Edward Kane, and Margaret Cotter re: "Confidential," dated May 28, 2015, previously marked as Exhibit 305 during Edward Kane's deposition.

17. Attached hereto as Exhibit 16 is a true and correct copy of a draft "Confidential Settlement Memo of Understanding," dated June 3, 2015, previously marked as Exhibit 167 during Margaret Cotter's deposition.

18. Attached hereto as Exhibit 17 is a true and correct copy of an email from Edward Kane to Plaintiff, dated June 11, 2015, previously marked as Exhibit 306 during Edward Kane's deposition.

19. Attached hereto as Exhibit 18 is a true and correct copy of an email from Plaintiff to Edward Kane, dated May 22, 2015, previously marked as Exhibit 402 during Plaintiff's deposition.

20. This declaration is made in good faith and not for the purpose of delay.

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

Executed on the 13th day of October, 2016, in Los Angeles, California.

/s/ *Noah Helpern*
Noah Helpern

CERTIFICATE OF SERVICE

I hereby certify that, on October 13, 2016, I caused a true and correct copy of the foregoing **INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF JAMES J. COTTER, JR.'S MOTION FOR SUMMARY JUDGMENT** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ *Sarah Gondek*
An employee of Cohen|Johnson|Parker|Edwards

EXHIBIT 1

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	No. A-15-719860-B Coordinated with: P-14-082942-E

DEPOSITION OF TIMOTHY STOREY, a defendant herein, noticed by LEWIS ROCA ROTHGERBER CHRISTIE LLP, at 1453 Third Street Promenade, Santa Monica, California, at 9:28 a.m., on Friday, February 12, 2016, before Teckla T. Hollins, CSR 13125.

Job Number 291961

and the first full paragraph there, you see it talks about, "We would look to review his progress as CEO in June"?

A. Yes.

Q. And that was your understanding as to what had been agreed previously in connection with the work you were doing as ombudsman; correct?

A. Yes.

Q. Going down two paragraphs, there's a short paragraph that said, "This is a matter of urgency. I, for one, don't want to take part in a kangaroo court or what might appear to be a kangaroo court." Do you see that?

A. I do.

Q. Was that your way of communicating to the recipients of this e-mail that you thought the process had been inadequate?

MR. SEARCY: Objection. Vague. Assumes facts. Lacks foundation.

THE WITNESS: It was a comment of my view that we needed to do things properly in my view and, as I said earlier, define and address the issue, discuss it, and come to a conclusion.

MR. KRUM:

Q. Okay.

A. Separate battle to the merits of the issue.

Q. And did any of Messrs. Adams, McEachern and Kane ever tell you what process, if any, they went through to determine to vote to terminate Jim Cotter, Jr. as president and CEO?

A. I don't recollect.

Q. And the next paragraph, you say, "To be clear, my concern here is that we act with appropriate procedure." Is that the same notion that you're suggesting to them that a proper procedure and process has to be undertaken independent of the merits in the decision making?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yes.

MR. KRUM:

Q. Directing your attention to the top of the second page of Plaintiff's Exhibit 25, that's the page bearing production number 364 in the lower left, do you see the May 20, 3:40 p.m. e-mail reply by Mr. Kane to you?

A. Yes.

Q. Do you see where it says, quote, "We have heard from Nevada counsel via those memos," closed quote?

A. Yes.

Q. What's your understanding as to what memo or

EXHIBIT 2

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, VS. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF TIMOTHY STOREY

Wednesday, August 3, 2016

Wednesday, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

Job No.: 323867

T2 PARTNERS MANAGEMENT, LP., a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al.,

Plaintiff,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of TIMOTHY STOREY taken on behalf of Plaintiff, at 3993 Howard Hughes parkway, Suite 600, Las Vegas, California, beginning at 9:39 a.m. and ending at 12:19 p.m., on Wednesday, August 3, 2016, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

Mr. McEachern express any views to you with respect to the progress or lack of progress arising from those discussions?

A. I think he was happy with the process. I think, you know, they, like me as well, were somewhat frustrated that it would take time, but it was expected to take time. We were dealing with difficult issues, potentially difficult issues, which needed to be drawn out and discussed.

Q. What were those issues?

A. I'm sure there are a whole lot of issues. But the ones that spring to mind immediately were predominantly around the employment status or otherwise of Ellen and Margaret Cotter; and also -- I'm going from memory, I think around the request that we put in place business plans and budgets for the business for each of the divisions; and then, also from memory, around reporting lines and the process for which plans and budgets would be adopted and had to be reported upon.

Q. What were the issues regarding the employment status or otherwise for Ellen Cotter?

A. Ellen Cotter did not have a formal employment contract, and sometime earlier we put in place -- a formal employment contract being in

place for Jim Cotter, Jr. And she wanted a -- or looked for a formal employment contract.

Secondly, I think that there was a discussion around what her role actually was. I think her designation was Vice President of U.S. Cinemas, and Bob Smerling, who was in his 80s, was nominally president, and I think there was a view around how best to describe or how Ellen should be described. Talked about the issues around employment, and also, of course, issues around remuneration and the fact that she felt that she was underpaid, given the job that she was doing and had been for some time.

Q. What were the issues regarding the employment or lack of employment status for Margaret Cotter?

A. As it became clearer, Margaret was, in fact, in my view, not employed by the company, but was, in fact, providing services to the company through a company called "Liberty." So Liberty had a contract to manage the live theaters on behalf of Reading, and she was remunerated through that. So on analysis, it became clear that she wasn't employed by the -- by the company.

THE REPORTER: She was or wasn't?

EXHIBIT 3

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	)	Case No. A-15-719860-B Case No. P-14-082942-E Related and Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B P-14-082942-E
T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al., Plaintiffs, vs. MARGARET COTTER, ELLEN COTTER, GUY WILLIAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

time?

A. I strongly suspected she had spoken with Ed Kane.

Q. And had either you or Ed Kane spoken to Doug McEachern about that?

A. I haven't, no. I don't know if Ed did.

Q. Okay. When was the first time you spoke with Doug McEachern about either terminating Jim Junior as CEO or about a subject of -- the subject of an interim CEO?

A. That I talked to McEachern? I would say it was maybe -- again, I can only approximately guess. Maybe two weeks before the meeting.

Q. And you're referring to the May 18th -- May 21st meeting, it was, wasn't it?

A. Yes. I don't know the exact date, but yeah.

Q. So what else did Ellen say and what else did you say during this approximate hour-plus breakfast meeting?

A. My recollection, we talked about Jim Junior and the CEO position, and Ellen, I guess, talked to other people because she was feeling that there was support for Jim Junior to be removed.

Q. What did she say that caused you to

conclude she had talked to other people about Jim Junior being removed?

A. I don't know specifically what she said. Maybe it was innuendos that she maybe talked to McEachern, maybe. But it wasn't specific.

Q. Did you ever learn after the fact whether that was the case?

A. Considering McEachern, when I did call him, like two weeks before the vote, he said he was on board with that. I suspect she called and talked to him. I sure didn't. So I suspect -- I suspect she did or maybe Ed Kane did. I don't know.

Q. What else, if anything, did you discuss with Ellen Cotter at the breakfast meeting at the Peninsula in April?

A. Nothing further that I can remember at this time.

Q. What, if anything, did she say about why she wanted Jim Junior removed as CEO?

A. I think she felt he wasn't doing an adequate job as CEO.

Q. Excuse me. My question is, what did she say?

A. What did she say about -- I'm sorry.

EXHIBIT 4

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	)	Case No. A-15-719860-B Case No. P-14-082942-E Related and Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

FRIDAY, APRIL 29, 2016

VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER 305149

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B P-14-082942-E
T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al., Plaintiffs, vs. MARGARET COTTER, ELLEN COTTER, GUY WILLIAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

(Exhibit 82 was marked for identification.)

THE WITNESS: Yes, I remember this.

BY MR. KRUM:

Q. You recognize Exhibit 82?

A. Yes.

Q. This is an email exchange you had with Mr. Kane on May 18 and 19?

A. Yes.

Q. During the telephone conversation you had with him on May -- Sunday or Monday, May 17 or 18, did the two of you discuss other motions?

A. Evidently not.

Q. What was your understanding as of the date of -- as of May 18 and 19, what the other motions were or might be?

A. Well, there were like two other motions. One was the removal of Jim Junior as CEO and president. Another motion -- there were three motions. One of them was to -- if you remove the CEO, you have to appoint an interim CEO. And there was a third motion which, I apologize, for the life of me, I can't remember what it is. There must be a board agenda or something with those items.

Q. The subject of interim CEO, where did

that stand as of May 19th?

A. Ellen, Margaret and Ed and Doug McEachern were of the opinion, yes, on an interim basis.

Q. Yes what?

A. Yes to Guy Adams being the interim CEO on a short-term basis.

Q. What about Ed Kane?

A. As interim?

Q. Okay. I'm sorry.

So how did you know that each of Ellen, Margaret, Ed Kane and Doug McEachern were agreeable to you being appointed CEO on an interim -- interim CEO or a short-term basis?

MR. TAYBACK: Objection to the extent it's asked and answered.

You can answer.

THE WITNESS: My recollection -- and I can't remember if it was Ellen or Ed Kane -- one of them told me and I followed up with a phone call to Doug McEachern to confirm it. So that's how I knew.

BY MR. KRUM:

Q. Okay. When did you have the follow-up phone call with Doug McEachern?

A. Help me -- what was the date of the meeting, that meeting? We're up to May 19. What

was the date of the meeting?

Q. I think it was May 21st.

A. 21st?

Q. Yes.

A. I called Doug either one or two days before the meeting.

Q. What did you say and what did he say?

A. I said, I understand you're going to vote for the removal of Jim Junior. He said yes. And I said, Are you comfortable with me being interim CEO for a short duration? He said yes. And I said, Okay. I'll see you in Los Angeles.

Q. That was it?

A. That was pretty much it.

Q. When did you first come to understand that Mr. McEachern had agreed or determined to vote to remove Jim Cotter Junior as president and CEO?

A. Again, either Ellen or Ed Kane informed me of that.

Q. When?

A. I'm not sure. Maybe -- I mean, I could guess.

Q. Well, if you would --

A. It was prior to this date.

Q. If you would do this, Mr. Adams, I don't

want you to guess a date but if you can put it in context or sequence of time or point of reference to a date we can -- an event we can date.

A. My recollection would be two weeks, three weeks before May 19th.

Q. And at that point in time, it was either Ellen Cotter or Ed Kane who told you that Doug McEachern had --

A. Yes, I didn't have conversations with Ed about it.

Q. I'm sorry. Let me finish.

So you learned that McEachern --

A. I apologize.

Q. No, it's okay. It happens. I've done it, too.

You were told by one or the other of Ellen Cotter or Ed Kane that Doug McEachern had determined to vote to terminate Jim Cotter Junior as president and CEO; correct?

A. Yes.

Q. And as you sit here today, do you recall if it was Ellen Cotter or Ed Kane who told you that?

A. It may have been both.

Q. And do you recall that as happening in a

single conversation with the two of them or separate conversations --

A. Separate.

Q. -- with each?

A. Separate conversation with each, yes.

Q. Okay. So as best you can recall, in the conversation with Ellen, was that in person or telephonic?

A. Ellen, could have been in person.

Q. Okay. And what did she say and what did you say?

A. I said, Well, if we're going to go through this stress of replacing a CEO, it's a very weighty decision. Before you have a board meeting call, you better make sure there are people that think like you do to remove him.

Q. To remove Jim Junior as president and CEO?

A. Yes.

Q. What was her response?

A. Well, she said, Well, Ed's going to vote, you're going to vote and I'm talking to Doug McEachern tomorrow. I talked to him earlier last week, or something like that. So she was clearly talking to him.

Q. Okay. And so you understood her to communicate that her expectation was that Doug McEachern also was going to agree to vote or had indicated that he might agree or would agree?

A. Yes.

Q. What exactly was your takeaway from that conversation?

A. That she felt that Doug McEachern would vote to remove Jim Junior. And I had -- I don't remember a specific but I had a notion there was another phone call in which she was talking to him again to reconfirm it.

Q. And directing your attention, Mr. Adams, to your conversation with Ed Kane in which he communicated to you his understanding that Mr. McEachern had agreed to vote to terminate Jim Cotter Junior as president and CEO --

A. Yes.

Q. -- what did Mr. McEachern say and what did you say?

A. You mean what did Mr. Kane --

Q. Thank you.

What did Mr. Kane say and what did you say?

A. He said, I'll talk to Doug and something

to the effect he's on board or sees things the way we do, something to that effect.

Q. Now, you haven't mentioned Margaret.

A. Yes.

Q. Was it your understanding that Margaret was prepared to vote to terminate Jim Cotter Junior as president and CEO?

A. Yes.

Q. And did that understanding develop sometime in the fall of 2014?

MR. TAYBACK: Objection; assumes facts.

You can answer.

THE WITNESS: No, not to my knowledge.

BY MR. KRUM:

Q. When did you come to understand that Margaret Cotter was prepared to vote to terminate Jim Cotter Junior as president and CEO?

A. When they asked me to be interim CEO, and what I didn't want was Ellen to want me, and if we terminated Jim Junior, he wouldn't be my friend anymore, and if Margaret didn't want me to be it -- I wanted to make sure they were both on board.

And when he said, Oh, Margaret and I both want you to be interim CEO, I said, Okay, here are the three conditions. When Margaret said that, I

was of the opinion that Margaret would vote to terminate Jim Junior.

MR. TAYBACK: I think he misspoke. I think he meant Ellen when he said Margaret, but maybe not.

MR. KRUM: Well, let me go through this.

Q. Directing your attention, Mr. Adams, to the telephonic -- strike that.

Directing your attention to the conversation you had with Ellen Cotter in which she inquired if would serve as interim CEO and you indicated that you would, subject to the three conditions you described, do you have that in mind?

A. Yes, sir.

Q. During that conversation, did Ellen Cotter indicate to you that she was asking on her behalf and Margaret's behalf?

A. Yes, sir.

Q. And as best you can recall, what did she say in that respect?

A. Margaret and I would both like you to be interim CEO.

Q. Now, in that conversation with Ellen Cotter about which you're testifying presently, did either of you talk about a process to search for a permanent CEO?

EXHIBIT 5

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E

DEPOSITION OF: EDWARD KANE

TAKEN ON: MAY 2, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

Cotter, Jr.

But I know there were other emails.

Q. And what communications did you have with Jim Cotter, Jr., regarding a resolution with his sisters during the time frame commencing with the supposed board meeting of May 20, 2015, through the supposed board meeting of June 12, 2015?

MR. SEARCY: Objection. Argumentative.

THE WITNESS: I was told that -- and it may have been by one of the Cotter sisters, that -- and in fact at a meeting, one of the last meetings we had, my recollection is Bill Gould suggested that Jim take the title of president, giving up the C.E.O. He refused.

Then Margaret Cotter -- and that may have been the May 29th -- said, "No. Keep the title of C.E.O., and we'll have a committee, executive committee, Margaret, Ellen, Jimmy" -- and initially they said Guy Adams -- and he would keep the title because it was important to him.

And I communicated with him. He -- usually my communications were not me advising. It was him asking my advice or they'd ask my advice. I didn't want to lecture them and tell them what to do.

I -- I said to him at one point, "Take it. You have nothing to lose. You're going to get terminated if you don't. If you can work it out with your sisters, it will go on and I will support you. I'll even make a motion to see if the company will reimburse the legal fees."

I did not want him to go.

And you, I'm sure, see emails in there to that effect. Even though I voted -- was voting against him, I wanted him to stay as C.E.O.

BY MR. KRUM:

Q. If you wanted him to stay as C.E.O. --

A. Right.

Q. -- why did you vote against him?

A. Because I wanted him to stay as C.E.O., working with his sisters who were work -- willing to work with him for the benefit of the company.

And to me it was a wonderful solution, and it had no adverse impact. If it didn't work out, then we would deal with it. But he would work with them and -- as an executive committee.

He told me that he didn't want Guy Adams on there. And I told him, "I'll do my best to make sure that he isn't on that; just you and your sisters."

And if they could work together, that's all we wanted.

Q. Are you drawing a distinction, Mr. Kane, between Ellen and Margaret working with Jim Cotter, Jr., as distinct from working for him?

MR. SEARCY: Objection. Vague.

THE WITNESS: I don't think I ever made that distinction, but I think he would glean and learn a lot working with them.

After all they were the operating executives of this company.

BY MR. KRUM:

Q. And did you understand that -- strike that.

But that resolution did not come to pass because Jim Cotter, Jr., rejected it, correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: He rejected it, yes.

(Whereupon Ms. Bannett left the deposition proceedings at this time.)

BY MR. KRUM:

Q. And he got himself terminated, right?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yes.

EXHIBIT 6

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E

VIDEOTAPED DEPOSITION OF EDWARD KANE

TAKEN ON MAY 3, 2016

VOLUME 2

Job no. 305191

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

terminate Mr. Cotter.

Q. Okay. Does that refresh your recollection that no later than May 18, 2015, you agreed to vote to terminate Mr. Cotter as president and C.E.O.?

MR. SEARCY: Objection. Misstates testimony.

THE WITNESS: No.

BY MR. KRUM:

Q. Okay. The next sentence says, quote, "If the vote is five/three, I might wants to abstain and make it four/three," period.

It continues, quote, "If it's needed, I will vote," period, close quote.

You see those two sentences?

A. Yes.

Q. What is it you're agreeing to vote if it's needed?

A. If it came to the point that we would vote to terminate him, I didn't want to vote to terminate him.

But I obviously had not made up my mind, because I wouldn't have invited him to come down to

my house and talk about how he could stay.

Q. Well, Mr. Kane, when you --

A. Yes.

Q. -- said to Mr. Adams in Exhibit 81 on May 18th --

A. Yes.

Q. -- quote,

"If the vote is five/three I may want to abstain and make it four/three. If it's needed, I will vote," period, close quote.

A. Yes.

Q. Is that not telling Mr. Adams that if your vote is required to carry the vote to terminate James Cotter, Jr., as president and C.E.O. of RDI, that you would cast that vote to terminate him?

A. If there were a motion to do so and there were no other way of getting him to work with his sisters, I would have.

But I don't think Mr. Adams -- or at least my recollection is it would -- it hadn't got to that point on May 18th.

Q. Well, I direct your attention, Mr. Kane, to the last sentence of Exhibit 81 --

A. Uh-huh.

Q. And I direct your attention to the last sentence of your email reply above it. That sentence reads, quote,

"The dye is cast and we will meet as a full board. And if you don't like it, don't show up," close quote.

Do you see that?

A. Yes.

Q. Were you telling him that the outcome of the vote on the question of whether to terminate Jim Cotter, Jr., as president and C.E.O. had already been set and that what remained was to show up, vote and be done with it?

MR. SEARCY: Objection. Argumentative, vague.

THE WITNESS: No. I think I was referring to the agenda --

BY MR. KRUM:

Q. So, when --

A. -- that was cast.

Q. When you're said "the dye is cast," you're referring simply to the agenda?

A. We have a meeting and an agenda. And that's enough.

MR. SEARCY: Objection. Vague.

THE WITNESS: That -- that's his position, yes.

BY MR. KRUM:

Q. Okay. And were you respond -- you were responding to that position with which you disagreed when you said "the die is cast," correct?

MR. SEARCY: Objection. Argumentative, misstates the document and testimony.

THE WITNESS: To me that meant the agenda is set, and that's what we'll discuss, and I see no reason to have a meeting beforehand.

BY MR. KRUM:

Q. Okay. Do you recall that the supposed board of directors meeting on May 21st concluded without a resolution of the question of whether Jim Cotter, Jr., would be terminated as president and C.E.O.?

A. Sir, we had several meetings at that point. I can't in my mind figure out when we did A and when we did B or C.

I do know we had meetings and there was adjournment and a meeting just with Mr. Cotter and his sisters. He asked me to participate in that meeting. I refused to do so.

EXHIBIT 7

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E

VIDEOTAPED DEPOSITION OF EDWARD KANE

TAKEN ON JUNE 9, 2016

VOLUME 3

Job No.: 315759

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

there's a sentence in the middle of it --

A. Uh-huh.

Q. -- that reads as follows, quote,

"If it is take it or leave it, then I strongly advise you to take it."

And the words "I strongly advise you to take it" are all caps.

Do you see that?

A. Yes.

Q. Why was that?

MR. SEARCY: Objection.

BY MR. KRUM:

Q. I mean why did you so advise Mr. Cotter?

A. I was looking out for his interests. I felt that if he didn't take what they offered, and leaving him as C.E.O. was a big concession, that he would be terminated; that there were votes there to terminate him. And I didn't want him to be terminated.

And I felt that if he could retain his title and work with his sisters for -- for a period of time on an equal footing, a lot of the issues would disappear.

And in the long run the stock goes to the kids anyway.

Q. The kids being the grandkids?

A. His kids and Margaret's kids.

Q. His being Jim Cotter, Jr.?

A. Uh-huh.

Q. You need to answer audibly.

A. Yes. Yes.

Q. Okay. Thank you.

A. Yes.

Q. As of the time you sent this email, approximately 2:00 P.M. on May 28, 2015, did you know that one of the terms of the proposal was that Jim Cotter, Jr., agree that Margaret would be the sole trustee of the voting trust that voted the RDI class B voting stock?

A. I don't --

MR. SEARCY: Objection. Vague, lacks foundation.

THE WITNESS: Sorry.

MR. SEARCY: It's all right. Go ahead.

THE WITNESS: I don't think I knew that. I didn't want to know it.

BY MR. KRUM:

Q. Did you subsequently learn that?

A. I don't think I did.

Q. Does that surprise you that that was a

EXHIBIT 8

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E

VIDEOTAPED DEPOSITION OF ELLEN COTTER

TAKEN ON MAY 18, 2016

VOLUME 1

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

seek to report to an executive committee of the RDI board of directors rather than to report to your brother Jim as C.E.O.?

A. I don't remember exactly when that request was developed, but it was sometime during the fourth quarter of 2014.

Q. How did it come to pass that you developed that request?

A. We were having issues with Jim, and we wanted to figure out a way to have a structure in place that would be almost transitional that would help us work together so that we could work through any issues that we would have.

Q. Prior to your father's resignation as C.E.O., to whom had you reported during the time you had been an executive at RDI?

A. Jim was the president at the time. My father was the chairman and C.E.O. So, technically I probably reported to Jim; or probably technically to Bob.

But we never operated that way.

Q. Was the way you operated since 2000 and up to the point when your father resigned as C.E.O. that you reported to him?

MR. SEARCY: Objection. Vague.

EXHIBIT 9

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Index No. A-15-179860-B
READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

VIDEOTAPED DEPOSITION OF ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

MR. TAYBACK: Objection. Asked and answered.

A No.

Q So when you use the same phraseology status to refer to the president and CEO in Item 1 as you use to refer to Craig Tomkins and Robert Smerling in Item 6, and yourself and Margaret Cotter in Item 7, were you attempting to obscure or conceal the fact that Item 1 was actually about terminating Jim Cotter as president and CEO?

MR. TAYBACK: Objection; argumentative, compound.

You can answer.

A I mean, there was no intention on my part to deceive anybody.

Q Well, in point of fact, prior to distributing Exhibit 338, you already had had discussions with Ed Kane, Guy Adams, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as president and CEO, correct?

A Prior to this meeting we did have discussions about whether Jim would remain as the CEO and president.

Q Well, you had discussions with each of -- Guy Adams, Ed Kane, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as CEO prior to distributing Exhibit 338 on May 19th, correct?

MR. TAYBACK: Objection. Asked and answered.

A Yes.

Q You had no such discussions with Tim Storey, correct?

A I did have discussions with Tim Storey.

Q What discussions did you have with Tim Storey and when did you have them?

A I had had discussions with Tim Storey about Jim and his performance.

Q Okay. The question is: What discussions did you have with Tim Storey, if any, prior to distributing Exhibit 338 on May 19, 2015, about terminating Jim Cotter, Jr. as president and CEO?

A I don't remember the specific discussion that I had with Tim.

Q Did you have any conversation with Tim Storey prior to distributing Exhibit 338 on May 19, 2015, in which the subject of

terminating Jim Cotter, Jr. as president and CEO of RDI was discussed?

A Prior to this agenda being sent out, Tim and I had had discussions about whether Jim would continue as CEO and president.

Q What discussion did you have with Tim Storey in that regard, and when did they occur?

A I don't remember the specific conversation, but I remember Tim taking the position that he -- he understood that Jim was inexperienced and it wasn't -- Jim's position would be under review and under evaluation.

Q When did you have that discussion?

A As I said, I don't remember.

Q Was it in person?

A I probably did have -- Tim came to Los Angeles a lot. I probably did have some of these discussions in person.

Q What is it that you said during that discussion or those discussions with respect to the subject of Jim Cotter, Jr. continuing as president and CEO or being terminated?

A I don't remember the specifics of the discussion.

Q Do you remember, generally, anything you said, if anything, with respect to Jim Cotter, Jr. continuing as president and CEO or being terminated?

MR. TAYBACK: To Mr. Storey?

MR. KRUM: Yes, thank you.

A I remember having conversations with Tim about whether Jim was the right person to lead Reading.

THE VIDEOGRAPHER: Counsel, I have less than five minutes left on this DVD.

Q Anything else?

A I don't remember the specifics.

Q What discussions did you have with Bill Gould, if any, prior to distributing Exhibit 338 on May 19 about terminating Jim Cotter, Jr. as president and CEO?

A My conversations with Bill would have been similar to what they were with Tim, questioning whether Jim was the right person to lead Reading.

Q As you sit here today, do you recall actually having had such conversation or conversations with Bill Gould?

A I do recall having conversations with

Bill Gould about it.

Q Was anyone else present?

A We had a meeting -- my sister and I had a meeting with Tim Storey and Bill Gould at his office where we discussed Jim's performance.

Q When was that?

A I don't remember when it was.

Q Do you recall that Tim Storey and Bill Gould met separately with Jim on the one hand, and either separately with Ellen and Margaret or together with the two of you at Bill Gould's office in March 2015?

A Yes.

Q And do you recall what followed from that was that Tim Storey assumed the role of ombudsman?

A Well, that's eventually what -- what transpired.

MR. KRUM: I'll ask the court reporter to mark as Exhibit 339, what purports to be a May 16th e-mail from Ellen Cotter to -- at her Reading address to her private e-mail address.

(Deposition Exhibit 339, E-mail dated May 16, 2015, from Ellen Cotter to nelle1438@gmail.com, marked for identification

EXHIBIT 10

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E

VIDEOTAPED DEPOSITION OF WILLIAM GOULD

TAKEN ON JUNE 8, 2016

VOLUME 1

JOB NUMBER 315485

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

A. Yes.

Q. Do you recall when you first heard or learned that?

A. Early in 2015, my recollection.

Q. Did you ever hear or learn or were you ever told that Margaret Cotter wanted to become an employee of RDI?

A. Yes.

Q. When did you first hear or learn that?

A. Same period.

Q. And did you also hear or learn that she wanted to have an employment contract with RDI?

A. Yes.

Q. Did you understand whether that was a point of contention between Margaret on one hand and Jim Cotter, Jr., on the other hand?

MR. SWANIS: Objection. Form.

THE WITNESS: I'm not so sure it was a point of contention. I think it was something that was under consideration.

Jim, Jr. And I talked about it. I had my own views on it. I couldn't understand why any Cotter family member needed to have an employment contract.

But I did see it could be -- on the

other side why, given the fact of the factions, that they were -- they felt their job may have been in jeopardy.

BY MR. KRUM:

Q. And the "they" is Ellen and Margaret?

A. Ellen and Margaret. Pardon me.

Q. Did either or both of them ever communicate to you in words or substance that either or both thought their jobs were or might be in jeopardy?

A. Yes.

Q. What did Ellen communicate to you?

A. She felt that the relationship was such with her brother that -- and since he was the C.E.O., that he would take steps to have her terminated.

Q. When did she communicate that to you?

A. The same time frame, early 2015.

Q. Was that in person or --

A. Both -- it was in person, it was a meeting at my office, where she expressed that, and I think over the telephone, as well.

Q. Did Margaret Cotter communicate to you that she was concerned that Jim Cotter, Jr., might terminate her whether as an RDI employee if she

became one or as the third-party contractor she was at the time?

A. Yes, she did.

Q. And when did she advise you that? When did she communicate that to you?

A. I can't recall exactly when. It was during the same time frame as I mentioned, early 2015.

Q. How did she communicate that to you?

A. I can't remember.

Q. Whether in words or substance, what did she communicate?

A. That she felt her job was in jeopardy because of the -- the fighting going on between the two factions.

Q. And by the fighting, was she referring to the trust and estates dispute, to interpersonal dynamic --

MR. SWANIS: Objection. Form.

THE WITNESS: I think -- I think she referred --

MR. HELPERN: Join.

THE WITNESS: I think she referred to both.

///

EXHIBIT 11

pp. 1920-1922 Filed Under Seal

EXHIBIT 12

From: Kane <elkane@sanrr.com>
Sent: Monday, May 18, 2015 10:18 PM
To: Guy Adams

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

EXH 81
DATE
WIT
PATRICIA HUBBARD

81

GA00005500

001924

EXHIBIT 13

pp. 1926-1927 Filed Under Seal

EXHIBIT 14

pp. 1929 Filed Under Seal

EXHIBIT 15

pp. 1931-1933 Filed Under Seal

EXHIBIT 16

pp. 1935-1939 Filed Under Seal

EXHIBIT 17

From: Kane <ekane@san.rr.com>
Sent: Thursday, June 11, 2015 1:43 PM
To: Cotter Jr. James

This morning, without the wine I was drinking last night during and after talking with your mother, I'm thinking more about your call to me last night and our conversation. I can see that from your point of view having Guy in on the meetings with your sisters could be a problem and doesn't solve the need to be able to work with them cohesively going forward. If you explain that to them they may be willing to accommodate you.

But, the main question is what are you going to do to accommodate them?

1. For now, I think you have to concede that Margaret will vote the 8 stock. As I said, your dad told me that giving Margaret the vote was his way of "forcing" the three of you to work together. Asking to change that is a nonstarter. Again, you need to compromise your "wants" as they have been willing to do. If you can work together than it becomes a non-issue and eventually your and her kids will have the vote. What's wrong with that?
2. For now you need ASAP to agree on the nominees for the Board going forward. As I told you months ago, changes are necessary and you need some quality people with expertise in fields where it is needed and lacking. You also need to get rid of divisive persons.
3. I do believe that if you give up what you consider "control" for now to work cooperatively with your sisters, you will find that you will have a lot more commonality than you think. You all want the same things: a vibrant growing business. After trust is established you can all go back to where you want to be.
4. I think if you make the proper and needed concessions, they might well relent on having Guy in the meetings as they can easily see there is great animosity between the two of you.
5. Bottom line: recognize you are not dealing from strength right now and be willing to compromise as they are rational and reasonable people who have been hurt and demeaned and you need to help heal the family. Otherwise you will be sorry for the rest of your life, they and your mother will be hurt and your children will lose a golden opportunity.
6. I am willing to help but I'd much prefer that you bend a bit and work it out between you to build the trust that is necessary so that you don't lose control of the company, as you presently have.

EXH 304
DATE
WIT
PATRICIA HUBBARD

EXHIBIT 18

Message

From: Kane [elkane@san.rr.com]
Sent: 5/22/2015 7:36:11 PM
To: James Cotter JR [james.j.cotter@readingrdi.com]
Subject: Re:

Flag: Follow up

Without question I would like to help bring back unity and respect. Margaret certainly was trying when she suggested you take what the Board offered and held out the possibility that after a few years of working together you could again be considered for the role of CEO. It would be similar to Dev, hiring an experienced CEO the same age as Dev. Further, there would be no need for any negative announcement and if everyone's attorneys are so instructed, perhaps it could lead to a global settlement. Unfortunately you rejected that out of hand. You might think about it on the drive down here. Two immediate suggestions: (1) don't threaten or list faults, like your e-mail to me that "we will have war" and the tentative employment agreement sent to Margaret preceded by a list of her supposed faults; (2) "Aunt" Maddy suggests you invite your mother and sisters to your house for a family get-together with no business to be discussed but only some adoration of your kids and, if present, their aunt Margaret's kids.
If you are not opposed to driving down here, a good time to get together would be for lunch on Monday.We could meet at La Jolla Country Club around 1:00 pm. I have committed to your dad's personal urologist and friend, Warren Kessler, to play golf in the morning at 7:30 so we should be finished by 11:30-12:00. Meeting at 1:00 will insure I will be done and have paid off my bets. If I'm in a pissy mood it will not be because of you but because I lost my usual $5 bet with Warren.

-----Original Message-----
From: James Cotter JR
Sent: Friday, May 22, 2015 9:32 AM
To: 'Kane (elkane@san.rr.com)'

Thank you for not pulling trigger yesterday. I know I have lost your support. You are most thoughtful director and one with most heart and emotion. I have made mistakes with my sisters and mother. They have made mistakes. It is now time for us to try to heal and I need your help. Last words my father said to me were, "your mother is good woman...be good to her." I know I have not been. I realize we have passed breaking point. We will not have another chance. I would like to sit down with you in SD for breakfast, lunch or dinner Saturday, Sunday, Monday...whatever works. You are only one I have now who can broker peace with company and family's interests in mind respecting what my Dad would have wanted. There is a balance. If not, we will have war and our company and family will be forever destroyed over the next week. I know I have one last shot and would like your help and thoughts.

Tab 18

RPLY
COHEN|JOHNSON|PARKER|EDWARDS
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400

QUINN EMANUEL URQUHART & SULLIVAN, LLP
CHRISTOPHER TAYBACK, ESQ.
California Bar No. 145532, *pro hac vice*
christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter,
Ellen Cotter, Douglas McEachern, Guy Adams, and Edward Kane

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc.,

Plaintiffs,

v.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Case No.: A-15-719860-B
Dept. No.: XI

Case No.: P-14-082942-E
Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

INDIVIDUAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT (NO. 1) ON PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: October 27, 2016
Time of Hearing: 1:00 p.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As a matter of law and undisputed facts, the Individual Defendants are entitled to summary judgment on Plaintiff's claims arising from his termination as President and CEO of Reading International, Inc. ("RDI" or "the Company").

First, there is no basis in law or fact to find that the termination of Plaintiff as an officer was, or could have been, a breach of fiduciary duty. Plaintiff has not identified a single case in any jurisdiction—let alone Nevada—in which a board's decision to terminate an officer was subjected to any "fairness" review, or in which the firing of an officer has ever been determined to be a breach of fiduciary duty, or in which a former CEO has been reinstated as a remedy for a purported breach of fiduciary duty. There are no such cases. To the contrary, courts uniformly bar breach of fiduciary duty claims against directors arising from their decision to terminate an officer—even where, as here, those claims were asserted by the officer and stockholders. Their reasoning is clear: *the termination of an executive by a board is a purely operational decision that does not implicate its fiduciary duties*. Thus, Nevada's corporate statutes vest broad discretion in RDI's Board to determine the course of the Company, and allow "removal before the expiration" of an officer's term whenever "prescribed by the bylaws." NRS 78.130(3)-(4). RDI's Bylaws, which are the contract between its stockholders, similarly provide that Plaintiff could "be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof." Indeed, Nevada law provides for broad application of the business judgment rule to all business matters, such as decisions on hiring and firing of executives. NRS 78.138(3). Not surprisingly, Plaintiff has simply avoided Nevada law, RDI's Bylaws, and the majority vote of the entire Board in favor of his removal in both his motion and opposition on the issue of his termination. The law and undisputed facts are fatal to his claims.

Second, even assuming the termination of an executive could be actionable as a breach of directors' fiduciary duties in Nevada (even under the law as Plaintiff wishes it was), Plaintiff has woefully failed to establish the elements of such a claim. Although there is no basis for

evaluating the "fairness" of the process of the decision to terminate, the undisputed evidence compels a conclusion it was fair—to RDI foremost (the actual "derivative plaintiff"), *cf.* NRS 78.140(2)(d) (Nevada's only "fairness" test, which analyzes whether an interested director transaction was "fair to the corporation" before potentially voiding it), but also to Plaintiff. After a period of difficult and abrasive management requiring extensive intervention by Board members (individually and collectively), the Board made a decision after extensive debate and with Board members (now Defendants) freely voting on each side. In an act of classic fairness (and consistent with RDI's Bylaws), the majority ruled—and decided—to terminate Plaintiff. These same undisputed facts establish that, even if there was a fiduciary breach stemming from the Board's decision, the Individual Defendants would not be liable because there is *no evidence* that the breach involved "intentional misconduct, fraud or a knowing violation of law," as required by NRS 78.138(7). Finally, Plaintiff has proffered no evidence of damages to RDI or proximate causation. Indeed, to the extent his "damages" consist of the fact of termination and he seeks reinstatement, such a remedy is unavailable.

Third, even if the termination of an employee could theoretically constitute the breach of a fiduciary duty (which it cannot), and Plaintiff could establish the required elements of such a claim (which he cannot), Plaintiff lacks standing to derivatively assert breach of fiduciary duty claims against the director Defendants arising from his termination. After over a year of discovery, he has failed to identify a single stockholder of RDI (other than himself) that supports his wrongful termination claims and demand for reinstatement. Plaintiff's pursuit of a purely personal claim makes him inadequate to sue derivatively on the claim.

With no legal or factual support for Plaintiff's termination claims and reinstatement demand, the Individual Defendants are entitled to summary judgment.

II. ARGUMENT

A. Plaintiff's Termination Cannot Support a Breach of Fiduciary Duty Claim

Despite 50 pages of briefing, Plaintiff has failed to come forward with evidence to establish disputed facts supporting his claim. Moreover, he cites no law to support a breach of

fiduciary duty claim arising from an executive's termination. Plaintiff does not identify any case, anywhere, that has recognized the viability of such a claim.[1] Indeed, the law and facts belie such a claim. As the Individual Defendants argued in their opening brief, Plaintiff cannot assert a viable breach of fiduciary duty claim arising from his termination given RDI's clear Bylaws and the broad latitude afforded decisions by a board of directors under Nevada law. (Defs.' MSJ No. 1 at 14-17.) Plaintiff, in both his motion and his opposition, has *entirely ignored this issue*, which is dispositive of his termination claim and reinstatement demand.

Plaintiff does not dispute that a Nevada corporation is a product of statutory and contract law. The statute is NRS Chapter 78: Private Corporations. The charter and bylaws are the contracts among the stockholders of a corporation. *See* NRS 78.060, 78.120, 78.135; *see also Centaur Partners, IV v. Nat'l Intergroup, Inc.*, 582 A.2d 923, 928 (Del. 1990) (same). "[U]nder Nevada's corporations laws, a corporation's board of directors has full control over the affairs of the corporation." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006) (citation and internal quotation marks omitted); *see also* NRS 78.120(1) ("Subject only to such limitations as may be provided by this chapter, or the articles of the corporation, the board of directors has full control over the affairs of the corporation.").

Under Nevada law—ignored by Plaintiff—corporate officers such as a CEO or President have no vested right to remain in their position. Rather, officers serve only "for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors," and an officer may be subject to "removal before the expiration of his or her term." NRS 78.130(3)-(4). RDI's Bylaws mirror NRS 78.130, and expressly provide that Plaintiff served solely "at the pleasure of the Board of Directors," such that he could "be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the

---

[1] As noted in the Individual Defendants' opposition, Plaintiff relies entirely on Delaware authority about general fiduciary duties arising under Delaware law, and inferences drawn from Delaware cases addressing where a board is alleged to have breached its duties when faced with a corporate merger or sale, or where there is an accusation that corporate assets have been misused. Noticeably absent is any case law in which the termination of an officer's employment is the subject of a fiduciary duty claim. (Defs.' Opp'n at 14 (collecting cases cited by Plaintiff).)

entire Board at any meeting thereof." (HD#1 Ex. 19 Art. IV § 10.)[2] Not surprisingly, Plaintiff's Employment Contract was consistent with RDI's Bylaws, as it similarly recognized that the Board had an undiminished right to terminate him "with cause," in which event he was owed no relief, or "without cause," in which case he was due a specified sum. (HD#1 Ex. 20 § 10.)

Plaintiff makes no showing how the Individual Defendants breached a contract with RDI's stockholders and abrogated any of their fiduciary duties if the Company's Bylaws and his employment contract *specifically allowed the Board to terminate Plaintiff at any time, for any reason, and a majority of the entire Board voted to do so*—which is what indisputably occurred.[3] Indeed, numerous courts have held that a plaintiff cannot use "an appeal to general fiduciary law" to transform a case involving the dismissal of an officer into a claim that a company's directors "breached a fiduciary duty as corporate officers," and have found arguments identical to those asserted by Plaintiff to be "novel" and with "no case in support." (*See* Defs.' MSJ No. 1 at 14-16 (collecting cases).) In short, a board's decision to fire (or hire) an officer is an operational function that does not implicate its fiduciary duties.

---

[2] Citations to "HD#1" refer to exhibits attached to the Declaration of Noah S. Helpern in Support of the Individual Defendants' Motion for Summary Judgment No. 1; citations to "HD#2" refer to exhibits attached to the Helpern Declaration in Support of the Individual Defendants' Motion for Summary Judgment No. 2; and citations to "HDO" refer to any new exhibits attached to the Helpern Declaration in Support of the Individual Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment. Any exhibits cited by Plaintiff in his opposition but not already included in the Individual Defendants' previous filings will be referred to using Plaintiff's "Appendix." No new factual evidence is attached to this reply brief.

[3] The Board's January 15, 2015 resolution—in which all five non-Cotter directors agreed that in order to terminate "the CEO" (and/or Ellen and Margaret Cotter), a majority of the *non-Cotter* directors would be required to vote in favor of doing so—is beside the point. Not only is it black-letter law that bylaws trump board resolutions, *see* 18A Am. Jur. 2d *Corporations* § 253 (2016), a majority of the non-Cotter directors in fact voted to remove Plaintiff as RDI's CEO and President. Although that should be the end of the issue, as explained in the briefing relating to the Individual Defendants' Motion for Summary Judgment (No. 2) re: the Issue of Director Independence, each of these non-Cotter directors also were disinterested in the decision before them and therefore "independent." Indeed, directors voted on both sides of the issue, remained directors for some time thereafter (and Mr. Gould even to the present), and nonetheless are Defendants in this lawsuit.

Rather than attempting to distinguish these decisions (which he cannot, because they also address situations in which the plaintiff was both an officer and a stockholder, as here), Plaintiff's only response is "[t]his is a different version of the same argument the Court rejected previously in denying the motion to stay this case and compel arbitration." (Pl.'s Opp'n at 18; *see also id.* at 24-25 (same).) Not so. Plaintiff's argument misrepresents the issues involved in RDI's Motion to Compel Arbitration, and the Court's denial thereof. That motion was predicated on RDI's argument that "the Employment Agreement is a valid and existing contract with an agreement to arbitrate disputes thereunder, and all of Mr. Cotter's claims arise from or relate to the Employment Agreement." (RDI's Mot. to Compel Arbitration (Aug. 10, 2015) at 5.) In denying RDI's motion, the Court merely recognized that, to the extent that Plaintiff may have derivative claims as an RDI stockholder, rather than as an employee, they do not "arise from or relate to" his Employment Contract and are thus not issues subject to arbitration. (*See* Sept. 1, 2015 Hr'g Tr. at 9:21-10:1 ("While the issue related to employment is a factor important to both Mr. Cotter and the Intervenors, it does not preclude them from pursuing this litigation, rather than going through arbitration, for preservation of their rights as shareholders.").

That Plaintiff's alleged derivative claims fall outside the corners of his Employment Contract is a far different issue than whether the causes of action he asserts as a stockholder are actually valid as a matter of law. With respect to his termination claim, they are not—based on the law of ***every*** jurisdiction to consider it. *See, e.g.*, *Berman v. Physical Med. Ass'n, Ltd.*, 225 F.3d 429, 433 (4th Cir. 2000) (affirming dismissal of fiduciary duty claim that directors did not follow fair procedures in deciding to terminate stockholder/doctor's employment because "any injury caused by the termination decision itself would be an injury to his interests as an employee, not as a stockholder"); *In re Eagle Corp.*, 484 B.R. at 654 (a stockholder "who is also an employee cannot recover on a breach of fiduciary duty claim when the claim is grounded solely in an employment dispute"); *Wall St. Sys., Inc. v. Lemence*, No. 04 Civ. 5299, 2005 WL 2143330, at *8 (S.D.N.Y. Sept. 2, 2005) (dismissing third-party claims against directors because "they are essentially employment disputes that cannot sustain a claim of fiduciary breach under Delaware law"); *Dweck v. Nassar*, No. 1353-N, 2005 WL 5756499, at *5 (Del. Ch. Nov. 23,

2005) ("[the shareholder's] allegations of wrongdoing in connection with her termination as President and CEO" by the Board of Directors "are insufficient to support a claim for breach of fiduciary duty"); *Nahass v. Harrison*, C.A. No. 15-12354, 2016 WL 4771059, at *6 (D. Mass. Sept. 13, 2016) (terminated officer could not maintain a breach of fiduciary duty claim where his termination was authorized under "the Bylaws"); *In re Eagle Corp.*, 484 B.R. 640, 654 (Bankr. D.N.J. 2012) (removal of officer and director could not be a breach of fiduciary duty where "Delaware General Corporation Law provides for removal . . . with or without cause"); *Goldstein v. Lincoln Nat'l Convertible Sec. Fund, Inc.*, 140 F. Supp. 2d 424, 438 (E.D. Pa. 2001) (plaintiff could not maintain fiduciary duty claim "[g]iven the express statutory authorization for the Board's action"), *vacated on other grounds*, 2003 WL 1846095 (3d Cir. Apr. 2, 2003); *Quadrant Structured Prod. Co., Ltd. v. Vertin*, C.A. No. 6990-VCL, 2014 WL 5465535, at *3 (Del. Ch. Oct. 28, 2014) (dismissing action where the "governing documents authorized" the challenged "strategy"); *see also* 2 Fletcher Cyc. Corp. § 363 (2015) ("where a bylaw provided that any officer might be removed by a majority vote of the entire board whenever the best interests of the company require it, it was for the directors to determine what was in the best interests of the company; the courts will not interfere unless for fraud or illegality").

Plaintiff cannot distinguish or avoid this authority. In fact, even "under Delaware law," which Plaintiff maintains is the "persuasive authority" on which he relies (Pl.'s Mot. at 22 n.6), courts are emphatic that "there can be no breach of fiduciary duty stemming from the termination of [an officer's] employment." *Kasper v. LinuxMall.com, Inc.*, No. Civ. A. 00-2019, 2001 WL 230494, at *3 (D. Minn. Feb. 23, 2001) (applying Delaware law in termination of president); *see also Riblet Prods. Corp. v. Nagy*, 683 A.2d 37, 39-40 (Del. 1996) (no breach of fiduciary duty where stockholder/plaintiff was "an employee of the corporation under an employment contract with respect to issues involving that employment"). Simply put, his claim is meritless.

B. Even If the Termination of an Employee Could Constitute a Breach of Fiduciary Duty, Plaintiff's Claims Fail as a Matter of Law

Even assuming *arguendo* that the termination of an employee could *ever* support a breach of fiduciary duty claim in Nevada, Plaintiff cannot establish an actionable breach of fiduciary in

this case with respect to the Board's termination decision because (1) the Board's decision was protected by the business judgment rule, which always applies to employment decisions under Nevada law; (2) the decision to terminate Plaintiff based on the undisputed facts was fair to the Company and its stockholders (and, although irrelevant for these claims under Nevada law, fair to Plaintiff); (3) Plaintiff cannot show that the Board's termination decision involved "intentional misconduct, fraud, or a knowing violation of the law," as is required for individual liability under Nevada law; and (4) Plaintiff has no evidence of any damages to RDI proximately caused by his termination.

1. Under Nevada Law, the Business Judgment Rule Applies in the Context of an Employee Termination

Plaintiff does not contest that if the business judgment rule were to apply, his fiduciary duty claims arising out of his termination would fail as a matter of law. (*See* Pl.'s Opp'n at 10-18.) Instead, he expresses surprise in his opposition brief that the Individual Defendants' opening brief "makes no mention" of *Delaware's* "entire fairness" standard, which Plaintiff claims applies to the Board's termination decision given his allegations regarding the interestedness or lack of independence of certain Board members. (Opp'n at 15.)

There is no justification for Plaintiff's purported shock. Plaintiff has failed to identify *a single case* in which *any court* (let alone a Nevada court) has subjected a board's decision to terminate an officer to Delaware's "entire fairness" test.[4] More importantly, *Nevada law*—not Delaware law—governs Plaintiff's termination claim.[5] Nevada's business judgment rule, codified by statute, provides that "[d]irectors and officers, in deciding upon *matters of business*, *are presumed to act in good faith*, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3) (emphasis added). Nevada's corporate law identifies only two situations where the business judgment presumption may be disturbed: (1) where directors take

---

[4] Nor, as RDI points out in its concurrently-filed reply brief, does it make sense to apply a Delaware test focused on "fair price" to an employment termination situation where price is not an issue. (*See* RDI Reply in Support of Ind. Defs.' MSJ No. 1 § I.)

[5] While Nevada courts may take into consideration Delaware precedents, such consideration is unnecessary here where there exists Nevada law.

certain actions to resist "a change or potential change in control of the corporation," NRS 78.139(1)(b), 2-4; and (2) in an "interested director transaction," which may involve "self-dealing" between a director and a corporation, NRS 78.140. In his opposition, Plaintiff concedes that, "[b]y their terms, on their face, those two statutory provisions do not speak to circumstances other than those described" and are therefore not relevant to his termination claims. (Pl.'s Opp'n at 15 n.4.) The Individual Defendants agree. But Plaintiff has not identified any Nevada statute or legal decision that has disturbed the application of the business judgment rule outside of these two situations. And he cannot identify a single case subjecting a board's decision to terminate an officer to *any* "fairness" review (under Nevada law or elsewhere).

The conclusion is simple: the RDI Board's business decision to remove a CEO was a purely operational decision that is one of those "matters of business" always entitled to the Nevada statutory presumption of reasonable business judgment under NRS 78.138(3). *See Nahass*, 2016 WL 4771059, at *5 (questioning how the "entire fairness" doctrine ever "would apply to employment decisions," and rejecting fiduciary duty claim by officer terminated by company's directors).[6] This is fully consistent with the wide discretion afforded to corporate boards under Nevada law on matters that determine the course of the company, *see* NRS 78.120, 78.135, 78.138, whether or not to sell the company, *see* NRS 78.139, and the limitations on liability, *see* NRS 78.037, 78.751, 78.7502. As Nevada corporate policy, these statutes are designed to vest decision-making in the board, and to protect directors who are called upon to make these decisions (usually working on a part-time basis, sometimes with less-than-perfect knowledge, and typically for not much money). *See also* NRS 78.138(7) (providing additional legal protections to directors with respect to potential personal liability).[7]

---

[6] In short, in Nevada, there is a marked contrast between "operational decisions," such as removing an officer or changing a marketing strategy, and "transactional decisions," such as where a director can be on both sides of a particular transaction. It defies logic to imply a more stringent standard for operational decisions like the termination of an executive (*i.e.*, Delaware's "entire fairness" test) than there is under existing Nevada statutes where a director sits on both sides of a specific transaction (*i.e.*, the NRS 78.140 "fair as to the corporation" analysis).

[7] The only other basis upon which Plaintiff challenges this Board decision relies on allegations of "lack of independence" by certain Board members. Even if the disinterestedness

2. The Board's Termination of Plaintiff Was Fair

As noted above, Nevada law does not recognize Delaware's "entire fairness" standard in the context of an officer termination. Nor does it employ a "fairness review" outside of the inapplicable circumstances of NRS 78.140(2)(d)—and specifically not for an "employment decision." But even assuming that this Court should evaluate the fairness of the Board's process or ultimate decision to terminate Plaintiff as CEO and President, no colorable argument can be made that Plaintiff's removal was not "fair" to RDI (which is the actual "derivative plaintiff") both procedurally and on the merits. *See, e.g.*, NRS 78.140(2)(d) (refusing to void interested director transaction if it was "fair as to the corporation at the time it is authorized or approved").

(a) The Process Involved in Plaintiff's Removal Was Fair

The months-long reasoned review process underlying Plaintiff's removal was fair to RDI (and, although not required, to Plaintiff as well). (*See* Defs.' MSJ No. 1 at 21-22; Opp'n at 26-27.) Prior to formally discussing Plaintiff's removal at any Board meeting, the RDI Board worked informally with Plaintiff over several months in an attempt to rectify and alleviate his many deficiencies, including by appointing Director Storey as an "ombudsman" to help coach Plaintiff. (*See* Defs.' MSJ No. 1 at 8-9; Defs.' Opp'n at 8-10.) Storey had warned Plaintiff well prior to May 21, 2015 that he faced removal absent significant short-term improvement; in an April 15, 2015 email to Plaintiff, Storey wrote: "It has been made clear to Jim he needs to make progress in the business and with Ellen and Margaret quickly, or the board will need to look to alternatives to protect the interests of the company." (HD#1 Ex. 37 at 1-3.)[8] As Director

---

and/or independence of RDI's directors could have an impact on whether the business judgment rule applies to the Board's termination of a corporate officer (which they do not), Directors Edward Kane and Guy Adams were clearly "disinterested" and "independent" with respect to their decisions to support Plaintiff's removal from office for the reasons set forth in the Individual Defendants' Motion for Partial Summary Judgment (No. 2) re: the Issue of Director Independence (*see* Defs.' MSJ No. 2 at 6-10, 15-19, 22-27), the Individual Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment (Defs.' Opp'n at 22-26), and the Individual Defendants' concurrently-filed Reply in Support of their Motion for Partial Summary Judgment (No. 2). Plaintiff is wrong on the law and unsupported by the facts to the extent that he seeks to challenge the disinterestedness and independence of RDI Directors Kane and Adams on the issue of termination or any of the various Board actions he challenges.

[8] Plaintiff, in his opposition, does not deny that Storey gave him this warning. Instead,

McEachern testified, Plaintiff "knew that his position as CEO was in jeopardy for a longer period of time than just May 21," (HD#1 Ex. 7 at 176:1-9), and Plaintiff conceded at deposition that he was aware that there was "the possibility of getting an interim CEO . . . as early as October 2014." (HD#1 Ex. 11 at 528:9-529:20.)

Plaintiff objects that the ombudsman process did not continue until the end of June 2016 (Pl.'s Opp'n at 7 n.2), and asserts that agenda items distributed by Ellen Cotter two days in advance of the Board's May 21, 2015 meeting—which listed "status of President and CEO" as an item for discussion (HD#1 Ex. 39)—were vague and unexpected. (Pl.'s Opp'n at 5.) But neither complaint is valid. Regardless of what certain Directors may have preferred (or Plaintiff himself may have wanted), the Board "never set a date of June 30 for our intervention" and Director Kane and others felt that "there was no reason for us to wait until June 30" without progress, as protecting stockholder value needed to be considered paramount to Plaintiff's self-interested desire to remain CEO and President. (HD#1 Ex. 6 at 532:12-533:15.) Plaintiff's claim that Ellen Cotter's agenda item was ambiguous is contradicted by the presence of Plaintiff's current litigation counsel at the May 21, 2015 Board meeting (HD#1 Ex. 29 at 1), and the fact that, in the days prior, both Plaintiff and his counsel threatened to sue each director "and ruin them financially" if they voted for his removal. (HD#1 Ex. 3 at 426:19-427:9; HD#1 Ex. 7 at 78:14-79:2.)[9] Plaintiff was well aware that the Board was going to discuss his potential removal on May 21, 2015.

Plaintiff merely suggests that Storey not only cautioned that a removal could involve Plaintiff, it could involve Ellen and/or Margaret Cotter as well—a fact that is irrelevant to whether the process involving Plaintiff's removal was fair. (Pl.'s Opp'n at 5.)

[9] While Plaintiff makes vague allusion to "entrenchment" in his opposition (Pl.'s Opp'n at 15), there is no evidence that his termination was about entrenchment of any director. On its face, none of the non-Cotter directors had a stake in the outcome of the vote, and Plaintiff proffers no evidence that any director was more or less likely to remain on the Board based on how they voted. Entrenchment is "engaging in [an] action which had the effect of protecting their tenure" and being "motivated primarily or solely for the purpose of achieving that effect"—the very definition of "entrenchment," *In re Fuqua Indus., Inc. S'holder Litig.*, Civ. A. No. 11974, 1997 WL 257460, at *11 (Del. Ch. May 13, 1997). The only evidence of entrenchment as a motive is from Plaintiff's threats to "ruin" board members "financially" through a lawsuit if

Plaintiff's related insinuation that he was not provided sufficient notice of his potential removal prior to the May 21, 2015 Board meeting is similarly flawed. Not only was Plaintiff aware for months that his job was in jeopardy, and given specific notice that his status would be debated at a formal Board meeting two days prior to its occurrence (both of which factually disprove Plaintiff's argument), Plaintiff ignores the clear authority collected by the Individual Defendants in their opening brief (Defs.' MSJ No. 1 at 21) establishing that directors need not give a CEO ***any*** advance notice of a plan to remove him or her.[10] RDI's Bylaws contain no such requirement, and instead provide that Plaintiff could "be removed at any time." (HD#1 Ex. 19 Art. IV § 10.) As such, Plaintiff's notice and timing objections are baseless.

Plaintiff's characterization of communications between Board members leading up to the May 21, 2015 Board meeting as "consist[ing] of secret machinations and agreements" is also a product of his own imagination. (Pl.'s Opp'n at 17.) None of the evidence he cites supports his depiction. (*See id.* at 7.) Rather, as various directors independently contemplated Plaintiff's removal over the weeks leading up to May 21, 2015, they began a series of emails, meetings, and informal straw polls as to a potential termination vote, and commenced discussing what to do on an interim basis in the event that Plaintiff was fired. (HDO Ex. 9 at 175:17-179:7; HDO Ex. 3 at 98:8-99:22; HDO Ex. 4 at 366:14-373:2.) None of this was improper, as Plaintiff suggests. Rather, the Board had to determine if it was even worthwhile to formally discuss Plaintiff's employment status during a Board meeting, and it had an obligation to plan ahead if he was ultimately removed.

Directors holding informal discussions in advance of a meeting as to how they might vote on an important matter, and contemplating what steps to take should a vote go a certain way, is

---

they dared to exercise their fiduciary duties and debate the merits of his continued tenure. (HD#1 Ex. 3 at 426:19-427:9; HD#1 Ex. 7 at 78:14-79:2.)

[10] Plaintiff does not cite a single case for the proposition that any notice is required. Other authority is clear that notice is not necessary. *See OptimisCorp. v. Waite*, C.A. No. 8773-VCP, 2015 WL 5147038, at *66-67 (Del. Ch. Aug. 26, 2015) (rejecting argument that directors "breached their duty of loyalty by not advising [CEO] in advance of his potential termination"); 2 Fletcher Cyc. Corp. § 357.20 (2015) (a board's failure to give CEO advance notice of a plan to remove him as CEO does "not invalidate his termination").

exactly what diligent board members should do. Moreover, there is "a difference between corporate acts and informal intentions or discussions." *In re Numoda Corp. S'holders Litig.*, C.A. No. 9163-VCN, 2015 WL 402265, at *9 (Del. Ch. Jan. 30, 2015). "Corporate acts are driven by board meetings, at which directors make formal decisions," and courts look "to organizational documents, official minutes, duly adopted resolutions, and a stock ledger, for example, for evidence of corporate acts." *Id.* Conversations and even "conversational agreements" are not "corporate acts" and do not provide the basis for any liability. *Id.*

Finally, once the formal Board review process began, there was no "kangaroo court," as Plaintiff misleadingly claims. (Pl.'s Opp'n at 7, 14, 17.) The only emails cited by Plaintiff in support of this point pre-date the Board's May 21, 2015 meeting, and merely evince Director Storey's disagreement with the "apparent view" of certain directors "that no discussion is necessary" and a simple vote on Plaintiff's employment would suffice once a motion to terminate was raised and seconded. (*See, e.g.*, HDO Ex. 14.) Storey instead wanted to "define and address the issue, discuss it, and come to a conclusion," which was "a separate issue [as] to the merits of the decision before us." (HDO Ex. 1 at 134:9-135:1; HDO Ex. 13 at 1-2.)

What Plaintiff leaves out is that the RDI Board took Storey's advice, engaged outside counsel to assist it in its fiduciary duties,[11] and vigorously debated the merits of Plaintiff's

---

[11] Citing no legal precedent in support, Plaintiff asserts that the Individual Defendants' factual statement that they engaged the services of outside counsel when discussing Plaintiff's potential termination (and their related suggestion that such engagement is indicative of a board acting responsibly) is somehow equivalent to "asserting reliance on counsel" as an affirmative defense. (Pl.'s Opp'n at 16 n.6.) Plaintiff is wrong as a matter of law. Acknowledging receipt of advice from an attorney is different and distinct from asserting an advice of counsel affirmative defense (which the Individual Defendants have not done and are not doing, as they are not claiming that they cannot be held liable ***because*** they relied in good faith on the informed advice of counsel in taking a specific action—*i.e.*, to terminate Plaintiff). *See In re Comverge, Inc. S'holders Litig.*, Civ. A. No. 7368-VCP, 2013 WL 1455827, at *1, *3-4 (Del. Ch. Apr. 10, 2013) (finding no waiver of privilege and no invocation of advice of counsel defense; holding that "it is the existence of legal advice that is material to the question of whether the board acted with due care, not the substance of that advice"). Plaintiff cannot have it both ways—he cannot proclaim there was a "kangaroo court" and then seek to prevent the Individual Defendants from noting steps taken to show that no procedural improprieties occurred. Regardless, had the RDI Board not engaged outside counsel, the procedure it employed in deciding whether to terminate Plaintiff would still have been procedurally fair.

termination in three different Board meetings held over a three-week period that lasted a combined 13 hours. (*See* Defs.' MSJ No. 1 at 8-12; Defs.' Opp'n at 10-14.) The Board gave Plaintiff the opportunity to speak "at length" regarding his tenure, and the chance to present a business plan (which he was unable to do). His response was nothing more than an appeal to nepotism (*see* HD#1 Ex. 30 at 3 (plaintiff asserting "that it was the intention of his father . . . that he run the Company and the Board should observe his wishes")) and an attempt to intimidate the Board by again threatening a lawsuit. (HD#1 Ex. 3 at 426:19-427:9.) The Board properly deferred a final termination decision when it appeared that Plaintiff agreed to a revised management structure, which would have created oversight over his responsibilities and had the potential to end his adversarial relationship with his sisters, who were key RDI employees and also sat on the Board. (*See* HD#1 Ex. 30 at 3-4 (Minutes of the May 29, 2015 Board meeting); HD#1 Ex. 40 (May 27, 2015 version of agreement-in-principle); HDO Ex. 16 (June 3, 2015 revision).) And the Board gave Plaintiff three separate chances to stay on as President under a new CEO so that he could better learn the business and gain the management skills he so sorely lacked. (HD#1 Ex. 29 at 4; HD#1 Ex. 30 at 1.) The extensive reasoned review process utilized by the Board went far above any "fair procedure" requirement.

(b) <u>The Decision to Terminate Plaintiff Was Fair on the Merits</u>

The decision to terminate Plaintiff also was unquestionably fair on the merits with respect to RDI (and, although not required, also to Plaintiff). (*See* Defs.' MSJ No. 1 at 18-20; Opp'n at 27-28.) After over a year of discovery, Plaintiff has not been able to meet the minimum proof thresholds required to create a triable issue of fact as to whether his termination was fair on the merits. Instead it is beyond reasonable dispute that:

- <u>Plaintiff Lacked Significant Experience in Areas Critical to RDI</u>: There is no evidence in the record that Plaintiff's background would enable him to be an effective CEO or President. Instead, the Individual Defendants have established (and Plaintiff has not contested) (*see* Defs.' MSJ No. 1 at 5-6; Defs.' Opp'n at 5) that Plaintiff lacked noteworthy experience in numerous areas critical to RDI. Director McEachern recognized that Plaintiff "had no real estate experience, no international experience, no management experience, no cinema experience and

no live theater experience"—virtually all of the business areas relevant to RDI's operations. (HD#1 Ex. 7 at 49:25-50:7.) Director Adams was similarly worried that Plaintiff "was young" and "didn't have that much experience" (HD#1 Ex. 4 at 462:14-25), while Director Storey believed that "if his last name wasn't Cotter, he wouldn't be CEO." (HD#1 Ex. 4 at 460:12-24.) Given this undisputed absence of experience, Plaintiff's eventual termination due to performance issues—which arose, in part, because he was not yet ready to be CEO—was more than fair.[12]

- Teamwork and Morale Was Poor Under Plaintiff's Abusive Leadership: As the Individual Defendants have established (and Plaintiff has not contested) (*see* Defs.' MSJ No. 1 at 7; Defs.' Opp'n at 5-6), the Board was troubled by Plaintiff's "behavior," "temperament," and "anger issues" (HD#1 Ex. 15 at 55:21-57:5), and some Directors considered sending Plaintiff to a "psychologist or psychiatrist" or to anger management classes in early 2015. (HD#1 Ex. 6 at 529:22-530:2; HD#1 Ex. 35 at 3.) As Director Storey recognized, under Plaintiff, "morale" within RDI was "poor and needs to be improved," Plaintiff "need[ed] to establish teamwork," and he required hand-holding "to lead/develop leadership role." (HD#1 Ex. 33 at 3.)

- Plaintiff Lacked an Understanding of Key Components of RDI's Business: The Individual Defendants have established that Plaintiff demonstrated a lack of understanding with respect to costs and margins highly critical to RDI's cinema business. (*See* Defs.' MSJ No. 1 at 7; Defs.' Opp'n at 6-7.) Plaintiff has offered no evidence in response. (*See* Pl.'s Opp'n.)

- Plaintiff Could Not Work With Key RDI Executives: Plaintiff does not dispute that his sisters, Ellen and Margaret Cotter, were key executives within RDI. Nor does he dispute that he could not work well with them, as established by the Individual Defendants. (*See* Defs.' MSJ No. 1 at 6-7; Defs.' Opp'n at 7-9.) And he does not contest that, due to this inability, Director Gould and others determined that RDI was faced with "a dysfunctional management team" in

---

[12] Plaintiff's only counter is that—five-and-a-half years ***before*** his election as CEO—his father authored a memo suggesting that he intended Plaintiff to succeed him. (Pl.'s Opp'n at 4.) Not only is this memo irrelevant to the issue of whether Plaintiff did or did not have significant experience in areas critical to RDI (and it actually proves true Director Storey's worry about nepotism), the intent of the late James J. Cotter, Sr. in 2009 has no bearing on whether the termination of his son years later was fair to the Company and its stockholders.

which there was "'thermonuclear' hostility" between the Cotters. (HD#1 Ex. 35 at 2-3.) In fact, Plaintiff testified that the tensions between him and his sisters had become so intense by 2015 that RDI was unable to function, such that drastic reform in behavior or potential termination(s) were required to get beyond the current paralysis. (HD#1 Ex. 12 at 696:22-700:3, 704:7-22.)

Each of these issues, which were articulated and considered by the Individual Defendants prior to rendering their termination vote, is separately sufficient to justify Plaintiff's removal as CEO and President. Taken together, they render the fairness of the Board's termination decision beyond dispute.[13] But Plaintiff's evidentiary failures do not end here. There is no evidence in the record that continuing Plaintiff as CEO and/or President would have been in the best interests of RDI. Nor is there any evidence in the record that returning him to office would be in the best interests of the Company. As McEachern testified, "from August of 2014 until [Plaintiff's] termination, I cannot tell you one thing that we did that created value for the company, one thing that Jim Cotter, Jr. managed to do. Nothing." (HD#1 Ex. 7 at 292:2-5.) Given the absence of record evidence, apparently Plaintiff cannot as well. At the summary judgment stage, this is fatal to Plaintiff's challenge to the fairness of his termination, as he cannot show that his removal was in any way "unfair" to RDI—the actual derivative plaintiff in this action.

---

[13] With respect to the above-deficiencies, Plaintiff's asserts—with absolutely no support—that the substantial testimony and documentary evidence collected by the Individual Defendants is "flimsy"; his one factual response is to claim that Director Kane, at least, did not actually share these concerns. (Pl.'s Opp'n at 4.) A reference to the evidence collected by the Individual Defendants belies any suggestion that it is "flimsy," and such naming-calling, of course, falls well short of Plaintiff's obligation to muster contrary evidence at the summary judgment stage. Moreover, Plaintiff's single reference to an early June 2015 email chain with Director Kane is itself "flimsy" and perplexing. If Plaintiff believes that Kane wanted him to remain CEO in early June 2015, it disproves his theory that there was a conspiracy amongst the Individual Defendants to remove him from office with no debate in mid-May 2015. In reality, the emails cited by Plaintiff regarding Kane, whom Plaintiff had begged to help him "broker" a deal with Ellen and Margaret Cotter (*see* Defs.' Opp'n at 12-13), merely show Kane using flattery in an attempt to reason with Plaintiff, forestall his firing, and advocate for a negotiated resolution of the myriad of management problems plaguing Plaintiff's tenure. (*See* Pl.'s Appendix Ex. 2.) None of these actions by Kane, which were attempting to avert the prevent, costly corporate battle, were in any way improper.

Despite this, Plaintiff still maintains that his termination was unfair because the Board engaged in "attempted extortion and execution on the extortion threat" when it delayed his potential termination on May 29, 2015 after a potential negotiated settlement between the Cotters was agreed to in principle, and when it ultimately terminated him on June 12, 2015 when that settlement fell through. (*See* Pl.'s Opp'n at 6, 17-18.) There are two fatal problems to this argument. First, it relates only to fairness as it applies to Plaintiff—not RDI. But, in a derivative action, whether or not an action was fair vis-à-vis Plaintiff is irrelevant as to whether it was fair to RDI, the actual plaintiff on whose behalf this lawsuit is (purportedly) being brought. Indeed, to the extent that Nevada has a "fairness review," it analyzes whether an action is "fair as to the corporation," not the individual involved. NRS 78.140(2)(d).

Second, Plaintiff's pejoratives are unfounded. (*See* Defs.' MSJ No. 1 at 10-11, 20; Defs.' Opp'n at 12-14, 28.) The Board's support for and consideration of a potential compromise between the Cotter siblings was far from "extortion"; rather, affording respect to the potential deal made business sense because it could have alleviated the admitted "dysfunction" within the management ranks that was clearly affecting the Company and stockholder value; rectified some of the otherwise-terminal problems in Plaintiff's CEO tenure; and ameliorated Plaintiff's managerial deficiencies by providing him with an Executive Committee structure under which he would have operated as CEO going forward, which could have allowed him the chance to grow and gain needed experience. (*See* HD#1 Ex. 30 at 3-4; HD#1 Ex. 40.)

Once that agreement fell through, the Board was left with the same intractable problems as before—which Plaintiff does not dispute. As *both* Storey (who voted against termination) and Kane (who voted for termination) testified, the Individual Defendants felt that "things should be dealt with now," "[t]hey had come to a head and there was no point in delaying," "the current disharmony within the business was untenable going forward," "[t]here was a polarization in the office among the employees, and it had to be resolved one way or another." (HD#1 Ex. 1 at 119:25-120:12, 154:2-14; HD#2 Ex. 5 at 331:11-332:17.) Given that the Board was faced with a CEO that could not perform adequately, lacked experience and expertise, required close

supervision, did not process the requisite leadership skills, and could not work well with various directors or executives, its decision to terminate Plaintiff was objectively fair.

3. RDI Was Not Damaged by Plaintiff's Termination

Even if Plaintiff's termination was somehow "unfair" to RDI (which it was not), Plaintiff's fiduciary duty claims arising from his removal must fail because he has not shown any damages to RDI resulting from his firing, nor has he provided evidence that any such damages were proximately caused by the Board's June 12, 2015 decision. (*See* Defs.' MSJ No. 1 at 22-23; Defs.' Opp'n at 19-20.)

Plaintiff, in his opposition, spends pages on a convoluted argument suggesting that he is not required to actually prove *any* damages to RDI in order to establish his breach of fiduciary duty claims against the Individual Defendants. (*See* Pl.'s Opp'n at 19-21.) In fact, he labels such a requirement "imaginary." (*Id.* at 20.) But not once does Plaintiff cite applicable Nevada law.[14] In fact, Nevada precedent is clear that damages and proximate causation are both ***elements*** of a breach of fiduciary claim (and any related aiding and abetting claim). *See Olvera v. Shafer*, No. 2:14-cv-01298, 2015 WL 7566682, at *2 (D. Nev. Nov. 24, 2015) ("A claim for breach of fiduciary duty under Nevada law requires a plaintiff to demonstrate a fiduciary duty exists, that duty was breached, and the breach proximately caused the damages."); *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D. Nev. 2009) (same, applying Nevada law); *In re Amerco Deriv. Litig.*, 127 Nev. 196, 225 (2011) (adopting standard for "aiding and abetting a breach of a fiduciary duty," for which one of the "four elements" is "the

---

[14] *Kendall v. Henry Mountain Mines, Inc.*, 78 Nev. 408 (1962), the one Nevada case that Plaintiff cites for the proposition that corporations may void the challenged transactions of interested directors (Pl.'s Opp'n at 20), says nothing about the elements of a fiduciary duty claim or whether damages are a required showing. Similarly, *Cinerama, Inc. v. Technicolor, Inc.*, 643 A.2d 345 (Del. 1993), a Delaware case, does not support Plaintiff's argument. While that case states that "[t]o require proof of injury as a component of proof necessary to rebut the business judgment presumption would be to convert the burden shifting process from a threshold determination of the appropriate standard of a review to a dispositive adjudication on the merits," *id.* at 371, this quote does not stand for the proposition that *no proof* of injury is required at all—instead, it merely establishes ***the timing as to when*** proof of injury is required. In fact, the court went on to state that "injury or damages becomes a proper focus only after a transaction is determined *not* to be entirely fair." *Id.* (emphasis in original).

breach of the fiduciary relationship resulted in damages"); *see also Stalk v. Mushkin*, 125 Nev. 21, 28 (2009) ("a breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the fiduciary relationship").

In contrast to his motion (where he did not discuss damages at all), Plaintiff in his opposition contends that he "has produced evidence of damages." (Defs.' Opp'n at 21.) But nothing Plaintiff cites constitutes economic harm to RDI proximately "caused by" his termination. To the extent that Plaintiff identifies certain corporate actions taken after his firing as "waste," such as "monies paid to third-party consultants" (*id.*), he introduces no proof that this alleged conduct was wasteful, nor does he introduce evidence showing that *his terminatio*n was the proximate cause of such waste. Indeed, Plaintiff still sits on RDI's Board, and his failure to prevent the conduct of which he complains undermines any causal connection to his removal (as it apparently would have occurred irrespective of his firing).[15]

Plaintiff also baldly asserts—without citation—that RDI's stock price suffered a "diminution" in "the days following disclosure of" Plaintiff's termination. (*Id.*) As an initial matter, this is not actually true. On June 18, 2015, the day that RDI filed a Form 8-K announcing Plaintiff's removal (HD#1 Ex. 25), RDI's stock price closed at $13.53/share, up from $13.45/share the day before.[16] By June 30, 2015, the Company's stock price was $13.85/share, and it reached $14.00/share on July 1, 2015. Even if RDI's stock price had not risen, a mere drop in share price is insufficient to satisfy the required causation. *See Morgan v. AXT, Inc.*, No. C 04-4362, 2005 WL 2347125, at *16 (N.D. Cal. Sept. 23, 2005) (that share price dropped after disclosure revealed prior misrepresentations is insufficient to constitute causation). And, of course, a "decline" in "stock price is not even a derivative injury" and cannot support the

---

[15] Plaintiff also asserts that the Individual Defendants "have wrongfully insisted that Plaintiff resign as Company director." (Pl.'s Opp'n at 8.) While this allegation has absolutely no relevance to whether or not Plaintiff's termination was a fiduciary breach, Plaintiff in fact did not resign and instead remains a Board member to this day—meaning that neither he nor RDI could have suffered any damages from this purportedly wrongful conduct.

[16] *See* http://www.nasdaq.com/symbol/rdi/historical.

required causation in the context of Plaintiff's purported derivative action. *South v. Baker*, 62 A.3d 1, 25 (Del. Ch. 2012).

Plaintiff is left with an assertion, based on a single twenty-year-old New York case, that a shift in the "control of the company" may "be viewed as irreparable injury." *Vanderminden v. Vanderminden*, 226 A.D.2d 1037, 1041 (App. Div., 3d Dep't, 1996). But "control" of RDI did not shift with Plaintiff's termination: Ellen and Margaret Cotter, as trustees of the Estate of James J. Cotter, Sr. (recognized by this Court), controlled the majority of RDI's shares both *before and after Plaintiff's termination*. Moreover, the *Vanderminden* case does not involve a derivative claim; rather, it addresses an inapposite situation, where rival shareholders were battling for control of a trust (and thus a shift in voting power was irreparable harm to one plaintiff). *See id.* In contrast, this action is brought by Plaintiff in a derivative capacity, as a representative of the Company itself; he must show harm to RDI, not himself. But there is no such evidence. Uncontroverted testimony and documentary evidence from within RDI indicates that Plaintiff "was very weak as a C.E.O. or as a manager," and "wasn't really leading the business and he wasn't leading us forward." (Defs.' MSJ No. 1 at 22 (citations omitted)). Similarly, RDI's major unaffiliated investors have indicated that it would not " make much difference" to the Company's stockholders if Plaintiff was CEO, and that the overall performance of the RDI, along with its business plan, have remained entirely consistent and appropriate since Plaintiff's termination. (*Id.* at 22-23 (citations omitted).)

Because Plaintiff does not have evidence of any "economic harm" flowing to RDI following his termination, let alone evidence that his firing was the "proximate cause" of such harm, he cannot establish an actionable breach of fiduciary claim.

4. <u>Plaintiff Cannot Show That His Termination Involved Intentional Misconduct, Fraud, or a Knowing Violation of the Law</u>

Finally, even if Plaintiff's termination was somehow unfair (it was not) and proximately caused damages to RDI (which it did not), the Individual Defendants are statutorily immune from individual liability where, as here, any "breach" did not involve intentional misconduct, fraud, or a knowing violation of law. (*See* Defs.' MSJ No. 1 at 14, 18; Defs.' Opp'n at 28-29.)

Nevada's corporate law provides "a director or officer is not individually liable to the corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his or her capacity as a director unless it is proven that . . . the breach of those duties involved intentional misconduct, fraud or a knowing violation of law." NRS 78.138(7). There can be no "knowing violation" or "intentional misconduct" where the RDI Board weighed the propriety of Plaintiff's termination over several meetings, considered his attempted defense of his tenure, engaged outside counsel to assist it in exercising its fiduciary duties, and articulated a wide variety of business-specific reasons motivating its removal decision. Even the Directors that voted not to terminate Plaintiff on June 12, 2015 recognized significant problems with his performance, and objected more to the timing of his removal than to the underlying basis. (*See* Defs.' MSJ No. 1 at 8-12, 19.) Plaintiff has not identified a single case anywhere in which directors have been held liable for breaching their fiduciary duties in the context of an employee termination, let alone under the strict requirements set forth in NRS 78.138(7).

Plaintiff's only response is to cite Delaware law, and argue that "the exculpatory statute" does not apply where, as here, he has asserted "duty of loyalty" claims. (Pl.'s Opp'n at 16 n.5.) Once again, Plaintiff's reliance on Delaware law—as opposed to Nevada law—is flawed. In contrast to whatever Delaware may hold, the Nevada Supreme Court has made clear that under Nevada law, "directors and officers may only be found personally liable for ***breaching their fiduciary duty of loyalty*** if that breach involves intentional misconduct, fraud, or a knowing violation of the law." *Shoen*, 122 Nev. at 640 (citing NRS 78.138(7) (emphasis added)). Because Plaintiff cannot meet this requirement (nor has he even attempted to), his claims fail as a matter of law.

C. Plaintiff's Reinstatement Demand Is Unsupportable and Untenable

As the Individual Defendants emphasized in their opening brief, even if the Board's removal of Plaintiff somehow constituted a breach of fiduciary duty, the reinstatement relief demanded by Plaintiff is untenable as a matter of law and practice. (Defs.' MSJ No. 1 at 28-30; Defs.' Opp'n at 29-30.) Perhaps for this reason Plaintiff has not identified a single case in any jurisdiction in which the firing of a corporate officer was reversed following a breach of

fiduciary duty claim. (*See id.*) The Individual Defendants identified six reasons such a remedy is precluded. (*See* Ind. Defs.' MSJ No. 1 at 28-30.) Plaintiff does not address *any* of them. Failure to make a responsive argument in the first instance constitutes a waiver. *Chonwdhry v. NLVH, Inc.*, 111 Nev. 560, 563 (1995); *see also Polk v. State*, 126 Nev. 180, 185 (2010) (failure to address or dispute argument is "a confession of error on this issue"). Notwithstanding Plaintiff's waiver, the numerous problems associated with any reinstatement of Plaintiff as CEO and President of RDI render that relief untenable. Such a request, which is unsupported by law, contradicted by the terms of Plaintiff's Employment Contract, and operationally problematic, should be denied.

D. Even If the Termination of an Employee Could Constitute a Breach of Fiduciary Duty, Plaintiff Lacks Standing to Maintain His Derivative Action

Finally, Plaintiff's termination claim fails as a matter of law for yet another independent reason: Plaintiff lacks standing to derivatively assert breach of fiduciary duty claims against the Individual Defendants arising out of his termination.

Plaintiff's main response is that an attack on his derivative standing "has been rejected by the Court previously." (Defs.' Opp'n at 22.) This is misleading at best. Elements of standing are not merely pleading requirements, but are also an "indispensable part of the plaintiff's case" on which "the plaintiff bears the burden of proof" at each of "the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *see also CCWIPP v. Alden*, No. Civ. A. 1184, 2006 WL 456786, at *10 (Del. Ch. Feb. 22, 2006) ("discovery" and "[f]urther development of the facts" may prove a plaintiff is "an inadequate derivative plaintiff"). At the motion to dismiss stage, the Court was required to accept Plaintiff's mere allegations as true, and afford him any and all reasonable inferences warranted on the pleadings alone. But Plaintiff cannot meet his burden now that discovery has occurred and he must provide *actual evidence* to support standing with respect to his ability to derivatively assert his termination claim and his demand for reinstatement.[17]

---

[17] In his opposition, Plaintiff points to purported "substantial evidence of self-dealing" conduct by the Individual Defendants with respect to their approval of both a stock option and

In their opening brief, the Individual Defendants' established why Plaintiff lacks derivative standing with respect to his termination claim and reinstatement demand: clear economic antagonisms exist between Plaintiff and other shareholders and the remedy sought by Plaintiff is entirely personal. (Defs.' MSJ No. 1 at 24-27.) Plaintiff's responses to these arguments are, at best, unsatisfactory on their face: he cites no cases in support of any of his points, and distinguishes none of the authority collected by the Individual Defendants. (*See* Pl.'s Opp'n at 23-24.)

But it is indisputable that Plaintiff lacks derivative standing for one simple reason: after over a year of discovery, he has failed to identify a single RDI stockholder (other than himself) who supports his derivative action with respect to his termination claim or his demanded reinstatement. This alone is fatal to Plaintiff's attempted derivative standing. *See Khanna v. McMinn*, No. Civ. A. 20545-NC, 2006 WL 1388744, at *41 (Del. Ch. May 9, 2006) ("the inadequacy of a plaintiff may be concluded from a strong showing of only one factor" if that factor involves "some conflict of interest between the derivative plaintiff and the class"). Instead, several notable third-party shareholders have gone on the record to actively *oppose* Plaintiff's termination and reinstatement claims. (*See* Defs.' MSJ No. 1 at 28 (individuals who control over 1 million shares of RDI's Class A stock and over a thousand Class B shares have rejected the idea of reinstating Plaintiff because "the well has been poisoned" with respect to Plaintiff as CEO, his reinstatement would perpetuate a "divided company," Plaintiff is not "the single best qualified person to run" RDI, and his advancement was the product of "nepotism").)

Plaintiff's only response is a naked assertion that this "claim is inaccurate, as reflected by the objections to the T2 Plaintiffs' request for court approval of their settlement." (Pl.'s Opp'n at 24.) But Plaintiff does not actually cite to or quote what these objections say, for good reason—they are have nothing to do with Plaintiff's termination claim and reinstatement

---

the nominations of new directors to justify his standing as a derivative plaintiff. (Defs.' Opp'n at 22.) While the Individual Defendants do not challenge Plaintiff's theoretical ability to derivatively assert claims relating to those types of corporate actions, that "evidence"—which is, in fact, nonexistent—is entirely irrelevant to Plaintiff's derivative standing *with respect to his separate termination claim and reinstatement demand*—.the subject of this motion.

demand. (*See* Objs. of Diamond A. Partners, L.P. and Diamond A. Invs., L.P., to Settlement at 3-6 (objecting to the settlement because it "provides no tangible benefit to shareholders" and "the General Release of all possible claims against Defendants and others is quite valuable and overbroad"); Obj. of Mark Cuban to Settlement at 4-6 (same, focusing on an argument that the settlement "releases any unknown claims Reading may bring").) Nowhere do the objecting stockholders provide any indication that they explicitly support Plaintiff's termination claim or are actively in favor of his demand for reinstatement as CEO and President of RDI. (*See id.*)

This resounding "lack of support" for Plaintiff's termination and reinstatement claims by relevant "non-defendant shareholders" is fatal to Plaintiff's standing. *Love v. Wilson*, No. CV 06-06148, 2007 WL 4928035, at *6 (C.D. Cal. Nov. 15, 2007) (rejecting derivative standing); *see also Smith v. Ayres*, 977 F.2d 946, 948 (5th Cir. 1992) (lack of "cooperation" or support from other shareholders undermined attempted derivative action); *Energytec, Inc. v. Proctor*, Nos. 3:06-cv-0871 *et al.*, 2008 WL 4131257, at *7 (N.D. Tex. Aug. 29, 2008) (applying Nevada law and rejecting derivative standing of former CEO because other stockholders do not "share" an interest in his "regain[ing] control" of the company). Because Plaintiff lacks standing to pursue a derivative action seeking relief on his termination and reinstatement claims, summary judgment is entirely appropriate.

III. CONCLUSION

For the foregoing reasons, the Individual Defendants respectfully request that the Court grant both their Motion for Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims and provide such other and further relief as the Court may deem necessary and proper.

///

///

Dated: October 21, 2016

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400

QUINN EMANUEL URQUHART & SULLIVAN, LLP
CHRISTOPHER TAYBACK, ESQ.
California Bar No. 145532, *pro hac vice*
christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, and Edward Kane

CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2016, I caused a true and correct copy of the foregoing **INDIVIDUAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT (NO. 1) ON PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

Bird Marella

Contact	Email
Bora Lee	blee@birdmarella.com
Docket	Docket@BirdMarella.com
Herman E. Vera	hdv@birdmarella.com
Karen Minutelli	kmm@birdmarella.com
Shoshana E. Bannett	seb@birdmarella.com

Chubb

Contact	Email
Allison Rose	allisonrose@chubb.com

Cohen|Johnson|Parker|Edwards

Contact	Email
C.J. Barnabi	cj@cohenjohnson.com
H. Stan Johnson, Esq.	calendar@cohenjohnson.com
Sarah Gondek	sgondek@cohenjohnson.com

Fish & Richardson PC

Contact	Email
Andrea Sager	sager@fr.com
Rebekah Graham	rgraham@fr.com
Scott C. Thomas, Esq.	sthomas@fr.com
Thomas M. Melsheimer, Esq.	tmelsheimer@fr.com

Greenberg Traurig, LLP

Contact	Email
6085 Joyce Heilich	heilichj@gtlaw.com
7132 Andrea Rosehill	rosehilla@gtlaw.com
IOM Mark Ferrario	lvlitdock@gtlaw.com
KBD Kara Hendricks	hendricksk@gtlaw.com
LVGTDocketing	lvlitdock@gtlaw.com
MNQ Megan Sheffield	sheffieldm@gtlaw.com
WTM Tami Cowden	cowdent@gtlaw.com
ZCE Lee Hutcherson	hutcherson@gtlaw.com

Laxalt & Nomura, Ltd.

Contact	Email
James E. Murphy, Esq.	jmurphy@laxalt-nomura.com
Mike Bale	mbale@laxalt-nomura.com
Nancy Rozan	nrozan@laxalt-nomura.com

Lewis Roca Rothgerber

Contact	Email
Judy Estrada	Jestrada@lrrlaw.com

Lewis Roca Rothgerber Christie

Contact	Email
Mark Krum	mkrum@lrrc.com
Stephanie Sodorff	ssodorff@lrrc.com

Lewis Roca Rothgerber Christie LLP

Contact	Email
Jessie Helm	jhelm@lrrc.com
Kirsten Story	kstory@lrrc.com
Luz Horvath	LHorvath@lrrc.com

Maupin, Cox & LeGoy

Contact	Email
Carolyn K. Renner	crenner@mcllawfirm.com
Donald A. Lattin	dlattin@mcllawfirm.com
Jennifer Salisbury	jsalisbury@mcllawfirm.com
Karen Bernhardt	kbernhardt@mcllawfirm.com
Katie Arnold	karnold@mcllawfirm.com

McDonald Carano Wilson

Contact	Email
Aaron D. Shipley	ashipley@mcwlaw.com
Leah Jennings	ljennings@mcdonaldcarano.com

Patti Sgro Lewis & Roger

Contact	Email
Andrew D. Sedlock	asedlock@pslrfirm.com
Nelson Achaval	nachaval@pslrfirm.com
Stephen Lewis	slewis@pattisgrolewis.com

Quinn Emanuel Urquhart & Sullivan, LLP

Contact	Email
Christopher Tayback	christayback@quinnemanuel.com
Lauren Laiolo	laurenlaiolo@quinnemanuel.com
Mario Gutierrez	mariogutierrez@quinnemanuel.com
Marshall M. Searcy III	marshallsearcy@quinnemanuel.com
Noah Helpern	noahhelpern@quinnemanuel.com

Reading International

Contact	Email
Craig Tompkins	craig.tompkins@readingrdi.com
Ellen Cotter	Ellen.Cotter@readingrdi.com
Kenneth Tucker	Kenneth.Tucker@readingrdi.com
Margaret Cotter	margaret.cotter@readingrdi.com
Susan Villeda	susan.villeda@readingrdi.com

Royal & Miles LLP

Contact	**Email**
Ashley Andrew	aandrew@royalmileslaw.com

Santoro Whitmire

Contact	**Email**
Asmeen Olila-Stoilov	astoilov@santoronevada.com
James M. Jimmerson	jjimmerson@santoronevada.com
Jason D. Smith	jsmith@santoronevada.com
Kristen Capella	kcapella@santoronevada.com
Nicholas J. Santoro	nsantoro@santoronevada.com
Rachel Jenkins	rjenkins@santoronevada.com

Shepard, Mullin, Richter & Hampton LLP

Contact	**Email**
Adam Streisand	astreisand@sheppardmullin.com

Sheppard, Mullin, Richter & Hampton LLP

Contact	**Email**
Dolores Gameros	dgameros@sheppardmullin.com

SOLOMON DWIGGINS & FREER, LTD.

Contact	**Email**
Alan D. Freer, Esq.	afreer@sdfnvlaw.com

Troy Gould

Contact	**Email**
William Gould	wgould@troygould.com

Dated this 21st day of October, 2016.

/s/ C.J. Barnabi
An employee of Cohen|Johnson|Parker|Edwards

Tab 19

RPLY
MARK G. KRUM (Nevada Bar No. 10913)
MKrum@LRRC.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
(702) 949-8398 fax

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al.,

Plaintiffs,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG

CASE NO. A-15-719860-B
DEPT. NO. XI

Coordinated with:

CASE NO. P-14-082942-E
DEPT. NO. XI

CASE NO. A-16-735305-B
DEPT. NO. XI

Jointly administered

PLAINTIFF JAMES J. COTTER, JR.'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

TOMPKINS, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

TABLE OF CONTENTS

PAGE

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

TABLE OF AUTHORITIES

PAGE

Cases

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Statutes

Other Authorities

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Plaintiff James J. Cotter, Jr., ("JJC" or "Plaintiff"), by and through his attorney Mark G. Krum of Lewis Roca Rothgerber Christie LLP, files this Reply in Support of his Motion for Partial Summary Judgment (the "Motion"), as follows.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In his motion for summary judgment ("MSJ"), plaintiff James J. Cotter, Jr. ("Plaintiff" or "JJC") evidenced the following undisputed facts:

- In March 2015, then director Timothy Storey was appointed "ombudsman" to work with Plaintiff and to "mediate any disputes between him and other executives," i.e., his sisters, Ellen and Margaret Cotter. (Quotation from Opposition of the Interested Director Defendants at 9:12-15.)

- On May 19, 2015, Ellen Cotter as Chairman of the RDI Board of Directors distributed an agenda for a supposed special meeting of the Board on May 21, 2015, the first item of which was "Status of President and CEO."

- The agenda item "Status of President and CEO" proved to be about the termination of Plaintiff as President and CEO of RDI.

- Prior to May 19, 2015, Director Defendants Ed Kane, Guy Adams and Doug McEachern each had communicated with Ellen Cotter and/or each other their agreement to vote to terminate Plaintiff as President and CEO of RDI.

- No termination vote was had at the May 21, 2015 supposed special meeting of the RDI Board of Directors but, a few days later, on or about May 27, 2015, an attorney representing Ellen and Margaret Cotter transmitted to an attorney representing JJC a document containing terms to which Ellen and Margaret Cotter would agree to resolve disputes with JJC, including disputes that were the subject of a prior pending action in California regarding trust and estate matters (the "California Trust Action").

- At a supposed RDI Board of Directors meeting beginning in the morning of May 29, 2015, the meeting adjourned in the afternoon with a majority of the non-Cotter directors, meaning Kane, Adams and McEachern, advising Plaintiff that he needed to strike a global resolution of disputes with his sisters or the vote to terminate him would proceed when the supposed meeting reconvened telephonically at 6:00 p.m. that evening.

- During the call at or about 6:00 p.m. on May 29, 2015, Ellen Cotter reported that she and Margaret had reached a tentative global resolution of disputes with Plaintiff, and that lawyers would prepare documentation to complete it. No termination vote was taken.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

- On or about June 8, 2015, JJC communicated to Ellen and Margaret Cotter that he could not agree to the terms embodied in the document provided to his trust lawyer on or about June 3, 2015, by the trust lawyer representing Ellen and Margaret Cotter.

- Ellen responded by calling a supposed special meeting of the RDI Board of Directors on June 12, 2015. At that supposed meeting, a vote was taken and each of Kane, Adams and McEachern (and Ellen and Margaret Cotter) voted to terminate Plaintiff.

- The Tim Story Ombudsman process was aborted by the events described above.

In their Oppositions, the Defendants do not address any of the foregoing matters, except that they acknowledge that Tim Storey was appointed ombudsman in March 2015 and point out that there is disagreement between and among the directors as to whether that process was to continue into June. Otherwise, they ignore the foregoing undisputed facts. Instead, the Interested Director Defendants obfuscate. To that end, they spend page after page talking about Plaintiff's supposed historical failings as President and CEO and then, as if the matter miraculously arose for deliberation on May 21, 2015, mischaracterize what happened at the May 21 and 29 and June 12 supposed board meetings as deliberations. Even were that fiction actual facts, none of it disputes the material facts set forth above. Therefore, Plaintiff has presented the Court with a set of undisputed material facts upon which his MSJ is based.

As to the legal analysis, Defendants proffer arguments that attempt to recast this case as an employment action, which the Court previously has determined that it is not, and then cite to a series of inapposite cases for the proposition that RDI's Board had the authority to terminate Plaintiff, whose rights as a shareholder they again argue are subsumed by his rights under an executive employment agreement. Based on those erroneous premises and inapposite case after inapposite case, the Interested Director Defendants conclude that they could have not breached (presumably non-existent) fiduciary obligations in taking the actions they did – to threaten Plaintiff with termination if he did not resolve disputes with his sisters on terms they required and,

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

when he failed to do so, to terminate him. As demonstrated below, those arguments are unavailing, at best.

Perhaps recognizing the foregoing, the Defendants also argue that the business judgment rule is not a rebuttable presumption, that the only exceptions to it are statutory provisions concerning other matters, and that the business judgment rule therefore immunizes them from liability for their conduct. These arguments also are erroneous as a matter of law. As demonstrated in Plaintiff's Motion and herein, where, as here, a majority of the directors who approve a challenged action lack disinterestedness, independence or both, Plaintiff has rebutted the presumptions of the business judgment rule and the entire fairness standard applies. Under the entire fairness standard, the Director Defendants are required to demonstrate the entire fairness of both the process resulting in the decision to terminate Plaintiff, and the entire fairness of the result, here, termination following a failure to acquiesce to threats of termination. As the facts above make clear, and as is shown below, the Director Defendants cannot meet that objective burden.

For the foregoing reasons, Plaintiff respectfully submits that his MSJ should be granted.

II. FACTS WARRANTING RELIEF

The Interested Director Defendants purported statement of facts is an effort at obfuscation predicated on after the fact "assessments" of Plaintiff's management and performance that supposedly occurred months before the relevant termination vote. What they have not done, and cannot do, is to dispute the facts and circumstances leading to and surrounding the vote itself, upon which Plaintiff's Motion for Partial Summary Judgment is based.

Defendants cannot dispute that, on Tuesday, May 19, 2015, Ellen Cotter first distributed an agenda for a supposed RDI Board of Directors special meeting on Thursday, May 21, 2015. (Declaration of James J. Cotter, Jr., submitted with Motion, at ¶ 10; Motion Appendix Ex. 1 (EC 6/16/26 Dep. Tr. 171:14-175-16); Motion Appendix Ex. 34 (Dep. Ex. 338).) The first item on the agenda was entitled "Status of President and CEO" – (purposefully disguised phraseology that employed the same words as subsequent agenda items—none of which concerned termination. *Id.*

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Defendants cannot dispute that, even before May 19, 2015, each of Adams and Kane (and McEachern) communicated to Ellen Cotter and/or between or among themselves their respective agreement to vote as RDI directors to terminate Plaintiff as President and CEO of RDI. (Motion Appendix Ex. 1 (EC 6/16/16 Dep. Tr. 175:17- 176:8); Motion Appendix Ex. 5 (Storey 2/12/16 Dep. Tr. At 96:5-91:4, 98:21-100:8, 100:14-101:11); Motion Appendix Ex. 9 (Adams 4/28/16 Dep. Tr. At 98:7-17; 98:18-99:22); Motion Appendix Ex. 9 (Adams 4/29/16 Dep. Tr. 378:15-370:5); *see also* Motion Appendix Ex. 6 (TS 8/31/16 Dep. Tr. 66:22-67:20) and Motion Appendix Ex. 26 (Dep. Ex 131).) For example, on May 18, 2016, Kane sent an email to Adams in which he (Kane) agreed to second the motion for Plaintiff's termination, if necessary, and acknowledged his lack of disinterestedness:

> See if you can get someone else to second the motion [to terminate Plaintiff as President and CEO]. If the vote is 5-3 I might want to abstain and make it 4-3. If it's needed I will vote. *It's personal and goes back 51 years*. If no one else will second it I will.

(Motion Appendix Ex. 19 (Dep. Ex. 81 at GA00005500) (emphasis supplied).)

And, in a May 19, 2015 email to Kane, Adams acknowledged both Kane's lack of disinterestedness and that the two of them had picked sides in a family dispute:

> Ed,
>
> I am sorry, as I know your relationship with the family started long before they were born. I also know—and now see for myself—why SR placed such a high value on you and your counsel. More than anyone else on the board, you worked behind the scenes attempting to bridge every problem with the kids. Lastly, I know that more than anyone else, you have been at SR's side at every turn as he built his empire. I think you and I share a [sic] obligation to the family . . . . based upon our commitment to our friend.... Unfortunately, it seems that we have no choice but to choose a side.

(Motion Appendix Ex. 21 (Adams Dep. Ex. 85 at GA0000554'1 15 (emphasis supplied); *see also* Motion Appendix Ex. 6 (TS 8/3/16 Dep. Tr. 65:12-66:20).)

Defendants cannot dispute that, prior to the May 21, 2015, meeting Kane and Adams discussed other motions related to Plaintiff's termination, such as to appoint an interim CEO. (Motion Appendix Ex. 9 (Adams 4/29/16 Dep. at 366:5-367:6); s*ee also* Motion Appendix Ex. 20 (Adams Dep. Ex. 82 at GA00005502-03). Importantly, Directors Gould and/or Storey contemporaneously memorialized that the non-Cotter directors had not undertaken an appropriate

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

process to make a decision regarding whether or not to terminate the President and CEO of RDI and requested that the non-Cotter directors meet before the supposed May 21 meeting. Gould in fact warned the others that they all could "face possible claims for breach of fiduciary duty if the Board takes action without following a process . . . ." (Motion Appendix Ex. 318 (Gould Dep. Ex. 318).) Storey used the term "kangaroo court," and observed as to the non-Cotter directors that, "as directors we can't just do what a shareholder [, meaning Ellen and Margaret Cotter,] asks." (Motion Appendix Ex. 22 (Kane Dep. Ex. 116).) In the face of this, however, Kane responded they did not need to meet, stating that "the die is cast." (Motion Appendix Ex. 23 (EK Dep. Ex. 117 at TS000069).)

Nor can Defendants dispute how intertwined Ellen and Margaret Cotter's personal demands that Plaintiff resolve trust disputes on terms satisfactory to the two of them were with what Plaintiff was told he must do to avoid termination as President and CEO. This is plainly reflected in the settlement document transmitted by their trust lawyer Susman on May 27, 2015. (*See* JCC Dec. at ¶ 12; Motion Appendix Ex. 4 (MC 6/15/16 Dep. Tr. 154:19-156:19); Motion Appendix Ex. 32 (Dep. Ex. 322).) The fact that Ellen and Margaret Cotter's personal agenda drove the termination decision was reinforced by Kane when he emailed Plaintiff the day after the document was transmitted:

> I have not seen the [take it or leave it settlement] proposal. I understand that it would leave you with your title, which is very important to you and which you told me was essential to any settlement . . . if it is take-it or leave-it, then I STRONGLY ADVISE YOU TO TAKE IT, . . . if we can end all of the litigation and ill feelings, -- and their offer to keep you as CEO as a major concession -- . . .

(Motion Appendix Ex. 1(MC 6/16/16 Dep. Tr. 185:13-186:9); Motion Appendix Ex. 24 (Dep. Ex. 118).)

On Friday, May 29, before the supposed RDI board of directors special meeting commenced, Ellen and Margaret Cotter met with JJC. They discussed that the document that had been conveyed by their lawyer Susman was a take-it or leave-it offer and that, if JJC did not accept it, the RDI board would proceed with the vote to terminate him as President and CEO. (JCC Dec. at ¶ 14).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

The supposed special board meeting on May 29 commenced and Adams made a motion to terminate Plaintiff as President and CEO. In response, Plaintiff questioned Adams' independence and/or disinterestedness. (Declaration of James J. Cotter, Jr., submitted with Motion at ¶ 15). The supposed special meeting eventually was adjourned until 6:00p.m. that evening. Plaintiff was told that he needed to resolve his disputes with his sisters by then or he would be terminated. (*Id.*) As reflected in Storey's contemporaneous handwritten notes:

> long board discussion
>
> ended with basically a command from "majority" – Jim go settle something with sisters in next hour or you will be terminated.

(*See* Appendix Ex. 5 (Storey 2/12/16 Dep. Tr. at 110:6-12); Appendix Ex. 15 (Storey Dep. Ex. 17).)

The Board reconvened at or about 6:00 p.m. on Friday, May 29, 2015. At that time Ellen Cotter reported that she and Margaret Cotter had reached an agreement in principal with Plaintiff to resolve their disputes. Ellen Cotter concluded that, while no definitive agreement had been reached, Ellen and Margaret Cotter would have one of their lawyers provide documentation to counsel for Plaintiff. No termination vote was taken. (Declaration of James J. Cotter, Jr., submitted with Motion at ¶ 16; Motion Appendix Ex. 3 (MC 5/13/16 Dep. Tr. at 368:13-369:22; *see also* Appendix Ex. 15 (Dep. Ex. 17).)

Defendants cannot dispute that, on June 8, 2015, after Plaintiff advised Ellen and Margaret Cotter that he could not accept their document, Margaret Cotter's response was to advise the RDI board of directors. (Declaration of James J. Cotter, Jr., submitted with Motion at ¶ 18; Motion Appendix Ex. 3 (MC 5/13/16 Dep. Tr. at 368:13-369:22); *see also* Motion Appendix Ex. 3 (MC 5/12/16 Dep. Tr. 271:22-279:7); Motion Appendix Ex. 27 (Dep. Ex. 156).). Likewise, on Wednesday afternoon, June 10, 2015, Ellen Cotter transmitted an email to all RDI board members stating, among other things, that "we would like to reconvene the Meeting that was adjourned on Friday, May 29th, at approximately 6:15 p.m. (Los Angeles time.) We would like to reconvene this Meeting telephonically *Friday, June 12 at 11:00 a.m. (Los Angeles time) . . .*" (Declaration of James J. Cotter, Jr., submitted with Motion at ¶ 19).

The Directors in turn reconvened on Friday, June 12, 2015. At that time, Adams Kane and

Lewis ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

McEachern, Margaret and Ellen Cotter) each voted to terminate Plaintiff. (Declaration of James J. Cotter, Jr., submitted with Motion at ¶ 20; Motion Appendix Ex. 10 (Kane 5/2/16 Dep. Tr. 191:25-192:12, 193:3-194-10); Motion Appendix Ex. 5 (Storey 2/12/16 Dep. Tr. 139:22-140-11); *see also* Motion Appendix Ex. 6 (TS 8/3/16 Dep. Tr. 75:4-76:16 and 81:22-82:6).)

III. ARGUMENT

Defendants effectively proffer two types of arguments in response to Plaintiff's MSJ. Both are erroneous as a matter of law.

The first set of arguments confuses powers or legal rights, such as the power and right to terminate Plaintiff under Nevada law and the Company's bylaws,with the issue in this case, which is whether the Director Defendants breached their fiduciary duties in threating Plaintiff with termination and, when he failed to acquiesce to those threats, terminating him. As shown below in Sections III A., B. and C., these arguments each confuse two different sets of legal issues and each is mistaken, as a matter of law.

The other sets of arguments proffered by Defendants seeks to transform the rebuttable presumptions of the business judgment rule, into a more or less absolute immunity. As shown in Section III. D., E., F. and G Defendants misread Nevada's statutory scheme and ignore Nevada and Delaware law, including well-established Nevada and Delaware law for the proposition that where, as here, the majority of the directors who took or approved the challenged actions lacked disinterestedness and/or independence, the presumptions of the business judgment rule have been rebutted and the Director Defendants bear the burden of satisfying the entire fairness standard. Likewise, Defendants erroneously argue that equitable relief is unavailable, which argument also is contrary to Nevada and Delaware law. It requires that the Director Defendants show the objective fairness of both the process and the result. Here, obviously and as demonstrated herein, they cannot do so and have not done so.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

The entire fairness standard therefore applies. It requires that the Director Defendants show the objective fairness of both the process and the result. Here, obviously and as demonstrated herein, they cannot do so and have not done so.

A. Defendants Do Not Have an Unrestricted Right to Breach Fiduciary Obligations With Respect to Officer Appointment and Termination.

The Interested Director Defendants first argue that RDI's bylaws and Nevada law provide the RDI Board with "an *express unrestricted right* to terminate Plaintiff's employment at any time and for any reason" and, based on that premise, (erroneously) conclude that, as a matter of law, they "cannot be liable for breaching fiduciary duties and violating any fundamental covenant between the company and its stockholders." (Opposition at 15:22-25). Taken to its logical end, what Defendants now claim is that they have carte blanche to do as they please, regardless of the limits on corporate and director action, including Section 78-138(1)'s restriction that all powers must be exercised in good faith and with a view to the interests of the corporation. Not surprisingly, Defendants point to no statute or case that would provide them with this extraordinary carte blanche. That is because it does not exist.

The argument that RDI's bylaws and Nevada law allow a board to terminate a CEO and that the directors therefore could not have violated their fiduciary duties in doing so is a *non sequitur* and mistaken as a matter of law. As a matter of logic, that an act is permitted does not make it necessarily not actionable, particularly where, as here, the question is whether the director defendants breached their fiduciary obligations. Given that, it is unsurprising that the cases Defendants rely upon for their nonsensical argument do not support their argument and/or are inapposite:

- *Centaur Partners, IV v. National Intergroup, Inc.* did not involve a claim for breach of fiduciary duty. As such, at no point in that case did the court hold that corporate bylaws could supersede directors' statutory obligation to act in good faith and for the best interests of the corporation. *Centaur Partners, IV v. National Intergroup, Inc.*, 582 A.2d 923 (Del. 1990).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

- In *Nahass v. Harrison*, the court held that the minority shareholder could not maintain a breach of fiduciary duty claim because the corporation was a non-statutory close corporation, which is not the case here. 2016 WL 4771059, at *6 (D. Mass. Sept. 13, 2016). As such, the court's analysis of the bylaws was based on a breach of contract analysis, not a breach of fiduciary duty analysis, which is the claim at issue in this case. *Id.*
- In *In re U.S. Eagle Corp.*, the court in fact relied on *Riblet Products Corporation v. Nagy*, and ruled that the minority stockholders in a close corporation are not liable to a minority stockholder for breach of fiduciary duty with respect to the minority shareholder's employment "when that claim is grounded *solely* in an employment dispute." 484 B.R. 640, 654 (D. N.J. 2012). As explained below, Plaintiff's claim is not grounded solely in an employment dispute – rather, the issue is the Directors using the corporate machinery (including officer appointment) to achieve their personal agendas. That is not an employment dispute, that is a derivative claim.
- *Goldstein v. Lincoln Nationals Convertible Securities Fund, Inc.* involved a shareholder challenge to the board's decision to adopt a classified board and stagger elections, actions that were expressly permitted by statute. 140 F. Supp.2d 424, 438 (E.D. Pa. 2001). Nothing in that case held that a director is totally absolved of liability in connection with officer appointments or terminations. Likewise, unlike in *Goldstein*, there is no Nevada law that expressly permits directors to utilize the corporate machinery, including the power to fire officers, as a means to achieve their own personal agendas, as was the case here.
- In *Quadrant Structured Products Company, Ltd. v. Vertin*, the court in fact recognized that, "in every case, corporate action must be *twice tested*: first, by the technical rules having to do with the existence and proper exercise of the power; *second, by equitable rules* somewhat analogous to those which apply in favor of a cestui que trust to the trustee's exercise of wide powers granted to him in the instrument making him a fiduciary." 2015 WL 5465535 (Del. Ch. Oct. 20, 2015)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

> (emphasis supplied) (quoting Adolf A. Berle, *Corporate Powers As Powers In Trust*, 44 Harv. L. Rev. 1049, 1049 (1931). Thus, while the plaintiff in *Quadrant* failed to support allegations under both steps of the analysis, the case in fact undercuts Defendants' contention that the bylaws can absolve them of liability for breach of fiduciary duty because their fiduciary obligations are the necessary second step of the analysis. It is this second step on which Defendants' actions do not pass muster.

Notably, the instructive case they clearly choose not to cite at this point of their erroneous argument, *Riblet Prods. Corp v. Nagy*, 683 A.2d 37 (Del. 1996), which they subsequently miscite (at 17:25-27) for the proposition that there is no "liability for breach of fiduciary duty where stockholder/plaintiff was 'an employee of the corporation under an employment contract with respect to issues regarding employment," actually makes clear that the rights and duties owed to an individual as an employee under an employment contract are different than the rights and duties owed to that same individual as a shareholder. Of course, this Court made that very determination when it denied the Company's motion to compel arbitration. In *Riblet*, the Delaware Supreme Court stated as follows:

> This is a case governed by an employment contract. [Plaintiff] actively and successfully pursued his contractual rights as an employee. These contractual rights are separate from his rights as a stockholder.
>
> This is not a case of breach of fiduciary duty to [plaintiff] *qua* stockholder. To be sure, the Majority Stockholders may well owe fiduciary duties to [plaintiff] as a minority stockholder. But that is not the issue here.... Moreover, this is not an attempt to bring a derivative suit by plaintiff as a stockholder on behalf of the corporation...

Riblet, 683 A.2d at 40 (quotation and citation omitted).[1]

By contrast, this is a case of breach of fiduciary duty to Plaintiff *qua* stockholder because the issue is not simply his termination as Defendants suggest; it is an ongoing course of self-ealing

[1] As Chief Justice Steele testified last week: "under Delaware law the fact that you have the authority to act doesn't end the inquiry, particularly under the entire fairness standard. Our law is well established that despite being authorized either by the charter or the bylaws to take certain action, when you take the action, it must be taken equitably." [Transcript of Deposition of Myron Steele, attached as Appendix A, pgs. 57-67]

Lewis ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

and entrenchment that merely started with threats of termination and termination. The law provides no immunity for that.

Plaintiffs' contention Plaintiff's rights a s a shareholder are subsumed by an employment relationship and contract is nonsensical and has no support in the law. This Court should, as it has rightly done prior, reject that proposition.

B. The Legal Right or Power to Perform and Act does not Mean that the Act Cannot be Inequitable and Actionable.

Contrary to what the opposition argues, legally permissible actions may give rise to breaches of fiduciary duty. *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971) ("inequitable action does not become permissible simply because it is legally possible."). The distinction the Opposition suggests does not exist is well-recognized in the jurisprudence of fiduciary duty law. In *Sinchareonkul v. Fahnemann*, 2015 WL 292314, at *6 (Del. Ch. Jan. 22, 2015), the court stated in this regard:

> When assessing challenges to corporate acts, Delaware law distinguishes between arguments that the act is not legally permissible and arguments that it was inequitable under the circumstances presented for those in control of the corporation to take otherwise legally permissible action. The corporate scholar and statesman Adolf A. Berle highlighted the distinction, explaining that 'in every case, corporate action must be twice tested: first, by the technical rules having to do with the existence and proper exercise of the power; second, by equitable rules somewhat analogous to those which apply in favor of a cestui que trust to the trustee's exercise of wide powers granted to him in the instrument making him a fiduciary.' Delaware adheres to the twice-testing principle.

Sinchareonkul v. Fahnemann, 2015 WL 292314, at *6 (Del. Ch. Jan. 22, 2015) (citing Adolf A. Berle, *Corporate Powers As Powers In Trust*, 44 Harv. L.Rev. 1049, 1049 (1931)).

C. The Argument that "Courts Routinely Reject Attempts to Transform an Officer's Employment into a Breach of the Fiduciary Duty Claim" Is an Exercise in Question Begging Based on a Mischaracterization of the Nature of this Action and Inapposite Cases.

The Interested Director Defendants' next argument, that termination of an executive officer can only give rise to employment claims and not claims for breach of fiduciary duty, likewise mischaracterizes the nature of this action and relies upon inapposite cases in which the plaintiff brought contract claims (whether under an employment agreement, a stockholders agreement

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

and/or other contracts) to which purported breach of fiduciary duty claims were added as an afterthought.

First, as the Court full well knows (and has recognized multiple times already), this action involves an ongoing course of self-dealing and entrenchment, not a single, isolated act of terminating an executive. What Defendants have done is not a simple termination like in the cases cited in oppositions; their actions, including using an executive committee to circumvent Plaintiff and directors Storey forcibly "retiring" Storey stacking the Board with unqualified family friends, adopting the CEO search to make Ellen Cotter CEO, employing Margaret Cotter was given a highly compensated executive position for which ongoing she has no prior experience or qualifications and rejecting the Offer to do the bidding of the Cotter sisters all involve abuse of the corporate machinery and their authority as Directors of RDI. That is why there is a derivative action for breach of fiduciary duty, which provides for equitable relief.[2]

Predictably, the cases on which the Interested Director Defendants rely are inapposite employment cases, several of which actually acknowledge the distinction they seek to persuade the Court does not exist, namely, that an individual has different rights as an employee and as shareholder. For example, *Ingle v. Glamore Motor Sales,* 535 N.E.2d 1311, 538 N.Y.S.2d 771 (1989), actually acknowledges what they imply the case and the others they cite does not, namely, that individual has rights both as a contracting employee and separately as a stockholder, as follows:

> It is necessary in this case to appreciate and keep them distinct the duty… owe[d] to a minority shareholder *as a shareholder* from any duty…owe[d] him as an employee.

Ingle, 73 N.Y. S. at 187.

Likewise, *Hackett v. Marquardt & Roche/Meditz & Hackett, Inc.* Civ. No. 02-990166881S, 2002 WL 31304216, at *2 (Conn. Sup. Ct. Sept. 17, 2002), cites *Ingle* and found that the gravaman of the claim in that case was a claim for termination of employment, not a claim for breach of fiduciary duty. *Datto Inc. v. Braband, 856 F.Supp. 354, 384 (D. Conn. 2012)* in turn

---

[2] As a result, and as explained below, Defendants arguments about proof of damages arising from the termination are misplaced. Because breach of fiduciary duty is an equitable claim, this Court may award relief as equity demands.

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

cites *Hackett.* As the foregoing illustrates, what the Interested Director Defendants have done is to find a series of inapposite cases and miscite them with the hope that counsel for the Plaintiff and the Court will not read them. Also by way of example, *Carlson v. Hallinan,* 925 A.2d 506, 540 (Del Ch. 2006) expressly acknowledges that the decision to remove an officer is a decision that may give rise to a claim for breach of fiduciary duty. The balance of the cases they cite likewise are cases in which the action was for breach of an employment contract, not breach of directors' independent duties as fiduciaries. The only other case they cite worth mentioning is discussed above, namely, the Delaware Supreme Court decision in a *Riblet*, which (as discussed above) unequivocally undermines their legally erroneous argument that the only claim that can arise from the termination of an executive is for breach of an employment contract, and not for breach of the fiduciary duties of directors in making their decisions.[3]

This Court should continue as it has and reject Defendants' attempts to reframe this case as an employment action.

D. Under Nevada Law, the Entire Fairness Doctrine Applies Where an Action Was Not Approved By a Majority of Disinterested and Independent Directors, As Here.

Defendants also erroneously contend that the entire fairness doctrine is inconsistent with Nevada law. As Plaintiff has explained multiple times, that is not the case. On the contrary, the Nevada Supreme Court has expressly recognized "when an interested fiduciary's transactions with the corporation are challenged, the fiduciary must show good faith and the transaction's fairness." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 644 n. 61, 137 P.3d 1171, 1186 n.61 (2006) (citing *Oberly v. Kirby*, 592 A.2d 445, 469 (Del.1991) (noting that, when approval of an interested director transaction by an independent committee is not possible, the interested directors carry the burden of proving that transaction's entire fairness)). When a transaction is effected by directors with an interest in the transaction, "[t]he interested directors bear the burden of proving the entire fairness of the transaction in all its aspects, including both the fairness of the price and the fairness of the directors' dealings." *Oberly*, 592 A.2d at 469; *accord Reis v. Hazelett Strip-Casting Corp.*,

---

[3] Chief Justice Steele also pointed out in his testimony last week that the CEO contract was irrelevant to the question of whether the Directors breached their fiduciary obligations because the issue is breach of fiduciary duty, not breach of contract. [Testimony of Myron Steele, attached as Appendix A, pgs. 59-67]

Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

28 A.3d 442, 459 (Del. Ch. 2011) ("Once entire fairness applies, the defendants must establish to the court's satisfaction that the transaction was the product of both fair dealing and fair price.") (quotation omitted). As discussed below (and as pointed out in Plaintiff's Opposition to Defendants' Motion for Summary Judgment No. 1), Defendants have not, and cannot meet that burden. As a result, summary judgment is proper.

In addition, in *Shoen*, the Nevada Supreme Court adopted the Delaware Supreme Court's holding in *Aronson v. Lewis*. 122 Nev. at 635, 137 P.3d at 1180. In *Aronson*, the court held that the business judgment rule only applies when a director is disinterested and independent:

> The function of the business judgment rule is of paramount significance in the context of a derivative action. ... However, in each of these circumstances there are certain common principles governing the application and operation of the rule.
>
> First, its protections can only be claimed by disinterested directors whose conduct otherwise meets the tests of business judgment.

Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000).

The Interested Director Defendants also argue that "[u]nder Nevada corporate law, the presumptive application of the state's business judgment rule may be called into question in only two scenarios." In support of that (erroneous) proposition, the Opposition identifies two circumstances, one in which NRS 78.139(1)(b)(2)-(4) applies (the change or potential change in control of a corporation) applies, and (ii) one in which NRS 78.140 (Nevada's statutory limitation on the common law presumption that interested transactions are void) applies. (Opposition at 21:1-22:14.) The proposition is an extraordinary and egregious misstatement of the law. Understandably, the Opposition cites no authority for it. Instead, it simply misstates the purpose and function of two statutory provisions it cites.

NRS 78.139, which concerns the duties of directors in a change of control or potential change of control circumstances, was part of the Nevada legislature's response to the decision in *Hilton Hotels Corp the ITT Corp.*, 978 F.Supp. 1342 (D. Nev. 1997). Keith Paul Bishop & Jeffrey P. Zuckerberg, *Bishop and Zucker on Nevada Corporations and Limited Liability Companies,* 10-

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

5, 10-62-66 (2013). Nothing that statutory provision, nor anything in NRS 78.138, supports Defendants' contention. Nor does it follow as a matter of logic or statutory construction that a statutory provisions such as NRS 78.139, which is addresses a discrete set of circumstances, modifies well-established case law discussed above and in the Motion, which establishes that the presumptions of the business judgment rule are rebuttable.

NRS 78.140 is merely Nevada's statutory exception to the common law rule that interested transactions are void or voidable. "A general common law presumption is that a director's or officer's conflict of interest can result in the voiding of a transaction." Keith Paul Bishop & Jeffrey P. Zuckerberg, *Bishop and Zucker on Nevada Corporations and Limited Liability Companies,* § 8.16, 8-44-47 (2013). Nevada, like other states, has enacted a statutory safe harbor that protects certain conflict-of-interest transactions from being voided when certain protective measures have been taken, such as approval of the interested transaction by a disinterested majority of the board of directors. Nevada's statutory safe harbor is NRS 78.140. *Id.*

Thus, and contrary to what defendants argue, NRS 78.140 is not one of two (imaginary) statutory exceptions to the rebuttable presumptions of the business judgment rule codified in NRS 78.138. Nor does NRS 78.140 provide a definition of interestedness. NRS 78.140 provides that, absent approval of a disinterested majority of directors-- which did not occur here-- the action in question is voidable, meaning record can provide exactly the equitable relief sought by Plaintiff. As demonstrated in the Motion, Plaintiff's Opposition to Defendants' Motion for Summary Judgment No. 1, and reiterated above, Ellen and Margaret Cotter indisputably were interested in and not independent with respect to the decision to terminate Plaintiff. Likewise each of Adams and Kane lacked disinterestedness, independence, or both. Thus, the standards recognized and adopted by the Nevada Supreme Court require summary judgment in Plaintiff's favor.

E. The Court Has Rejected Defendants' Adequacy Argument Three Times and Should Do So Again.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

The Interested Director Defendants cite *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), a case in which an issue was whether an environmental group had standing, and then proffer five erroneous factual conclusions in support of what actually is an argument that Plaintiff is an inadequate derivative plaintiff. (Opposition at 818:8-26.) Gould gives passing reference to that subject, as well. (Gould Opposition at 5:14-19.) This Court twice has rightly rejected these very arguments proffered in support of motions to dismiss and, most recently, rejected them a third time in response to the oppositions to Plaintiff's motion for leave to file a Second Amended Complaint. It should continue to do so here.

As before, Defendants proffer an incomplete list of factors typically considered in assessing the adequacy of a derivative plaintiff. (Motion at 15-18: 24.) The complete list from the inapposite case cited by Gould reads as follows:

> In determining whether a shareholder is an adequate representative, the court may also evaluate: economic antagonisms between representative and class; the remedy sought by plaintiff in the derivative action; indications that the named plaintiff was not the driving force behind the litigation; plaintiff's unfamiliarity with the litigation; other litigation between the plaintiff and defendants; the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action itself; plaintiff's vindictiveness toward the defendants; and, finally, the degree of support plaintiff was receiving from the shareholders he purported to represent.

Energytec, Inc. v. Proctor, 2008 WL 4131257, at *6-7 (N.D. Tex. Aug. 29, 2008), citing *Davis v. Comed, Inc.*, 619 F.2d 588, 593-94 (6th Cir. 1980).

Individually and collectively, the foregoing considerations weigh heavily against a determination that Plaintiff is an inadequate derivative plaintiff.

First, the consideration of economic antagonisms between the derivative plaintiff and other shareholders typically if not invariably arises in circumstances in which the derivative suit obviously is brought to provide additional leverage to the Plaintiff, who separately is pursuing direct litigation (typically against the company) in which the Plaintiff's economic interest is paramount. In other words, the question is whether the derivative plaintiff's economic interest in his personal direct claims far exceeds his economic interest in the derivative claims he has brought.

Here, Plaintiff's obvious paramount interest is in the viability and value of RDI, in which he personally is a significant shareholder and with respect to which his three children are a majority of the beneficiaries of the trust(s) holding approximately 70% of the Company's Class B voting stock and a significant amount of the Company's Class A non-voting stock.

Second, the Interested Director Defendants attempt to transmogrify the remedy sought by Plaintiff regarding his termination into the equivalent of unemployment contract case. As shown herein, that relief is appropriately sought by way of a derivative action. Indeed, the intervening institutional shareholder plaintiffs previously sought that relief too. Finally, Plaintiff seeks additional relief, demonstrating the defendants effort to recast this case as an employment case is mistaken.

The third consideration identified in the list quoted above, indications that the named plaintiff is not a driving force behind the litigation, here clearly weighs heavily in favor of the adequacy of Plaintiff as a derivative plaintiff. Plaintiff, a significant shareholder and father of three children who are majority beneficiaries of the trust which is the largest voting shareholder of the Company, has at all times in this litigation pursued the very same interests he advanced and protected as President and CEO of the Company, namely, the best interests of the Company and all of its shareholders. No doubt for this reason, defendants ignore this consideration.

The fourth consideration, the plaintiff's familiarity or unfamiliarity with litigation, also weighs entirely in favor of the adequacy of Plaintiff as a derivative plaintiff. He not only is intimately familiar with the issues raised in this shareholder derivative action, he also is uniquely informed with respect to them. As such, he is uniquely qualified to serve as derivative plaintiff in this case. Defendants likewise ignore this consideration, in what can only be understood to be an effort to persuade the court to employ an erroneous legal test, to reach erroneous result.

As to the fifth consideration of other litigation pending between Plaintiff, on one hand, and the Company or the Interested Director Defendants, on the other hand, that consideration likewise does not weigh against the adequacy of Plaintiff as a derivative plaintiff. As the Court knows, the other litigation is a bogus arbitration brought by the Company for the purpose of making the arguments made herein, after having brought and lost a specious motion to compel arbitration.

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

The sixth consideration, the relative magnitude of Plaintiff's personal interests as compared to his interest in the derivative action itself, weighs heavily in favor of the adequacy of Plaintiff as a derivative representative. As noted above, Plaintiff is a significant RDI shareholder individually. Conversely, Plaintiff's personal interest, presumably in the compensation received from being employed as President of RDI, pales in comparison to the value of his interests as an RDI shareholder.

The seventh consideration, Plaintiff's vindictiveness toward one or more of defendants, is based on what the Court previously has seen to be gross, self-serving mischaracterizations of the facts and Plaintiff's allegations. Although Plaintiff's allegations admittedly reflect badly on the Interested Director Defendants, that is because those allegations recite their wrongful, purposeful and actionable conduct. The characterization of those substantive allegations as reflecting personal animus is as inaccurate as if they were characterized as ad hominem remarks.

F. Defendants Are Liable for Breach of Fiduciary Duty and/or Aiding and Abetting the Same.

1. A Majority of Voting Directors Were Not Disinterested or Independent Under Nevada Law.

Dutifully ignoring the applicable legal analysis and case law, Defendants contend that the standards to review their actions as set forth in the Motion are not consistent with Nevada law. Not so. As discussed in the Motion, Nevada Courts routinely look to Delaware law as persuasive authority. Not only that, the principles underlying the Motion have been recognized by the Nevada Supreme Court:

> A lack of independence also can be indicated with facts that show that the majority is 'beholden to' directors who would be liable or for other reasons is unable to consider a demand on its merits, for directors' discretion must be free from the influence of other interested persons.

Shoen, 122 Nev. at 639, 137 P.3d at 1183.

Defendants in fact agree to this definition. (*See* Opposition at 24:8-12.) "[T]o show interestedness, a shareholder must allege that a majority of the board members would be materially affected, either to their benefit or detriment, by a decision of the board, in a manner not shared by the corporation and the stockholders." *Shoen*, 122 Nev. at 639, 137 P.3d at 1183; *see*

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996