77. Defendants admit that the RDI Board did not vote on the termination of Plaintiff at the RDI Board meeting on May 21, 2015. Defendants deny the allegations of paragraph 77 of the Complaint in all other respects.

78. Defendants admit that Harry Susman transmitted a settlement offer to Adam Streisand. Defendants deny the allegations of paragraph 78 of the Complaint in all other respects.

79. To the extent that the allegations of paragraph 79 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 79 of the Complaint in all other respects.

80. Defendants deny the allegations of paragraph 80 of the Complaint.

81. The allegations of paragraph 81 of the Complaint are purportedly based on written documents, which speak for themselves. Defendants deny the remaining allegations of paragraph 81 of the Complaint.

82. Defendants deny the allegations of paragraph 82 of the Complaint.

83. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of the Complaint, and therefore deny them.

84. Defendants admit that Plaintiff was present at the RDI Board meeting on May 29, 2015. Defendants admit that Guy Adams made a motion to remove Plaintiff from his position as President and CEO of RDI. Defendants admit that Plaintiff questioned the independence of Guy Adams. Defendants deny the allegations of paragraph 84 of the Complaint in all other respects.

85. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Complaint, and therefore deny them.

86. Defendants deny the allegations of paragraph 86 of the Complaint.

87. Defendants admit that James Cotter, Jr. was advised that the RDI Board meeting would be adjourned until about 6:00 p.m. that evening. Defendants deny the allegations of paragraph 87 of the Complaint in all other respects.

88. Defendants admit that the RDI Board meeting reconvened at approximately 6:00 p.m. Defendants admit that Ellen Cotter reported that she, Margaret Cotter, and Plaintiff had reached an "agreement-in-principle." Defendants admit that Ellen Cotter read some of the

"agreement-in-principle" to the RDI Board. Defendants admit that the RDI Board did not vote on the termination of Plaintiff at the RDI Board meeting on May 29, 2015. Defendants admit that the RDI Board meeting was adjourned. Defendants deny the allegations of paragraph 88 of the Complaint in all other respects.

89. Defendants admit that on or about June 3, 2015, Harry Susman transmitted a document to counsel for James Cotter, Jr., Adam Streisand. Defendants deny the allegations of paragraph 89 of the Complaint in all other respects.

90. Defendants deny the allegations of paragraph 90 of the Complaint.

91. Defendants deny the allegations of paragraph 91 of the Complaint.

92. To the extent that the allegations of paragraph 92 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 92 of the Complaint in all other respects.

93. To the extent that the allegations of paragraph 93 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 93 of the Complaint.

94. Defendants admit an RDI Board meeting was held on June 12, 2015. Defendants admit that Guy Adams, Edward Kane, and Douglas McEachern voted to terminate Plaintiff. Defendants admit that Timothy Storey and William Gould voted against terminating Plaintiff. Defendants admit that Ellen Cotter was elected interim CEO. Defendants deny the allegations of paragraph 94 of the Complaint in all other respects.

95. Defendants admit that no candidate was offered the position of Director of Real Estate. Defendants admit that the Company decided to put the search for a Director of Real Estate on hold. Defendants deny the allegations of paragraph 95 of the Complaint in all other respects.

96. Defendants deny the allegations of paragraph 96 of the Complaint.

97. Defendants deny the allegations of paragraph 97 of the Complaint.

98. Defendants deny the allegations of paragraph 98 of the Complaint.

99. Defendants deny the allegations of paragraph 99 of the Complaint.

100. Defendants deny the allegations of paragraph 100 of the Complaint.

101. To the extent that the allegations of paragraph 101 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 101 of the Complaint in all other respects.

102. Defendants admit that at least forty one percent (41%) of RDI's Class B voting stock is held in the name of the James J. Cotter Living Trust. Defendants admit that the James J. Cotter Living Trust became irrevocable upon James J. Cotter, Sr.'s death in September 2014. Defendants admit that who has authority to vote the RDI Class B voting stock held in the name of the James J. Cotter Living Trust is a subject of dispute in the California trust and estate litigation between Ellen Cotter and Margaret Cotter, on one hand, and Plaintiff, on the other hand. The allegations of paragraph 102 of the Complaint related to Section 15620 of the California Probate Code constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 102 of the Complaint related to Section 15620 of the California Probate Code are denied. Defendants deny the allegations of paragraph 102 of the Complaint in all other respects.

103. Defendants deny the allegations of paragraph 103 of the Complaint.

104. Defendants admit that in April 2015, Ellen Cotter and Margaret Cotter exercised options to acquire 50,000 and 35,100 shares of RDI Class B stock, respectively. Defendants admit that in September 2015, Ellen Cotter and Margaret Cotter, acting in the capacities as the Co-Executors of the Cotter Estate, exercised on behalf of the Cotter Estate an option held by the Cotter Estate to acquire 100,000 shares of RDI Class B voting stock. Defendants admit that Class A shares were used to pay for the exercise of the Cotter Estate's option. Defendants deny the allegations of paragraph 104 of the Complaint in all other respects.

105. Defendants deny the allegations of paragraph 105 of the Complaint.

106. Defendants deny the allegations of paragraph 106 of the Complaint.

107. Defendants admit that Edward Kane is and Guy Adams was a member of the Compensation Committee. Defendants admit that the Compensation Committee authorized the use of Class A shares to pay for the exercise the Cotter Estate's option to acquire 100,000 shares of Class B stock. Defendants admit that Edward Kane and Guy Adams have acknowledged

receiving advice from legal counsel, including in-house counsel Craig Tompkins, regarding Compensation Committee decision-making. Defendants admit that Timothy Storey was a member of the Compensation Committee. Defendants admit that Timothy Storey did not attend a meeting of the Compensation Committee. Defendants deny the allegations of paragraph 107 of the Complaint in all other respects.

108. Defendants deny the allegations of paragraph 108 of the Complaint.

109. To the extent that the allegations of paragraph 109 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 109 of the Complaint.

110. Defendants admit that in December 2014, the District Court of Clark County, Nevada, appointed Ellen Cotter and Margaret Cotter as co-executors of the Cotter Estate. Defendants deny the allegations of paragraph 110 of the Complaint in all other respects.

111. To the extent that the allegations of paragraph 111 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 111 of the Complaint.

112. Defendants admit that in April 2015, Ellen Cotter exercised an option to acquire 50,000 shares of RDI Class B stock. Defendants admit that Class A shares were used to pay for the exercise. To the extent that the allegations of paragraph 112 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 112 of the Complaint in all other respects.

113. Defendants admit that in April 2015, Margaret Cotter exercised options to acquire 35,100 shares of RDI Class B stock. Defendants admit that Class A shares were used to pay for the exercise. To the extent that the allegations of paragraph 113 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 113 of the Complaint in all other respects.

114. Defendants deny the allegations of paragraph 114 of the Complaint.

115. To the extent that the allegations of paragraph 115 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 115 of the Complaint in all other respects.

116. To the extent that the allegations of paragraph 116 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 116 of the Complaint.

117. To the extent that the allegations of paragraph 117 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 117 of the Complaint.

118. Defendants deny the allegations of paragraph 118 of the Complaint.

119. Defendants deny the allegations of paragraph 119 of the Complaint.

120. Defendants deny the allegations of paragraph 120 of the Complaint.

121. Defendants deny the allegations of paragraph 121 of the Complaint.

122. Defendants admit that a candidate for RDI's Board withdrew from consideration. Defendants admit that Ellen Cotter also knows the candidate's wife and child. Defendants admit that the candidate had done business with RDI and that Ellen Cotter had known the candidate for years. To the extent that the allegations of paragraph 122 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 122 of the Complaint in all other respects.

123. Defendants admit that Ellen Cotter proposed Judy Codding as a candidate for RDI's Board of Directors. Defendants admit that Judy Codding had not previously served as a director of a public company. Defendants deny the allegations of paragraph 123 of the Complaint in all other respects.

124. Defendants admit that Mary Cotter knows Judy Codding. Defendants admit that Mary Cotter is the mother of Plaintiff, Ellen Cotter, and Margaret Cotter. Defendants deny the allegations of paragraph 124 of the Complaint in all other respects.

125. Defendants admit that, with the exception of James Cotter, Jr. and Timothy Storey, RDI's directors voted to add Ms. Codding to RDI's Board of Directors on October 5, 2015. Defendants deny the allegations of paragraph 125 of the Complaint in all other respects.

126. Defendants admit that Edward Kane, Guy Adams, Douglas McEachern, and William Gould had not personally performed a background check regarding Judy Codding. Defendants admit that Edward Kane, Guy Adams, and Douglas McEachern were initially not aware of the alleged violations by Judy Codding's employer. Defendants admit that Ellen Cotter was generally aware of certain of the alleged violations by Judy Codding's employer. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 126 of the Complaint related to one of RDI's shareholder representatives, and therefore deny them. Defendants deny the allegations of paragraph 126 of the Complaint in all other respects.

127. Defendants deny the allegations of paragraph 127 of the Complaint.

128. Defendants deny the allegations of paragraph 128 of the Complaint.

129. Defendants deny the allegations of paragraph 129 of the Complaint.

130. Defendants deny the allegations of paragraph 130 of the Complaint.

131. Defendants admit that RDI's Board of Directors voted to elect Michael Wrotniak to fill the vacancy on the Board of Directors. Defendants deny the allegations of paragraph 131 of the Complaint in all other respects.

132. Defendants admit that Michael Wrotniak is not an expert in cinema operations and real estate development. Defendants admit that Michael Wrotniak had not previously been a director of a public company. Defendants admit that Michael Wrotniak's wife is a friend of Margaret Cotter. Defendants deny the allegations of paragraph 132 of the Complaint in all other respects.

133. Defendants admit that the Special Nominating Committee voted to nominate Michael Wrotniak to the RDI Board for nomination. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 133 of the Complaint, and therefore deny them.

134. Defendants deny the allegations of paragraph 134 of the Complaint.

135. To the extent that the allegations of paragraph 135 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 135 of the Complaint in all other respects.

136. To the extent that the allegations of paragraph 136 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 136 of the Complaint in all other respects.

137. Defendants admit that the selection of the search firm was delegated by the RDI Board to Ellen Cotter. Defendants admit that the Search Committee consisted of William Gould, Douglas McEachern, Margaret Cotter, and Ellen Cotter. Defendants admit that Ellen Cotter functioned as the chair of the Search Committee until she resigned from the Search Committee. Defendants deny the allegations of paragraph 137 of the Complaint in all other respects.

138. Defendants admit that on August 4, 2015, Ellen Cotter advised that the Company had retained Korn Ferry to assist the Company in the CEO search. Defendants deny the allegations of paragraph 138 of the Complaint in all other respects.

139. Defendants admit that Korn Ferry interviewed each of the members of the Search Committee. Defendants admit that Korn Ferry spoke with Craig Tompkins. Defendants admit that Korn Ferry created a "position specification." To the extent that the allegations of paragraph 139 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 139 of the Complaint in all other respects.

140. Defendants admit that an initial set of interviews of candidates was set to occur on November 13, 2015. Defendants admit that before the interviews commenced, Ellen Cotter informed the Search Committee that she wanted to be a candidate and resigned from the Search Committee. Defendants deny the allegations of paragraph 140 of the Complaint in all other respects.

141. Defendants admit that when Ellen Cotter informed the Search Committee that she wanted to be a candidate, the other Search Committee members did not discuss whether Margaret

Cotter should continue to serve on the Search Committee. Defendants admit that the Search Committee did not seek the advice of counsel in connection with Ellen Cotter's announcement. Defendants deny the allegations of paragraph 141 of the Complaint in all other respects.

142. Defendants deny the allegations of paragraph 142 of the Complaint.

143. Defendants admit that in November and December, the Search Committee interviewed several candidates, including Ellen Cotter. Defendants admit that after the candidates were interviewed, the Search Committee reached a consensus that Ellen Cotter would likely be the Search Committee's recommended candidate. Defendants deny the allegations of paragraph 143 of the Complaint in all other respects.

144. Defendants admit that the Search Committee held a meeting on December 29, 2015. Defendants admit that after discussion, the Search Committee resolved to recommend to the RDI Board Ellen Cotter as CEO and President. Defendants admit that Craig Tompkins was directed to prepare a draft report of the Search Committee's actions and determinations for review and approval by the Search Committee and submission to the RDI Board. To the extent that the allegations of paragraph 144 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 144 of the Complaint in all other respects.

145. Defendants admit the allegations of paragraph 145 of the Complaint.

146. Defendants admit that William Gould reviewed with the RDI Board the Search Committee's recommendation that the RDI Board appoint Ellen Cotter as President and CEO. Defendants admit that seven of the nine RDI directors voted to appoint Ellen Cotter as President and CEO. Defendants admit that Plaintiff voted against the motion and Ellen Cotter did not participate. Defendants deny the allegations of paragraph 146 of the Complaint in all other respects.

147. To the extent that the allegations of paragraph 147 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 147 of the Complaint.

148. Defendants deny the allegations of paragraph 148 of the Complaint.

149. Defendants admit that on March 10, 2016, the RDI Board appointed Margaret Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants admit that Margaret Cotter is responsible for the development of RDI's properties in New York City. Defendants deny the allegations of paragraph 149 of the Complaint in all other respects.

150. Defendants admit that Margaret Cotter was awarded a compensation package that included a base salary of $350,000, and a short term incentive target bonus opportunity of $105,000 (30% of her base salary). Defendants admit that Margaret Cotter was granted a long term incentive of a stock option for 19,921 shares of Class A common stock and 4,184 restricted stock units under the Company's 2010 Stock Incentive Plan, as amended, which long term incentives vest over a four year period. Defendants deny the allegations of paragraph 150 of the Complaint in all other respects.

151. Defendants admit that the Compensation Committee, comprised of Edward Kane, Judy Codding, and Guy Adams, and the Audit and Conflicts Committee, comprised of Douglas McEachern, Edward Kane, and Michael Wrotniak, each approved an additional one-time payment to Margaret Cotter totaling $200,000 for services rendered by her to the Company in recent years outside of the scope of the Theater Management Agreement, including, but not limited to: (i) predevelopment work on the Company's Union Square and Cinemas 1,2 & 3 properties, (ii) management of the New York properties, and (iii) management of Union Square tenant matters. Defendants deny the remaining allegations of paragraph 151 of the Complaint in all other respects.

152. Defendants admit that the Compensation Committee evaluated the Company's compensation policy for executive officers and outside directors and established a plan that encompasses sound corporate practices consistent with the best interests of the Company. Defendants deny the allegations of paragraph 152 of the Complaint in all other respects.

153. Defendants admit that the RDI Board adopted a resolution providing that Guy Adams be compensated $50,000 in recognition of extraordinary services to the Board of Directors. Defendants deny the allegations of paragraph 153 of the Complaint in all other respects.

154. To the extent that the allegations of paragraph 154 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants admit that the price

proposed in the non-binding indication of interest was approximately 34% and 33% greater than the prices at which RDI's Class A and Class B stock opened on May 31, 2016. Defendants deny the allegations of paragraph 154 of the Complaint in all other respects.

155. To the extent that the allegations of paragraph 155 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 155 of the Complaint.

156. Defendants admit that two days after Ellen Cotter received the unsolicited letter, the RDI Board discussed the non-binding indication of interest at a duly noticed regular meeting of the Board held on June 2, 2016. Defendants admit that copies of the unsolicited letter were distributed to the RDI Board prior to the RDI Board meeting. Defendants deny the allegations of paragraph 156 of the Complaint in all other respects.

157. Defendants admit that on June 23, 2016, a duly noticed telephonic meeting of the RDI Board was held for the sole purpose of discussing the unsolicited letter. Defendants admit that Ellen Cotter presented management's view that $17 per share was an inadequate price for the Company. Defendants admit that Ellen Cotter advised that adding together the existing value of the Company's cinemas and the appraised value of the Company's real estate, and subtracting RDI's debt, suggested an net asset value greater than the total equity value indicated in the unsolicited letter. Defendants admit that Ellen Cotter concluded that, in management's view, the interests of the Company and its stockholders would best be served by continuing with the implementation of the Company's business plan and long-term strategic objectives. Defendants admit that, with the exception of Plaintiff, who abstained, each of the other eight directors voted in favor of a resolution that stated that the value proposed for the Company in the indication of interest was inadequate. Defendants deny the allegations of paragraph 157 of the Complaint in all other respects.

158. Defendants deny the allegations of paragraph 158 of the Complaint.

159. Defendants admit that they did not consult with outside independent financial advisors in connection with the non-binding indication of interest. Defendants deny the allegations of paragraph 159 of the Complaint in all other respects.

160. Defendants deny the allegations of paragraph 160 of the Complaint.

161. Defendants admit that Ellen Cotter and Margaret Cotter did not consult with outside independent financial advisors in connection with the non-binding indication of interest. Defendants deny the allegations of paragraph 161 of the Complaint in all other respects.

162. Defendants deny the allegations of paragraph 162 of the Complaint.

163. Defendants deny the allegations of paragraph 163 of the Complaint.

164. Defendants deny the allegations of paragraph 164 of the Complaint.

165. Defendants deny the allegations of paragraph 165 of the Complaint.

166. To the extent the allegations of paragraph 166 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, such allegations of paragraph 166 of the Complaint are denied. Defendants deny the allegations of paragraph 166 of the Complaint in all other respects.

167. To the extent the allegations of paragraph 167 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, such allegations of paragraph 167 of the Complaint are denied. Defendants deny the allegations of paragraph 167 of the Complaint in all other respects.

168. Defendants deny the allegations of paragraph 168 of the Complaint.

169. Defendants deny the allegations of paragraph 169 of the Complaint.

170. Defendants deny the allegations of paragraph 170 of the Complaint.

171. Defendants deny the allegations of paragraph 171 of the Complaint.

172. Defendants deny the allegations of paragraph 172 of the Complaint.

RESPONSE TO "FIRST CAUSE OF ACTION

(For Breach of Fiduciary Duty – Against All Defendants)"

173. Defendants reassert and incorporate their responses to paragraphs 1 through 172 of the Complaint.

174. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 174 of the Complaint constitute conclusions of law, no responsive pleading is required.

To the extent a response is deemed required, the allegations of paragraph 174 of the Complaint are denied. Defendants deny the allegations of paragraph 174 of the Complaint in all other respects.

175. The allegations of paragraph 175 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 175 of the Complaint are denied. Defendants deny the allegations of paragraph 175 of the Complaint in all other respects.

176. The allegations of paragraph 176 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 176 of the Complaint are denied. Defendants deny the allegations of paragraph 176 of the Complaint in all other respects.

177. Defendants deny the allegations of paragraph 177 of the Complaint.

178. Defendants deny the allegations of paragraph 178 of the Complaint.

179. Defendants deny that Plaintiff, RDI, or its stockholders have suffered any damages by virtue of Defendants' conduct.

RESPONSE TO "SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

180. Defendants reassert and incorporate their responses to paragraphs 1 through 179 of the Complaint.

181. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 181 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 181 of the Complaint are denied. Defendants deny the allegations of paragraph 181 of the Complaint in all other respects.

182. The allegations of paragraph 182 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 182 of the Complaint are denied. Defendants deny the allegations of paragraph 182 of the Complaint in all other respects.

183. Defendants deny the allegations of paragraph 183 of the Complaint.

184. Defendants deny the allegations of paragraph 184 of the Complaint.

185. Defendants deny the allegations of paragraph 185 of the Complaint.

186. Defendants deny the allegations of paragraph 186 of the Complaint.

RESPONSE TO "THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

187. Defendants reassert and incorporate their responses to paragraphs 1 through 186 of the Complaint.

188. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 188 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 188 of the Complaint are denied. Defendants deny the allegations of paragraph 188 of the Complaint in all other respects.

189. The allegations of paragraph 189 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 189 of the Complaint are denied. Defendants deny the allegations of paragraph 189 of the Complaint in all other respects.

190. Defendants deny the allegations of paragraph 190 of the Complaint.

191. Defendants deny the allegations of paragraph 191 of the Complaint.

192. Defendants deny the allegations of paragraph 192 of the Complaint.

RESPONSE TO "FOURTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty – Against MC and EC)"

193. Defendants reassert and incorporate their responses to paragraphs 1 through 192 of the Complaint.

194. Defendants deny the allegations of paragraph 194 of the Complaint.

195. Defendants deny the allegations of paragraph 195 of the Complaint.

196. Defendants deny the allegations of paragraph 196 of the Complaint.

197. Defendants deny the allegations of paragraph 197 of the Complaint.

198. To the extent the allegations of paragraph 198 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed

required, the allegations of paragraph 198 of the Complaint are denied. Defendants deny the allegations of paragraph 198 of the Complaint in all other respects.

199. Defendants deny the allegations of paragraph 199 of the Complaint.

200. Defendants deny the allegations of paragraph 200 of the Complaint.

RESPONSE TO "IRREPARABLE HARM"

201. Defendants deny the allegations of paragraph 201 of the Complaint.

202. Defendants deny the allegations of paragraph 202 of the Complaint.

RESPONSE TO "PRAYER FOR RELIEF"

203. Responding to the unnumbered WHEREFORE paragraph following paragraph 202 of the Complaint, Defendants admit that Plaintiff demands and prays for judgment as set forth therein, but deny that Defendants caused or contributed to Plaintiff's or RDI's alleged injuries and further deny that Defendants are liable for damages or any other relief sought in the Complaint.

AFFIRMATIVE DEFENSES

204. Subject to the responses above, Defendants allege and assert the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to their responses above, Defendants specifically reserve all rights to allege additional affirmative defenses that become known through the course of discovery.

FIRST DEFENSE – FAILURE TO STATE A CAUSE OF ACTION

205. The Complaint, and each purported cause of action therein, is barred, in whole or in part, for failure to state a cause of action against Defendants under any legal theory.

SECOND DEFENSE – STATUTES OF LIMITATIONS AND REPOSE

206. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the applicable statutes of limitations and/or statutes of repose.

THIRD DEFENSE – LACHES

207. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of laches, in that Plaintiff waited an unreasonable period of time to file this action and this prejudicial delay has worked to the detriment of Defendants.

FOURTH DEFENSE – UNCLEAN HANDS

208. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of unclean hands.

FIFTH DEFENSE – SPOLIATION

209. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's spoliation of evidence and obstruction of justice.

SIXTH DEFENSE – ILLEGAL CONDUCT AND FRAUD

210. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's own illegal conduct and/or fraud.

SEVENTH DEFENSE – WAIVER, ESTOPPEL, AND ACQUIESCENCE

211. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrines of waiver, estoppel, and acquiescence because Plaintiff's acts, conduct, and/or omissions are inconsistent with his requests for relief.

EIGHTH DEFENSE – RATIFICATION AND CONSENT

212. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because any purportedly improper acts by Defendants, if any, were ratified by Plaintiff and his agents, and/or because Plaintiff consented to the same.

NINTH DEFENSE – NO UNLAWFUL ACTIVITY

213. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because, to the extent any of the activities alleged in the Complaint actually occurred, those activities were not unlawful.

TENTH DEFENSE – NO RELIANCE

214. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because Plaintiff did not justifiably rely on any alleged misrepresentation of Defendants.

ELEVENTH DEFENSE – FAILURE TO PLEAD FRAUD WITH PARTICULARITY

215. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because Plaintiff failed to plead the alleged fraud with particularity, including but not limited to identification of the alleged misrepresentations.

TWELFTH DEFENSE – UNCERTAIN AND AMBIGUOUS

216. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because it is uncertain and ambiguous as it relates to Defendants.

THIRTEENTH DEFENSE – PRIVILEGE AND JUSTIFICATION

217. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because the actions complained of, if taken, were at all times reasonable, privileged, and justified.

FOURTEENTH DEFENSE – GOOD FAITH AND LACK OF FAULT

218. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because, at all times material to the Complaint, Defendants acted in good faith and with innocent intent.

FIFTEENTH DEFENSE – NO ENTITLEMENT TO INJUNCTIVE RELIEF

219. Plaintiff is not entitled to injunctive relief because, among other things, he has not suffered irreparable harm, he has an adequate remedy at law, and injunctive relief is not supported by any purported cause of action alleged in the Complaint and is not warranted by the balance of the hardships and/or any other equitable factors.

SIXTEENTH DEFENSE – DAMAGES TOO SPECULATIVE

220. Plaintiff is not entitled to damages of any kind or in any sum or amount whatsoever as a result of Defendants' acts or omissions alleged in the Complaint because any damages sought are speculative, uncertain, and not recoverable.

SEVENTEENTH DEFENSE – NO ENTITLEMENT TO PUNITIVE DAMAGES

221. The Complaint, and each purported cause of action alleged therein, fails to support the recovery of punitive, exemplary, or enhanced damages from Defendants, including because such damages are not recoverable under applicable Nevada statutory and common law

requirements and are barred by the constitutional limitations, including the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution.

EIGHTEENTH DEFENSE – MITIGATION OF DAMAGES

222. Plaintiff has failed to properly mitigate the damages, if any, he has sustained, and by virtue thereof, Plaintiff is barred, in whole or in part, from maintaining the causes of action asserted in the Complaint against Defendant.

NINETEENTH DEFENSE – COMPARATIVE FAULT

223. Plaintiff's recovery against Defendants is barred, in whole or in part, based on principles of comparative fault, including Plaintiff's own comparative fault.

TWENTIETH DEFENSE – BUSINESS JUDGMENT RULE

224. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by the business judgment rule.

TWENTY-FIRST DEFENSE – EQUITABLE ESTOPPEL

225. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by the doctrine of equitable estoppel.

TWENTY-SECOND DEFENSE – ELECTION OF REMEDIES

226. Plaintiff is barred, in whole or in part, from obtaining relief under the Complaint, or any of the causes of action or claims therein, that are based on inconsistent positions and/or remedies, including but not limited to inconsistent and duplicative claims for equitable and legal relief.

TWENTY-THIRD DEFENSE – NEVADA REVISED STATUTE 78.138

227. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by Nevada Revised Statute 78.138, which provides that 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 or officer unless it is proven that: (a) the director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as a director or officer; and (b) the breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

TWENTY-FOURTH DEFENSE – FAILURE TO MAKE APPROPRIATE DEMAND

228. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, for failure to make a demand on RDI's Board of Directors.

TWENTY-FIFTH DEFENSE – CONFLICT OF INTEREST AND UNSUITABILITY TO SERVE AS DERIVATIVE REPRESENTATIVE

229. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, because Plaintiff has conflicts of interest and is unsuitable to serve as a derivative representative.

WHEREFORE, Defendants request that Plaintiff's Second Amended Complaint be dismissed in its entirety with prejudice, that judgment be entered in favor of Defendants, that Defendants be awarded costs and, to the extent provided by law, attorneys' fees, and any such other relief as the Court may deem proper.

Dated this 28th day of November, 2017.

COHEN|JOHNSON|PARKER|EDWARDS

By /s/ H. Stan Johnson
H. Stan Johnson, Esq.

Christopher Tayback
Marshall M. Searcy
QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

CERTIFICATE OF SERVICE

I hereby certify that, on November 28, 2017, I caused a true and correct copy of the foregoing **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** 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

DOC
Donald A. Lattin (NV SBN. 693)
dlattin@mclrenolaw.com
Carolyn K. Renner (NV SBN. 9164)
crenner@mclrenolaw.com
MAUPIN, COX & LEGOY
4785 Caughlin Parkway
Reno, Nevada 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185

Ekwan E. Rhow *(admitted pro hac vice)*
eer@birdmarella.com
Shoshana E. Bannett *(admitted pro hac vice)*
sbannett@birdmarella.com
BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
Telephone: (310) 201-2100
Facsimile: (310) 201-2110

Attorneys for Defendant William Gould

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER. JR, Plaintiff, vs. MARGARET COTTER, et al., Defendant.	CASE NO. A-15-719860-B **REQUEST FOR HEARING ON DEFENDANT WILLIAM GOULD'S PREVIOUSLY FILED MOTION FOR SUMMARY JUDGMENT** Assigned to Hon. Elizabeth Gonzalez, Dept. XI
READING INTERNATIONAL, INC., Nominal Defendant.	Trial Date: January 2, 2018

TO ALL PARTIES, COUNSEL, AND THE COURT:

Pursuant to Nevada Rule of Civil Procedure 56, Defendant William Gould, by and through his counsel of record, hereby submits this Request for Hearing Date on his previously-filed Motion for Summary Judgment. In particular, Gould requests that the hearing on the previously-filed Motion for Summary Judgment (filed on September 23, 2016) be set for **December 11, 2017**, when the Court is hearing motions for summary judgment filed by the other defendants in this matter.

This Request is based upon the following Memorandum of Points and Authorities, the accompanying Declaration of Shoshana E. Bannett and exhibits thereto, the previously filed Motion for Summary Judgment and Reply, the pleadings and papers on file, and any oral argument at the time of the hearing on Gould's Motion for Summary Judgment.

December 1, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By _____

Ekwan E. Rhow *(admitted pro hac vice)*
Shoshana E. Bannett *(admitted pro hac vice)*
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561

MAUPIN, COX & LeGOY
Donald A. Lattin (SBN 693)
Carolyn K. Renner (SBN 9164)
4785 Caughlin Parkway
Reno, NV 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185

Attorneys for Defendant William Gould

NOTICE OF MOTION

TO: YURKO, SALVESON & REMZ, P.C., Attorneys for Plaintiff:

PLEASE TAKE NOTICE that Gould's Previously-filed Motion for Summary Judgment will be heard the 08 day of January, 2018, at 8:30 AM in Department XI of the above-designated Court, or as soon thereafter as counsel can be heard.

December 1, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By _____

Ekwan E. Rhow *(admitted pro hac vice)*
Shoshana E. Bannett *(admitted pro hac vice)*
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561

MAUPIN, COX & LeGOY
Donald A. Lattin (SBN 693)
Carolyn K. Renner (SBN 9164)
4785 Caughlin Parkway
Reno, NV 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185

Attorneys for Defendant William Gould

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2017, I caused a true and correct copy of the forgoing ***Request for Hearing on Defendant William Gould's Previously Filed Motion for Summary Judgment*** to be served on all interest parties, as registered with the Court's E-Filing and E-Service System:

Kaitlin Aaron

An Employee of Maupin, Cox & LeGoy

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant William Gould filed a Motion for Summary Judgment ("Motion") on September 23, 2016. The Court never heard argument on Mr. Gould's Motion and never issued a decision on Mr. Gould's Motion. *See* Ex. 1 at 151:20-152:6 (10.26.16 Hrg. Tr.). Mr. Gould hereby requests that the Court set a hearing on his Motion on **December 11, 2017**, which is the same day that the motions for summary judgment filed by the other individual defendants will be heard.

Since Mr. Gould's Motion and reply brief were filed last year, the parties have taken additional depositions—including another session of Cotter, Jr.'s deposition. There has also been a change to the statute that governs director conduct in Nevada. Also, and importantly, the parties received final deposition transcripts from depositions taken just days before reply briefs were filed, including from the deposition of the Plaintiff's own expert—where he differentiated Mr. Gould from the other defendants, and testified that Gould was entitled to the protections of the business judgment rule and therefore there should be no further inquiry as to Gould's conduct. Given this additional evidence and change in law, Mr. Gould briefly summarizes below how his Motion is impacted by these events.

II. ARGUMENT

A. Under Nevada Law, The Court Does Not Undertake A Substantive Evaluation Of The Decisions Of An Independent And Disinterested Director.

Nevada recently amended the statute that governs the conduct and liability of individual directors. Among other changes, the law now makes clear that out-of-state authority cannot supplant or modify the plain meaning of the fiduciary duties and liability of directors under Nevada law. Nev. Rev. Stat. § 78.138(2). Moreover, the law specifies that the failure or refusal of a director to conform to the laws or judicial decisions of another jurisdiction does not indicate a breach of fiduciary duty. *Id.*

Under current Nevada law, individual directors are given broad protections when facing breach of fiduciary duty claims. First, directors, "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." Nev. Rev. Stat. § 78.138(4)(3). This is known as the business judgment rule presumption. *Wynn Resorts, Ltd v. The Eighth Judicial Dist. Ct. in and for Cty of Clark,* 399 P.3d 334, 341-42 (2017). As a threshold matter, a plaintiff cannot hold an individual director liable for damages unless he first rebuts the business judgment rule presumption. Nev. Rev. Stat. § 78.138(4)(7). In particular, the way that "the business judgment rule presumption operates" is that "only disinterested directors can claim its protections. Then, if that threshold is met, the business judgment rule presumes that the directors have complied with their duties to reasonably inform themselves of all relevant material information and have acted with the requisite, care in making the business decision." *Shoen,* 122 Nev. at 636. "[E]ven a bad decision is generally protected by the business judgment rule's presumption that the directors acted in good faith, with knowledge of the pertinent information." *Shoen,* 122 Nev. at 636. Nevada, unlike some other states, has rejected a substantive evaluation of director conduct. *Wynn,* 399 P.3d at 343.

As a practical matter, as Plaintiff's own expert explained, application of the business judgment rule presumption is a two-step inquiry. "In the first step, if there are no facts sufficiently pleaded to suggest a lack of independence and [ ] interestedness, then you get—don't go to the next inquiry and reach any decision about whether there was a breach of fiduciary duty because they get the benefit of the business judgment rule." Ex. 2 at 150:22-151:5 (Steele Dep.).

And even if Cotter, Jr. were somehow able to rebut this presumption with respect to Gould (and, as discussed below, he cannot), he must overcome two additional hurdles. Under Nevada law, the burden remains on Cotter, Jr. to prove both (1) the director's act or failure to act constituted a breach of fiduciary duty; and (2) the breach of fiduciary duty involved intentional misconduct, fraud, or a knowing violation of law. *Shoen,* 122 Nev. at 640; Nev. Rev. Stat. § 78.138(7)(b)

Here, as discussed below, all the relevant evidence proves that Gould was an independent and disinterested director entitled to the protections of the business judgment rule, who merely attempted to make the best decisions for Reading under extremely difficult circumstances—nothing more and nothing less. Moreover, there is no admissible evidence from which

a fact-finder could infer that Gould breached his fiduciary duty, much less acted with intentional misconduct, fraud, or a knowing violation of the law.

B. Plaintiff's Own Expert Agrees That Mr. Gould is Entitled To The Protection Of The Business Judgment Rule.

Mr. Gould is entitled to the protections of the business judgment rule because there is no evidence whatsoever that Mr. Gould is interested in any of the matters at issue or that he lacks independence. Mr. Gould is only ***interested*** in a matter if he will receive a specific financial benefit from his action or lack of action on the matter (or stands on both sides of a transaction) and he lacks ***independence*** only if his decision resulted from him being controlled by another. *See Shoen,* 122 Nev. at 637-38; *See also* Ex. 8 at 23 (Steele Rep.) (citing *Orman v. Cullman,* 794 A.2d 5, 24, 25 n.50 (Del. Ch. 2002). If the director makes his decision on the merits of the matter at hand, rather than extraneous influences, he is independent. Ex. 8 at 24 (Steele Rep.) (citing *Frank v. Elgamal*, 2014 WL 957550, at *22 (Del. Ch. March 10, 2014)).

The facts simply do not show that Mr. Gould received any material benefit from his Board votes, that he is controlled by anyone else or that he made his decisions based on any extraneous influences. This is not merely some partisan view of the evidence. To the contrary, after reading the fact depositions and reviewing the pleadings in this matter, ***Cotter, Jr's own paid expert witness*** in this case, conceded that "***there are insufficient facts to suggest to me that there was a reasonable doubt about [Gould's] independence or his disinterestedness***." Ex. 2 at 148:25-149:4 (Steele Dep.) And the Plaintiff himself admitted that he is not aware of any financial relationship that Mr. Gould had with Ellen or Margaret Cotter or any other member of the Reading Board. Ex. 3 at 1021:12-1025:18 (Cotter, Jr. Dep. Vol IV).[1] Cotter, Jr. has also failed to identify any personal

[1] Cotter, Jr. speculates that on the occasions when Gould's votes aligned with the votes of Ellen and Margaret Cotter , it "curried favor with Ellen and Margaret" and would allow Gould to "continue his service on the board of RDI." Ex. 3 at 1026:7-1027:12 (Cotter, Jr. Dep. Vol IV). This speculation is not evidence that Gould was not independent and was appropriately rejected as such by Cotter, Jr.'s expert. *First,* the same could be said of any director voting in line with a controlling shareholder, which means that it would be impossible to have any independent directors. *Second,* there is no evidence that Gould—an expert in corporate governance and fiduciary duties of directors, who has been cited by the Nevada Supreme Court—had such a strong interest in staying on Reading's board that he would abandon his fiduciary duties. Gould is

relationship between Mr. Gould and the Cotter sisters, for the obvious reason that none exists. Finally, each of the independent stockholders who were deposed in connection with this action differentiated Mr. Gould from the other directors and testified that they had no reason to believe that Mr. Gould was not independent or disinterested. Ex. 5 at 194:2-194:8 (Glaser Dep.) (testifying he believed Gould was independent); Ex. 6 at 160:11-161:4 (Tilson Dep.) (testifying that he would not seek to have Gould removed from the Board); Ex. 7 at 292:14-292:18 (Shapiro Dep.) (testifying that Gould was socially independent and that he had no problem with Gould).

Here, as Plaintiff's expert noted, because "there are no facts sufficiently pleaded to suggest a lack of independence and [ ] interestedness, than you [ ] don't go to the next inquiry and reach any decision about whether there as a breach of fiduciary duty because they get the benefit of the business judgment rule." Ex. 2 at 150:22-151:3 (Steele Dep.). Steele explained, "there's no reason for me to carry the analysis of Mr. Gould any farther than that." *Id.* at 151:4-5. The facts just "don't support the second step" in Mr. Gould's case. *Id.* at 151:7-8.[2]

In sum, because there is no evidence that Mr. Gould lacked independence or was interested, he is entitled to the benefit of the business judgment rule and the case against him must be summarily adjudicated in Mr. Gould's favor.

C. There Is No Evidence Of That Mr. Gould Breached His Fiduciary Duties, Let Alone With The Required Mindset Of Intentional Misconduct, Fraud Or A Knowing Violation Of Law.

Given that Plaintiff's own expert and all of the independent shareholders agree that there is no case against Mr. Gould, there is no reason to go any further. But even if Mr. Gould were not the beneficiary of the business judgment rule, the case against him should still be summarily adjudicated in his favor. That is because, as discussed in Gould's Motion, Plaintiff has adduced

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a successful lawyer who is a partner in an eponymous 34-lawyer firm in Los Angeles, and he has stepped down from the Reading board on previous occasions. Ex. 4 at 15:1-15 (Gould Dep.). Finally, Cotter, Jr. himself admitted that Mr. Gould could vote in line with the Cotter sisters and still be voting for what he believed was in the best interests of Reading. Ex. 3 at 1029:11-18 (Cotter, Jr. Dep. Vol. IV)

[2] Justice Steele further explained that his opinions about the other director-defendants do not apply to Mr. Gould. Ex. 2. at 149:22-150:1 (Steele Dep.).

no evidence to meet his burden of proof to establish that (1) Mr. Gould breached his fiduciary duty; and (2) the breach involved intentional misconduct fraud or a knowing violation of law. Because Gould has extensively addressed this matter in his Motion and Reply, Gould only briefly points out new information with respect to each of Plaintiffs' separate claims.

1. There is no evidence to support a separate claim against Mr. Gould for breach of fiduciary duty relating to Cotter, Jr.'s termination.

Plaintiff cannot maintain a separate claim against Mr. Gould for breach of fiduciary duty relating to Cotter, Jr.'s termination. As discussed in Mr. Gould's prior briefs, Mr. Gould voted against Cotter, Jr.'s termination. Cotter, Jr. admits that Mr. Gould's vote against his termination was done with the best interests of Reading in mind and he is not aware of any director that had any financial influence over Mr. Gould's vote. (Ex. 3 at 1017:14-24; 1026:21-1027:12 (Cotter, Jr. Dep. Vol IV)). Given that Mr. Gould voted against Mr. Cotter's termination, the claim against him for breach of fiduciary duty based on Mr. Cotter's termination must be summarily adjudicated in Mr. Gould's favor. *See, e.g., In re Tri-Star Pictures, Inc., Litig.*, No. CIV. A. 9477, 1995 WL 106520, at *2 (Del. Ch. Mar. 9, 1995)) (refusing to hold director liable for board decision where director abstained from vote); *In Re Wheelabrator Technologies, Inc. Shareholders Litigation*, C.A. No. 11495, 1992 WL 212595, at *10 (Del. Ch. Sept. 1, 1992) (same); *Citron v. E.I. du Pont de Nemours & Co.*, 584 A.2d 490, 499 (Del. Ch. 1990) (same).

Cotter, Jr. is apparently pursuing this absurd claim against one of his only supporters because he is upset that Mr. Gould did not launch an investigation into whether Guy Adams had a conflict of interest when Cotter, Jr. raised it at the meeting when he was terminated. Not only is this a completely separate issue than the vote on his termination (and therefore irrelevant to a claim of breach of fiduciary duty based on Cotter, Jr.'s termination), there is simply no evidence that Mr. Gould breached his fiduciary duty by not immediately investigating Mr. Adams' finances. As discussed in detail in Mr. Gould's Motion, Cotter, Jr. claimed to have known about Mr. Adams' alleged conflict for eight months, but said nothing when Mr. Adams voted in Cotter, Jr.'s favor. He raised the issue only when Mr. Adams was prepared to vote against him, which thoroughly undermined Cotter, Jr.'s credibility. Mot. at 28. Moreover, Mr. Gould testified that he

relied on company counsel to vet financial independence. *Id.* Nevada law makes clear that directors are entitled to rely on counsel on issues within the attorney's professional competence. Nev. Rev. Stat. § 78.138(4)(2)(b). As such, Mr. Gould acted appropriately and did not breach his fiduciary duty with respect to allowing Mr. Adams to participate in the vote.[3]

In short, there is simply no basis to hold Mr. Gould liable for breach of fiduciary duty relating to the Plaintiff's termination where he voted ***against*** that termination. This claim must be summarily adjudicated in Mr. Gould's favor.

2. There is no evidence to support a separate claim against Mr. Gould for breach of the duty of candor with respect to SEC filings and press releases.

Cotter, Jr. contends that Mr. Gould breached the duty of candor with respect to certain SEC filings and press releases issued by Reading. In particular, Cotter, Jr. contends that Mr. Gould breached the duty of candor when Reading attached a press release to its 8-K with a quote from Mr. Gould describing the CEO search process as thorough. He also contends that Mr. Gould breached the duty of candor by failing to prevent Reading from issuing several others 8-Ks that Cotter, Jr. contends are misleading (and which are described in Gould's motion for summary judgment). *See* Mot. at 28-30.

The problem with Cotter, Jr.'s breach of duty of candor claims is that Nevada does not recognize the duty of candor as one of a director's fiduciary duties (outside of the merger context). Indeed, the Nevada Supreme Court has explicitly laid out the extent of a director's ordinary fiduciary duties: "[T]he directors' fiduciary relationship with the corporation and its shareholders [] imparts upon the directors duties of care and loyalty." *Shoen,* 122 Nev. at 632. The Nevada Supreme Court has further explained that it is only in the limited context of the merger process, that the duty of candor and disclosure is imposed upon directors—and it results in an application of higher scrutiny in such situations. *Cohen v. Mirage Resorts, Inc.,* 119 Nev. 1, 18 (2003). And while Delaware law may provide a duty of candor under broader circumstances, the Nevada

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[3] Moreover, in any event, Cotter, Jr. has pointed to no evidence whatsoever that Mr. Gould acted with the requisite mental state of intentional misconduct, fraud or a knowing violation of law

legislature has made clear that out-of-state authority cannot supplant the fiduciary duties of directors under Nevada law and that the failure to conform to the laws of another jurisdiction, such as Delaware, does not indicate a breach of fiduciary duty. Nev. Rev. Stat. § 78.138(2). In other words, Mr. Gould cannot be liable for breach of the duty of candor relating to non-merger disclosures because Nevada law does not recognize such a duty.[4] As such, Cotter, Jr.'s claims for breach of the duty of candor must be summarily adjudicated in Mr. Gould's favor.

3. There is no evidence to support a separate claim against Mr. Gould for breach of fiduciary duty relating to the appointment of Codding and Wrotniak to Reading's Board of Directors.

In his Motion, Mr. Gould explained that there are no requirements to serve on a board of directors in Nevada other than that the director is over 18 and a natural person, that under NASDAQ listing rules, a controlling shareholder has the right to select directors, and that there were legitimate reasons to select including their business experience and Board harmony, and that Codding and Wrotniak's personal "relationships" with the Cotter sisters were tangential at best. Mot. at 16-20. Cotter, Jr. has since conceded that Board harmony is a legitimate consideration. Ex. 3 at 1055:6-14 (Cotter, Jr. Dep.). And his expert witness agreed that it was appropriate to take into account. Ex. 2 at 154:21-155:1 (Steele Dep.) Given that that Gould took into account appropriate considerations and that both Codding and Wrotniak are qualified to be directors under Nevada law, there is no evidence that Mr. Gould breached his fiduciary duty in voting in favor of

[4] Mr. Gould addressed additional problems with the claims against him pertaining to the SEC filings and press releases in his motion for summary judgment, namely that: (1) alleging the public filings do not contain enough information does not demonstrate that a defendant engaged in fraud and (2) the evidence shows that Gould provided comments on the parts of the filings he had knowledge of and relied on Reading's counsel and executives as to matters he was not involved with, which is consistent with a director's fiduciary duties. Mot. at 28-30. Since that time, Cotter, Jr. also conceded Gould did not have unilateral authority to correct SEC disclosures. Ex. 3 at 1080:4-10. He also admitted that Cotter, Jr, has no evidence that Mr. Gould did not believe "[a]fter conducting a thorough search process, it is clear that Ellen is best suited to lead Reading moving forward" and that Cotter, Jr. is solely relying on naked belief that Mr. Gould could not believe his sister to be the best person to lead Reading. Ex. 3 at 1069:11-25:1070:1; 1071:11-1073:9 (Cotter, Jr. Dep. Vol. IV). As detailed in Gould's motion, Ellen Cotter (who had been acting CEO) was selected after interviewing seven candidates, and based on her performance in that role and her other experience at Reading, Gould thought Ellen Cotter was intelligent and had the right personality to lead the company forward during a difficult time. Mot. at 9-10; 20-25.

their appointments, let alone that he acted with the requisite mindset of fraud, intentional misconduct or a knowing violation of law when he accepted the recommendation of the Special Nominating Committee and voted to appoint two experienced business people to the Reading Board.

4. There is no evidence to support a separate claim against Mr. Gould relating to the appointment of Ellen Cotter as permanent CEO.

Mr. Gould's Motion explained in detail the steps undertaken by the CEO search committee to find a CEO, including engaging an executive search firm and interviewing seven candidates. Mot. at 21-22. The Motion explained that the Search Committee moved away from the initial search criteria after determining that there was too great a focus on real estate experience and that even Cotter, Jr. believed the position specification was initially too focused on real estate experience. Mot. at 22-23. And the Motion also explained why Mr. Gould decided to recommend Ellen Cotter once she threw her hat in the ring—noting that the Board knew Ellen Cotter well, believed her to be intelligent, with an extensive knowledge of Reading and the right personality to lead the company through a difficult transition, and that she had performed well as interim CEO (among other factors). Mot. at 23-24. Cotter, Jr.'s complaints about the CEO search process amount to nothing more than nitpicking a process that lead to a conclusion he did not like—the appointment of his rival and sister, Ellen Cotter to the role of CEO. Indeed, Cotter, Jr.'s recent deposition makes clear that he was able to voice all of his concerns regarding process to the other Board members before the vote, and that Mr. Gould did not refuse to answer any of Cotter, Jr.'s questions. Ex. 3 at 1083:21-1084:3 (Cotter, Jr. Dep. Vol IV). Moreover, Cotter, Jr. conceded that directors could have different views and vote differently and still both be fulfilling their fiduciary duty. Ex. 3 at 1055:21-1056:3 (Cotter, Jr. Dep. Vol IV). That is precisely the case here. All of the evidence demonstrates that Mr. Gould conducted a CEO search that was completely open about its process, that he interviewed numerous candidates, and that he ultimately recommended the serving interim CEO, who had also been a successful executive at Reading for many years, for the permanent position, because he believed she was the best candidate for the job under the particular circumstances facing Reading. Under these circumstances, the claims against

Mr. Gould for breach of fiduciary duty relating to the CEO search must be summarily adjudicated in his favor.

5. There is no evidence to support a separate claim against Mr. Gould relating to the approval of compensation and other pay.

As discussed in Mr. Gould's Motion, Mr. Gould voted in favor of a salary raise for Ellen Cotter, a $50,000 payment to Guy Adams and a one-time payment to Margaret Cotter upon the windup of her consulting agreement because these payments all served legitimate business purposes and Mr. Gould appropriately relied on the work of committees and experts to determine whether and in what amount to make the payments. Mot. at 25-27. Cotter, Jr. now concedes that he has no evidence that Mr. Gould breached his fiduciary duty in voting in favor of these payments and is relying solely on the fact that Mr. Gould voted "yes". Ex. 3 at 1090:22-25 (Cotter, Jr. Dep. Vol IV). Given the legitimate business reasons for these payments, Mr. Gould's "yes" vote does not show that he breached his fiduciary duty, let alone that he acted with intentional misconduct, fraud or a knowing violation of law. This claim, too, must be summarily adjudicated in Gould's favor.

III. CONCLUSION

Mr. Gould requests that the Court set a December 11, 2017 hearing date for the Motion for Summary Judgment he filed on September 23, 2016. For the foregoing reasons, and the reasons stated in Gould's Motion for Summary Judgment, and the Reply in Support of Gould's Motion for Summary Judgment, and the Individual Defendants' Motion for Partial Summary Judgment No. 3 on Plaintiff's Claims Related to the Purported Unsolicited Offer, Mr. Gould further requests that all of Plaintiff's claims against Mr. Gould be summarily adjudicated in his favor.

December 1, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By _____

Ekwan E. Rhow *(admitted pro hac vice)*
Shoshana E. Bannett (*admitted pro hac vice*)
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561

MAUPIN, COX & LeGOY
Donald A. Lattin (SBN 693)
Carolyn K. Renner (SBN 9164)
4785 Caughlin Parkway
Reno, NV 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185

Attorneys for Defendant William Gould

OMSJ
MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913
Yurko, Salvesen & Remz, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108
Telephone: (617) 723-6900
Facsimile: (617) 723-6905
Email: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., 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, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **SUPPLEMENTAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT NOS. 1 AND 2 AND GOULD MOTION FOR SUMMARY JUDGMENT** **Hearing date: December 11, 2017** **Hearing time: 8:30 a.m.**

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

I. INTRODUCTION[1]

The "Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6" (the "Supplement") asserts with respect to MSJ No. 1, which the Court denied, that new issues of law merit reconsideration and granting that motion, and with respect to MSJ No. 2 that Plaintiff has failed to proffer evidence raising any disputed questions of fact regarding director independence or disinterestedness. Both arguments are predicated upon misstatements of the law and the argument with respect to MSJ No. 2 simply ignores the wealth of compelling evidence that shows a lack of independence and/or disinterestedness on the part of almost all if not all of the director defendants, in many instances generally and in all instances with respect to the matters at hand which were of interest to EC and MC.

With respect to MSJ No. 1, contrary to what the Supplement contends, no changes to the law warrant reconsideration, much less a different outcome. However, recent additional testimony by defendant Adams clarifies and confirms his financial dependence on EC and MC and, if reconsideration is warranted, supports granting Plaintiff's summary judgment motion.

With respect to MSJ No.2, the Supplement ignores what constitutes independence and disinterestedness and, more critically, the lack thereof, which Plaintiff again explains in this brief. Also with respect to MSJ No. 2, the Supplement ignores the evidence and ignores the fact that the Court is required to look at it both collectively and particularly with respect

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[1] Plaintiff concurrently is submitting four supplemental oppositions, one with respect to each of so-called Summary Judgment Motion Nos. 1, 3 5 and 6. Because each addresses issues relating to Summary Judgment Motion No. 2 and to Gould's separate summary judgment motion, each is submitted as a supplemental brief with respect to those motions as well.

to particular matters that Plaintiff claims in and of themselves, not just together with other matters, entail or constitute breaches of fiduciary duty.

II. SUPPLEMENTAL STATEMENT OF FACTS

The only recently discovered fact is recent deposition testimony by Adams that clarifies and confirms that most and in some years almost all of his income is from companies controlled by EC and MC. *See* Ex. 1 to Declaration of Akke Levin ("Levin Decl.")(Adams October 17, 2017 Dep. Tr. at 554:18–562:8).

III. ARGUMENT

The Supplement asserts that "recent clarification to Nevada law makes clear that suggestions of a purported lack of independence cannot rebut [the] statutory presumption..." Supplement at 11:9–13. Insofar as this argument is based upon a recent amendment, it misapprehends that amendment and is unavailing. Insofar as it is based on mischaracterization of the evidence Plaintiff has proffered, it is mistaken and unavailing.

A. The Recent Statutory Modifications do not Change the Analysis or Outcome Here

As demonstrated in Plaintiff's opposition to the renewed motion directed at the expert testimony of Chief Justice Myron Steele ("Renewed Steele MIL"), defendants' characterization of a recent amendment to NRS 78.138 is inaccurate and their reliance on it unavailing. Plaintiff respectfully incorporates that opposition herein. Briefly, as explained in Plaintiff's opposition to the Renewed Steele MIL, those amendments do not change the analysis or the result here. Contrary to what the Supplement argues regarding subsection 4 of S.B. 203, that subsection merely provides that directors of a Nevada corporation are not liable for breach of fiduciary duty for failing to abide by foreign laws, judicial decisions or practices. That of course says nothing about whether a Nevada Court, in determining whether

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

a director of a Nevada corporation breached his or her fiduciary duties under Nevada law, may look to Delaware statutes and/or judicial decisions to assist in interpreting a Nevada statute if doing so would not entail supplanting or modifying the law of Nevada. Finally, insofar as subsection 4 of S.B. 203 amends NRS 78.148 (7) to include language that a director of a Nevada corporation cannot be liable to the corporation for money damages "unless...[t]he trier of fact determines that the presumption established by subsection 3 has been rebutted[,]" this provision merely clarifies the pre-existing evidentiary burden, which is that the plaintiff bears the initial burden of rebutting the statutory presumption. The Motion admits as much, stating that the business judgment rule presumptions apply "*if* the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company." Motion at 3:25–4:2 (citing *Wynn Resorts*) (emphasis supplied).

B. The Supplement Misapprehends the Law and Ignores the Evidence

The Supplement in addressing the question of director independence cites to comments the Court made at the October 27, 2016 summary judgment hearing, which the Supplement characterizes as requiring "Plaintiff [to] provide additional information so that each director could be evaluated on an ' action-by-action basis.'" Supplement at 7:25–27. What the Court actually said was that "the independence issue needs to be evaluated on a transaction or action-by-action basis, because you have to separately evaluate the independence as related to each. And while there maybe facts that overlap between different actions that apply to others, I can't evaluate it in a vacuum." Ex. A to Declaration of Noah Helpern in support of Defendants' Supplemental Motions for Summary Judgment, (October 7, 2016 Hearing Tr. at 84:21-85:1). Plaintiff understood those

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

comments to reflect that the Court agreed with Plaintiff that independence does not exist outside of a factual context, and that it needed to be assessed not only generally but also with respect to specific transactions and/or actions, if any, that Plaintiff contended in and of themselves gave rise to or constituted breaches of fiduciary duty. Plaintiff further understood the Court to direct counsel for Plaintiff to indicate which if any of the complained of actions or transactions were matters which Plaintiff contends in and of themselves, not just together with others, give rise to or constitute breaches of fiduciary duty. The answer to that question is that Plaintiff for the purposes of the pending motions is of the view following matters may be viewed as also independently entailing or constituting breaches of fiduciary duty:

- The threat by Adams, Kane and McEachern to terminate Plaintiff if he did not resolve trust disputes with his sisters on terms satisfactory to them (which included giving EC and MC control of RDI).
- Termination of Plaintiff by them when he failed to acquiesce (after choosing not to terminate him when they understood that he had acquiesced).
- Adams and Kane authorizing exercise of the 100,000 share option to protect EC and MC's control of RDI from a possible proxy contest by non-Cotter shareholders.
- MC, McEachern and Gould aborting the CEO search and selecting EC, who lacked the most critical qualifications sought in a CEO of RDI, to which the other director defendants agreed in order to accommodate EC and MC as controlling shareholders.
- Hiring MC as EVP RED NY, even though she had no prior experience for that position, which is of vital importance to the

Company and its prospects, and providing MC a pre-employment $200,000 bonus, to accommodate EC and MC as controlling shareholders.

- Responding to the Patton Vision offer(s) in a manner intended to satisfy the wishes and protect the interests of EC and MC controlling shareholders.

Because each of the foregoing matters other than the termination of Plaintiff is addressed in other briefs (three filed contemporaneously herewith), only the termination topic is addressed herein at any length. However, the legal notion of independence and disinterest and the lack of either and/or both is discussed herein, as is an overview of each of the director defendants.

Because the business judgment rule presumes that directors have no conflict of interest, the business judgment rule does not apply where "directors have an interest other than as directors of the corporation." *Lewis v. S.L. & E., Inc.*, 629 F.2d 764, 769 (2d Cir. 1980). This is because "[d]irectorial interest exists whenever divided loyalties are present." *Rales v. Blasband*, 634 A. 2d 927, 933 (Del. 1993) (citations and quotations omitted). Thus, a director must be disinterested in the challenged conduct in particular and, as a general matter, otherwise independent. *Beam*, 845 A.2d at 1049.

A director is independent "only when the director's decision is based *entirely* on the corporate merits of the transaction and is not influenced by personal or extraneous considerations." *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) *modified in part on other grounds*, 636 A.2d 956 (Del. 1994) (emphasis supplied). "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Independence is lacking in situations in

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which a corporate fiduciary "derives a benefit *from the transaction* that is not generally shared with the other shareholders." in situations in which the benefit is derived by another (*e.g.*, by EC and MC), the issue is whether the [corporate fiduciary]'s decision resulted from that director being *controlled* by another." *Orman v. Cullman*, 794 A.2d 5, 25 n.50 (Del. Ch. 2002) (explaining the distinction between interest and independence). Control may exist where a corporate fiduciary has close personal or financial ties to or is beholden to another. *Id.*

"Independence is a fact-specific determination made in the context of a particular case. The Court must make that determination by answering the inquiries: independent from whom and independent for what purpose?" *Beam*, 845 A.2d at 1049–50.

The rule that a director must be independent *and* act independently means that, although independence is to be assessed with respect to particular challenged decisions that are claimed to have given rise to or constitute fiduciary breaches (*i.e.*, did the director act independently), independence must be assessed in view of all of the facts and circumstances that bear upon the director's independence (*i.e.*, is the director independent), including most fundamentally whether the director otherwise has acted or failed to act independently.

To illustrate the point, McEachern's independence in the context of his actions as a member of the CEO search committee to abort the search process and select EC to be CEO, like his reflexive rejection of the Offer, must be assessed in view of his prior conduct in the context of other matters of personal importance to EC and/or MC, including most notably McEachern's participation in the threat to terminate Plaintiff if he did not resolve trust disputes with his sisters on terms satisfactory to them (which

entailed giving them control of RDI) and his action to terminate Plaintiff when he did not do so.

Here, EC and MC are acknowledged by Defendants for the purpose of summary judgment motions to not be independent and/or disinterested generally.

Adams, Kane and McEachern's stunning misuse of their positions as directors to attempt to extort Plaintiff into resolving trust and estate disputes on terms dictated by EC and MC are squarely and unequivocally efforts to obtain personal benefits for EC and MC not shared with other RDI shareholders. More fundamentally, those efforts constitute compelling evidence not merely of divided loyalties on the part of each of Adams, Kane and McEachern, but rather of undivided loyalties, to EC and MC rather than the Company and all of its shareholders.

Also as to Adams, his own sworn testimony in his Los Angeles Superior Court divorce proceeding and in this case shows that he is financially dependent upon income he receives from companies that EC and MC control and therefore is personally interested in any and all matters of even potential personal interest to EC and/or MC, as his actions with respect to such matters (*e.g.*, as a Compensation Committee and Board member acting on employment and compensation of EC and MC) also evidence. Any question about his dependence on EC and MC (through companies they control, including RDI) for his income was put to rest by his recent deposition testimony which, among other things, confirmed the accuracy of the declarations he signed and filed in his divorce case. Ex. 1 to Levin Decl. (Adams October 17, 2017 Dep. Tr. at 554:18–562:8).

Kane's personal relationship with JJC, Sr., Kane's view that JJC, Sr. intended MC control the Voting Trust and his actions to make that happen, his actions to provide EC and MC with lucrative senior executive

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jobs at RDI for which each was and is demonstrably unqualified and his reflexive rejection of the Offer(s), among other things, demonstrate his lack of independence, both generally from and with respect to EC and MC, and with respect to each of these particular matters.

As discussed in the contemporaneously filed supplemental opposition to the so-called summary judgment motion directed at the CEO search, defendants Gould and McEachern were the ostensibly independent directors on the CEO search committee, but did not act as such. Instead, they allowed MC to participate and, together with her, undermined and actually aborted the CEO search process.

For Gould, that was chronologically in the middle of a series of actions and intentional failures to act in the face of a known duty, all of which were to accommodate EC and MC as controlling shareholders. Those acts and omissions include the following:

- When Plaintiff raised the issue of Adams' lack of independence due to his financial dependence on EC and MC, Gould chose to let Adams get away with refusing to address the issue, and failed to take any action to fulfill his fiduciary obligations and learn the (publicly available) facts. As a result, Adams cast the deciding vote to terminate Mr. Cotter as President and CEO. When Gould learned those facts during this litigation, he took the position that Adams was conflicted at least with respect to matters regarding the compensation of members of the Cotter family. Ex. 2 to Levin Decl. (William Gould 6/8/16 Dep. Tr. at 39:2–25).
- Gould told EC that the position she had caused the Company to take and publicly disclose in a SEC filing and press release, namely, that Mr. Cotter was required to resign as a director upon the termination of his executive employment agreement, was

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erroneous. When EC ignored him and proceeded to pursue that position (failing to correct the erroneous public disclosure and causing the Company to commence an arbitration against Mr. Cotter), Gould was required to take the issue to the highest decision-maker at the Company, the Board. Again, Gould chose not to act.

- Gould approved the repopulation of the executive committee knowing full well that it would be used as a means to limit the participation of Plaintiff and Storey as directors. In fact, his testimony was that he chose not to be on it because he knew it would take too much time. Ex. 2 (Gould Dep. Tr. at 25:3–23).
- When faced with the offer(s) by Patton Vision and others to acquire all of the outstanding stock of the Company, Gould redirected the conversation from matters bearing upon the best interests of the Company and all of its shareholders to the intentions and wishes of EC and MC as controlling shareholders. When EC and MC indicated they would not support pursuing the offer, Gould and the other directors promptly acquiesced to their wishes as controlling shareholders and determined not to proceed.

As to each of Codding and Wrotniak, they do not constitute a majority of directors or committee members voting with respect to a single matter, which means that their independence and/or disinterest is of little or no import. Even if they did, questions about their independence and/or disinterest exist, at a minimum. Codding and Wroniak, both of whom have personal relationships with a Codding family member and neither of whom have any background in RDI's businesses or public company boards, had been on the RDI board a mere two months when, without having participated in the CEO search, they were asked to make EC the new CEO.

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Without so much as going behind the presentation made at the board meeting, they dutifully did so. As to Codding, that may have been because her view was that a Cotter as a controlling shareholder should be the CEO of the company. *See* October 13, 2016 Declaration of James J. Cotter, Jr., Ex. 7 to Plaintiff's Supplemental Opposition to MSJ Nos. 2 and 3 (filed concurrently), ¶ 24. Likewise, both Codding and Wrotniak promptly and dutifully acquiesced to the wishes of EC and MC as controlling shareholders in voting to take no action in response to the Patton Vision offer(s).

As the foregoing illustrates, particularly when viewed in context, at a minimum disputed issues of fact exist regarding the independence and disinterestedness of most if not all of the director defendants, both generally and with respect to particular complained of conduct, including the threat of termination, termination, the aborted CEO search that resulted in EC being made CEO notwithstanding the fact that she lacked the qualifications and experience that were the *sine qua non* for the position, the hiring of MC for a critical, highly paid senior executive position for which she had no prior experience and the payment to her of a stunning $200,000 pre-employment signing bonus so she would take the very job for which she had been angling for a year and a half.

As if from a movie, all of these acts and omissions that can be summarized as entrenchment and self-dealing must be viewed in the context of the reflexive decision of all Board members to summarily reject even independently analyzing what should be done in response to the Offers, because they immediately asked what the controlling shareholders wanted to do and promptly did that, which of course was to tell the Offerors that the Company was not for sale and would not be for sale.

As if from a movie sequel, they doubled down on that conduct by taking defensive measures to make the acquisition of control of the

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Company more expensive (by providing in effect that Company monies would be paid to EC and MC upon a change of control).

As the foregoing demonstrates, the record is rich with evidence that each of the individual director defendants lacked independence and/or disinterestedness generally and with respect to particular complained of acts and omissions with respect to matters of personal interest to EC and MC. This evidence serves to rebut the presumptions of the business judgment rule and shift the burden to the individual director defendants to prove the entire fairness of their challenged conduct and the results.

"If the shareholder succeeds in rebutting the presumption of the business judgment rule, the burden shifts to the defendant directors to prove the 'entire fairness' of the transaction." *McMullin v. Brand*, 765 A.2d 910, 917 (Del. 2000). "[I]f the presumption is rebutted, the board's decision is reviewed through the lens of entire fairness, pursuant to which the directors lose the presumption of [the] business judgment [rule]." *Solomon v. Armstrong*, 747 A.2d 1098, 1112 (Del.Ch. 1999); *Horwitz v. SW. Forest Indus., Inc.*, 604 F. Supp. 1130, 1134 (D. Nev. 1985).

Under the entire fairness test, "[d]irector defendants therefore are required to establish to the *court's* satisfaction that the transaction was the product of both fair dealing and fair price." *Cinerama, Inc.* v. *Technicolor*, 663 A.2d 1156, 1163 (Del. 1995) (quoting *Cede & Co. v. Technicolor*, 634 A.2d 345, 361 (Del. 1993)). Thus, a test of entire fairness is a two-part inquiry into the fair-dealing, meaning the process leading to the challenged action and, separately, the end result. *In re Tele-Commc'ns Inc. Shareholders Litig.*, 2005 Del. Ch. LEXIS 206, at *235, 2005 WL 3642727, at *9 (Del. Ch. Sept. 29, 2005). Under the entire fairness standard, the challenged action itself must be objectively fair, independent of the beliefs of the director defendants. *Geoff v. II Cindus, Inc.*, 902 A.2d 1130, 1145 (Del. Ch. 2006) *subsequent proceedings*,

2006 (Del. Ch. LEXIS 161, 2000 WL 2521441 (Del. Ch. Aug. 22, 2006); *see also Venhill Ltd. P'ship v. Hilman*, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008) ("The fairness test therefore is "an inquiry designed to access whether a self-dealing transaction should be respected or set aside in equity").

IV. CONCLUSION

For the foregoing reasons, among others, Plaintiff respectfully submits that MSJ Nos. 1 and 2 and Gould's motion for summary judgment each should be denied, and that Plaintiff's motion for summary should be granted.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913
YURKO, SALVESEN & REMZ, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108

Attorneys for Plaintiff
James J. Cotter, Jr.

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **SUPPLEMENTAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT NOS. 1 AND 2 AND GOULD MOTION FOR SUMMARY JUDGMENT** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 1st day of December, 2017.

By: /s/ PATRICIA FERRUGIA

SUPP
Donald A. Lattin (NV SBN. 693)
dlattin@mclrenolaw.com
Carolyn K. Renner (NV SBN. 9164)
crenner@mclrenolaw.com
MAUPIN, COX & LEGOY
4785 Caughlin Parkway
Reno, Nevada 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185

Ekwan E. Rhow *(admitted pro hac vice)*
eer@birdmarella.com
Shoshana E. Bannett *(admitted pro hac vice)*
sbannett@birdmarella.com
BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
Telephone: (310) 201-2100
Facsimile: (310) 201-2110

Attorneys for Defendant William Gould

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER. JR,

Plaintiff,

vs.

MARGARET COTTER, et al.,

Defendant.

READING INTERNATIONAL, INC.,

Nominal Defendant.

CASE NO. A-15-719860-B

DEFENDANT WILLIAM GOULD'S SUPPLEMENTAL REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

[Filed concurrently with Declaration of Shoshana E. Bannett]

Hearing Date: December 11, 2017
Hearing Time: 10:30 A.M.

Assigned to Hon. Elizabeth Gonzalez, Dept. XI

Trial Date: January 2, 2018

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I. INTRODUCTION

Plaintiff James Cotter, Jr. filed four briefs, totaling 55 pages, which purport to summarize the so-called "evidence" of breach of fiduciary duty against William Gould (and the other Reading directors). But his briefs nowhere mention the critical fact most relevant to Mr. Gould—namely, that, on the key vote on which this entire lawsuit hinges, Mr. Gould voted ***against*** Plaintiffs' termination. This fact alone proves that Mr. Gould was not participating in some secret conspiracy with Ellen and Margaret Cotter to terminate Plaintiff and should also contextualize all of his future activities at the company—where he was forced to deal with the consequences of a vote ***that he did not agree with.***

Indeed, although Plaintiff half-heartedly argues that Mr. Gould is not independent because at times he voted with Ellen and Margaret Cotter or did not do exactly what Plaintiff wanted Mr. Gould to do, ***Plaintiff's own expert concluded that that there was insufficient evidence to find that Mr. Gould lacked independence or disinterestedness. Justice Steele therefore opined that Mr. Gould was entitled to protections of the business judgment rule.*** Similarly, the independent shareholders who were deposed in this case all testified that they viewed Mr. Gould as independent and that they had no problem with him. Given that even Plaintiff's own expert believes Mr. Gould is entitled to the protections of the business judgment rule, the claims against him must be summarily adjudicated in his favor on that basis alone.

Plaintiff's claims fare no better on a merits examination. Because of the jumbled way that Plaintiff briefed these issues and the fact that his claims have morphed over time, it is important to first clarify which claims Plaintiff has brought against Mr. Gould (as opposed to the other directors). Plaintiff identified six actions that he contends support independent claims for breach of fiduciary duty (specifically breach of the duty of loyalty): (1) the threat to terminate Plaintiff; (2) Plaintiff's termination; (3) the 100,00 share option exercise; (4); the CEO search and appointment of Ellen Cotter as CEO; (5) hiring Margaret Cotter as EVP New York Real Estate; and (6) declining to pursue the Patton Vision offer. Plaintiff has informed Mr. Gould that he is not a defendant on the claims regarding the threat to terminate Plaintiff and the 100,000 share option

because Mr. Gould was not involved in either of those actions. And while Plaintiff is still pursuing an inane claim against Mr. Gould for Plaintiff's termination, it is again undisputed that Mr. Gould voted ***against*** his termination. That leaves just three real claims against Mr. Gould—his alleged breach of duty of loyalty relating to the CEO search, the hiring of Margaret Cotter's position, and the declination of Patton Vision offer.

It is clear that Plaintiff cannot establish a breach of fiduciary duty on any of these matters. Nevada law gives great deference to directors in making decisions that they believe will be in the best interest of the company. There is simply no evidence that Mr. Gould ever made a decision for any reason other than he thought it best for Reading. That is why he at times has sided with Plaintiff and at times with the Cotter sisters. External parties such as the partner at the executive search firm retained for the CEO search noted that Mr. Gould took his duties seriously and was attempting to find the right person for the job. Independent shareholders describe him as having had "a level head in this mess." As discussed previously and below in detail, at every turn Mr. Gould took into account common and appropriate considerations, which were clearly permitted under Nevada statutory law.

Simply put, Plaintiff's evidence against Mr. Gould consists of nothing more than his contentions that he would have done things differently. As everyone - other than Plaintiff himself—that has looked at Mr. Gould's actions sees Mr. Gould as independent, disinterested, and acting in the best interest of the company, he is entitled to the full benefits of the business judgment rule and the claims against him must be summarily adjudicated in his favor.

II. ARGUMENT

A. Mr. Gould is independent and disinterested and entitled to the protection of the business judgment rule.

It is undisputed that under Nevada law a director who is both independent and disinterested is entitled to the protection of the business judgment rule. *See* Suppl. Opp. 1 & 2 at 6-7. Plaintiff does not contend that Mr. Gould is interested in any of the matters at issue.[1] Plaintiff does appear

[1] Nor can he. A director is interested in a matter if he will receive a specific financial benefit

to contend that Mr. Gould is not independent. *Id.* at 9-10. But a director lacks independence only if his decision resulted from him being controlled by another. *See Shoen v. SAC Holding Corp,* 122 Nev. 621, 637-38 (2006); *Orman v. Cullman,* 794 A.2d 5, 24, 25 n.50 (Del. Ch. 2002). Control is ordinarily shown by demonstrating that (1) a director is dominated by another party, such as through a close personal or familial relationship; or (2) a director is beholden to another party, such that the other party has the power to decide whether the director continues to receive a benefit upon which the director is so dependent or is of such subjective material importance that its threatened loss might create a reason to question whether the director is able to consider the corporate merits of the challenged action objectively. *Telxon Corp. v. Meyerson,* 802 A.2d 257.

Plaintiff does not point to *any* facts that suggest that Mr. Gould was controlled by Ellen or Margaret Cotter (or any of the other directors, for that matter). Plaintiff does not contend that Mr. Gould has a close personal relationship with either Ellen or Margaret Cotter. Suppl. Opp 1 & 2 at 9-10. And Plaintiff does not contend that Mr. Gould has any financial relationship with Ellen or Margaret Cotter. *Id.* As a result, Plaintiff cannot demonstrate that Mr. Gould lacks independence.[2]

Plaintiff's own expert witness in this case agrees. Justice Steele, a former justice on the Delaware Supreme Court, ***"reached the conclusion that [he] could find insufficient facts to suggest to [him] there was a reasonable doubt about [Gould's] independence or disinterestedness."*** Ex. 1 at 149:1-5 (emphasis added). Based on this conclusion, when Justice Steele defined the "defendants" he purposefully did not include Mr. Gould. *Id.* at 149:13-21. And Justice Steele's other opinions regarding possible breaches of fiduciary duty "do not apply to Mr. Gould", but only the other individual defendants. *Id.* at 149:22-150:1. Instead, because

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from his action or lack of action on the matter. *See Shoen v. SAC Holding Corp,* 122 Nev. 621, 637-38 (2006); *Orman v. Cullman,* 794 A.2d 5, 24, 25 n.50 (Del. Ch. 2002). Mr. Gould received no specific financial benefit from any of the events at issue in this lawsuit.

[2] The fact that Ellen and Margaret Cotter are controlling shareholders who could remove Gould if unhappy does not show a lack of independence, otherwise every director who voted the same way with a controlling shareholder would lack independence, As another Court put it, "a stockholder's control of an organization does not indicate lack of independence without particularized allegations of relationships between the directors and controlling stockholder demonstrating that the directors are beholden to the stockholder." *Beam v. Stewart,* 845 A. 2d 1040, 1054 (Del. 2004).

Justice Steele saw no evidence to suggest that Mr. Gould lacked independence or disinterestedness, ***Justice Steele concluded that Mr. Gould was entitled to the benefit of the business judgment rule and there was no need "to carry the analysis any farther than that."*** *Id.* at 150:22-151:5.

Justice Steele's expert opinion was reiterated by each of the independent shareholders who were deposed in this matter. Jonathan Glaser testified that he believed Mr. Gould was independent. Ex. 2 at 194:2-194:8 (Glaser Dep.). Similarly, Andrew Shapiro testified that Mr. Gould was socially independent and that, unlike some of the other directors, Shapiro had no problem with Mr. Gould. Ex. 3 at 292:14-292:18 (Shapiro Dep.). Likewise, Whitney Tilson testified that he had positive feelings towards Gould and Gould was not one of the directors he would seek to have removed from Reading's Board of Directors. Ex. 4 at 160:11-161:4 (Tilson Dep.).

Plaintiff cannot meet the legal standard and show that Mr. Gould had either a personal or financial relationship with Ellen and Margaret Cotter. But he tries to get around this by arguing that the Court should infer some sort of an improper bias toward Ellen and Margaret Cotter anyway. Plaintiff's argument is based solely on the fact that Mr. Gould sometimes voted the same way the Cotter sisters voted, such as when he voted to "repopulate" the executive committee (which this Court has already held cannot support an independent claim for breach of fiduciary duty), or took other reasonable actions that the Plaintiff himself disapproves of, even though each of those actions were similarly appropriate and within the scope of Mr. Gould's fiduciary duties, such as relying on company counsel to assess whether Mr. Adams had a financial conflict.

While all of Mr. Gould's actions were perfectly reasonable, that is not the point at this stage. Plaintiff's analysis of independence is completely backwards. The Court does not undertake a substantive evaluation of a director's conduct to determine whether the director is independent. Under the business judgment rule, the Court does not get into a substantive evaluation of a director's conduct *until* it is shown that the director is not independent and disinterested. *See, e.g., Wynn Resorts Ltd v. Eighth Judicial District Court in and for the County of Clark,* 399 P.3d 344, 342-43 (2017). Plaintiff has not cited to a single case in which the Court

looks at a defendant's actions as a director to determine whether the director is independent and that is because there are none. That is why Plaintiff's own expert, who was aware of all of the conduct that Plaintiff points to here, concluded that there was insufficient evidence to conclude that Mr. Gould lacked independence or disinterestedness—and did not then go any further in his analysis.

Given that every single person that has looked at the evidence in this case, including Plaintiff's expert and the independent shareholders, believes that Gould is independent and disinterested, Mr. Gould must be given the benefit of the business judgment rule and the case against him must be summarily adjudicated in his favor.

B. Under Nevada law, the burden to prove breach of fiduciary duty remains with Plaintiff; the burden never shifts to Mr. Gould to prove the "entire fairness" of his actions.

Even if the Court were to reach the merits of Plaintiff's claims against Mr. Gould (and it should not given that Mr. Gould is entitled to the business judgment rule), Plaintiff's claims against Gould should fail because Plaintiff cannot meet his burden to demonstrate that Mr. Gould (1) breached his fiduciary duty; and (2) did so with the requisite mindset of intentional misconduct, fraud, or a knowing violation of law.

Citing Delaware law exclusively, Plaintiff argues that if he is able to demonstrate that the business judgment rule does not apply, the burden shifts to Mr. Gould to prove the "entire fairness" of his actions Suppl. Opp. 2 & 3 at p. 12. But the plain language of the governing Nevada statute demonstrates that unlike Delaware, in Nevada the burden remains on Plaintiff. Nev. Rev. Stat. § 78.138 states that:

> [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 capacity as a director or officer unless:
>
> (a) The trier of fact determines that the presumption established by subsection 3 has been rebutted; and
>
> (b) ***It is proven that:***
>
> (1) The director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as a director or

officer; and

(2) Such breach involved intentional misconduct, fraud or a knowing violation of law.

Nev. Stat. Rev. § 78.138(4)(7) (emphasis added). Because even after the presumption that a director acts in good faith is rebutted, the statute still requires that the plaintiff must ***prove*** both a breach of fiduciary duty and that the breach involved intentional misconduct, fraud, or a knowing violation of law, a Nevada director-defendant does not have to prove the "entire fairness" of his actions.[3]

Here, as discussed below, it is clear that Plaintiff cannot meet this burden and show a breach of fiduciary duty involving intentional misconduct, fraud, or a knowing violation of law by Mr. Gould with respect to any of the four actions that Plaintiff claims support independent breaches of fiduciary duty—the termination of Cotter, Jr., the CEO search, the appointment of Margaret Cotter to the position of EVP New York real estate and/or the response to the Patton Vision offer.

C. There is no evidence to support a claim against Mr. Gould for breach of fiduciary duty based on Plaintiff's termination because Mr. Gould *voted against* Plaintiff's termination.

Strangely, Plaintiff continues to contend that Mr. Gould is liable for breach of fiduciary duty based on Plaintiff's termination even though Mr. Gould voted *against* terminating Plaintiff. Plaintiff's claim is nonsensical. Plaintiff admits that Mr. Gould's vote against his termination was done with the best interests of Reading in mind. (Ex. 5 at 1017:14-24; 1026:21-1027:12 (Cotter, Jr. Dep. Vol IV)). If Gould acted with the best interests of Reading in mind, then he did not breach his fiduciary duty. And unsurprisingly, the law is clear that a director is not responsible for an action he did not vote for. *See, e.g., In re Tri-Star Pictures, Inc., Litig.*, No. CIV. A. 9477, 1995 WL 106520, at *2 (Del. Ch. Mar. 9, 1995)) (refusing to hold director liable for board

[3] Plaintiff agrees that the law of another jurisdiction, such as Delaware, cannot supplant or modify the law of Nevada. Suppl. Opp 1 & 2 at p. 4. Here because Delaware's "entire fairness" burden shifting would supplant Nevada's statutory allocation of the burden of proof, the "entire fairness" test is invalid in Nevada.

decision where director abstained from vote); *In Re Wheelabrator Technologies, Inc. Shareholders Litigation*, C.A. No. 11495, 1992 WL 212595, at *10 (Del. Ch. Sept. 1, 1992) (same); *Citron v. E.I. du Pont de Nemours & Co.*, 584 A.2d 490, 499 (Del.Ch. 1990) (same). Because he voted against the termination, there is no basis whatsoever to hold Mr. Gould liable for an independent claim of breach of fiduciary duty based on Plaintiff's termination. This claim must be summarily adjudicated in Mr. Gould's favor.

D. There is no evidence to support a separate claim against Mr. Gould relating to the CEO search or the appointment of Ellen Cotter as permanent CEO.

Next, Plaintiff contends that Mr. Gould breached his fiduciary duty by "aborting the CEO search" and selecting Ellen Cotter (the interim CEO) as permanent CEO. Suppl. Opp 2 & 5. Plaintiff once again goes through a lengthy, misleading recitation of the "facts" regarding the CEO search. *Id.* at 2-9. Gould has already responded to Plaintiff's various mischaracterizations of the record, in his original reply brief and incorporates that brief by reference.

But even taking everything Plaintiff says as true, all Plaintiff has demonstrated is that the search could have been conducted differently and a different CEO could have been selected. And of course that is the case. There are many ways to look for a CEO. For example, when Reading hired the Plaintiff, they engaged in a much less thorough process than the search Plaintiff now challenges. In particular, when Reading hired Plaintiff, the Board did not engage an executive search committee. They did not come up with desired qualifications or interview any candidates at all. The Board of Directors simply voted to appoint the Plaintiff based on their understanding that Cotter, Sr., the controlling shareholder, wanted his son to succeed him as CEO. Motion for Summary Judgment at 3.

Here by contrast, Reading engaged an executive search firm (Korn Ferry), established a CEO search committee, which then met with Korn Ferry to put together a position specification. The search committee interviewed all six of the candidates recommended by Korn Ferry, interviewed Ellen Cotter after she decided to throw her hat in the ring, reassessed the validity of the original position specification after interviewing candidates and receiving feedback from the Plaintiff that it was too focused on real estate, discussed the relative merits of the external

candidates against Ellen Cotter and then selected Ellen Cotter based on her performance to date, her personality, her knowledge of Reading, and the stability she offered, among other factors (with Margaret Cotter abstaining from the vote). Mot. for Summary Judgment at 21, 23. Korn Ferry's Bob Mayes testified that these are common considerations in selecting a CEO: internal candidates are sometimes preferred because there is less disruption; cultural fit, motivation, personality traits and style are all commonly considered; and a strength in one area can outweigh a weakness in the other. Motion for Summary Judgment at 23.

Plaintiff contends that when the Directors (including Mr. Gould) selected Plaintiff because the Plaintiff's father, *the controlling shareholder*, wanted his son to become CEO, that selection was consistent with the Director's fiduciary duties. Mot. for Summary Judgment at 3. But he argues that the more thorough process involving the search and the appointment of his sister *was* a breach of fiduciary duty because the directors took into account the wishes of *the controlling shareholders*. Suppl. Opp. 2 & 5 at 12. Clearly, it cannot be consistent with one's fiduciary duties to take the wishes of the controlling shareholder into account when Cotter, Jr. is selected CEO, but a violation of one's fiduciary duties to take the wishes of the controlling shareholder into account when Cotter, Jr's rival is selected CEO.

Nevada's recent amendments to its statute governing director conduct make clear that Nevada directors have broad powers to determine what is in the best interest of the corporation and *are always permitted to take into account the interests of controlling shareholders*. Indeed, the Legislature specifically added a provision stating that

> [d]irectors and officers, in exercising their respective powers with a view to the interests of the corporation may: (a) consider all relevant facts, circumstances, contingencies or *constituencies*. . .[and] (b) *Consider or assign weight to the interests of any particular person or group*, or to any other relevant facts, circumstances, contingencies or constituencies.

Nev. Rev. Stat. § 78.138(4) (emphasis added). By taking into account the wishes of the controlling shareholders, Mr. Gould was doing nothing more than considering or assigning weight to the interests of a particular group. Here, Mr. Gould appropriately took into account (as one factor of many) the interest of the controlling shareholders in determining the interests of the

corporation, as he is entitled to do under Nevada law.

Finally, there is simply no evidence that Gould acted with intentional misconduct, fraud, or a knowing violation of law when he recommended Ellen Cotter for the position of permanent CEO. As Korn Ferry's Bob Mayes testified, Mr. Gould took the process seriously, attended all search committee calls, and ***Mr. Gould never said or did anything that made him think Mr. Gould was doing anything other than trying to find the right person for the job.*** Mot. for Summary Judgment at 25. The fact that Ellen Cotter could be and was selected by someone trying to find the right person for the job is reinforced by the fact that independent shareholders also recognize that Ellen Cotter was a good choice for CEO. As shareholder Johnathan Glaser testified, he was "not in the least surprised" that Ellen Cotter was selected permanent CEO, and he was not troubled by that, because he

> recognize[s], one the difficulty of finding anybody else, particularly with the circus going on; and two, I think she knows the company pretty well, has been there a long time, probably learned the business from her dad. So I'm not convinced that there's some knight in shining armor out there to come in and be, you know, a great – you know, a much better CEO of this company. I'm okay with Ellen.

See, e.g., Ex. 2 at 156:20-22; 258:22-259:18 (Glaser Dep.) (also testifying that "I'm personally comfortable with Ellen as CEO."). Simply put, there is no evidence to suggest that Mr. Gould breached his fiduciary duty, in selecting Ellen Cotter as CEO, a choice that other shareholders agree with, let alone that he acted with intentional misconduct, fraud, or a knowing violation of law.

E. There is no evidence that Mr. Gould breached his fiduciary duties when he voted to decline to pursue the Patton Vision Offer.

Plaintiff contends that Mr. Gould also breached his fiduciary duties when he voted to decline to pursue the Patton Vision offer. Plaintiff devotes more than 12 pages to spinning the facts, but essentially his "evidence" boils down two items that he contends shows that it was a breach of fiduciary duty to decline to pursue the Patton Vision offer. First, Mr. Gould asked Ellen and Margaret Cotter for their views, as controlling shareholder. Second, the business plan that the directors relied on was not a formal, written and approved business strategy. But despite

Plaintiff's use of negative buzz-words like "imaginary," everything that Mr. Gould did was entirely consistent with Nevada law and his fiduciary duties in contemplating an offer.

First, as discussed above, Nevada law makes clear that directors are able to consider the and assign weights to the interest of any particular person or group, which necessarily includes controlling shareholders. Nev. Rev. Stat. § 78.138(4)(b). And that makes sense. Before deciding whether to incur significant expenses on behalf of the company (and all shareholders) to hire outside experts to evaluate the offer, one would obviously want to know if there is any possibility of success. If the controlling shareholders are opposed and will not sell their stock, it could be a complete waste of corporate assets to engage outside experts. Nevada law permitted Mr. Gould to ask the controlling shareholders for their views and take those views into account and he reasonably did so.

But Mr. Gould did not solely rely on the controlling shareholders views. As Plaintiff's brief makes clear, the directors were provided with materials that summarized the company's business strategy and the company's management team made a presentation regarding the company's financial position. *See* Suppl. Opp. at 2-8. Plaintiff does not and cannot point to any requirement that the Board rely on a formally adopted, written business strategy as opposed to slideshows and other presentations. And while Plaintiff personally takes issue with various aspects of the conclusions presented by management, that does not make it unreasonable for Mr. Gould to rely on the information presented by the company's executives, including the company's CFO. Indeed, Nevada law specifically contemplates that a director will rely on the information presented by the company's executives. Nev. Rev. Stat. § 78.138(2)(a). And as it turns out, those views were not and are not unreasonable. External analysts have issued reports with a BUY rating and a target price of $26/share. Ex. 6 (Osborne Rebuttal Report) at ¶ 44. And the Company's stock is already up $4/share since the initial offer, suggesting that the management was correct when they concluded that Reading was undervalued.

Mr. Gould relied on appropriate considerations in making his decision to vote to decline to pursue the Patton Vision offer and as a result, Plaintiff cannot show that Mr. Gould's vote was a breach of fiduciary duty, much less that it involved intentional misconduct, fraud, or a knowing

violation of law.

F. There is no evidence that Mr. Gould breached his fiduciary duties when he approved the appointment of Margaret Cotter as EVP New York real estate.

Plaintiff concedes that the fact that Mr. Gould (1) approved Ellen Cotter's compensation package on the recommendation of executive compensation experts and the compensation committee, (2) approved a one-time payment to Margaret Cotter on the recommendation of the compensation committee and the audit committee based on the winding up of her separate business; and (3) the approval of a one-time payment to Guy Adams to cover additional work he did beyond his director duties, based on the recommendation of CEO Ellen Cotter, do not support independent claims for breach of fiduciary duty. Suppl. Opp. 2 & 6 at 2, Suppl. Opp. 2& 3 at 1-2 (identifying claims that Plaintiff contends constitute independent breaches of fiduciary duty). And that is correct. As discussed at length in Mr. Gould's Motion for Summary Judgment, approving each of those payments on the recommendation of knowledgeable executives, experts and committees was entirely consistent with Mr. Gould's fiduciary duties. Motion for Summary Judgment at 25-27.[4] And, as noted above, Mr. Gould was not involved in the $100,000 share option, and, necessarily, Plaintiff does not contend that Mr. Gould breached any fiduciary duties with respect to that option.

Plaintiff contends only that Mr. Gould is liable for an independent breach of fiduciary duty stemming from the appointment of Margaret Cotter as Executive Vice President (EVP) New York real estate. Ellen Cotter appointed Margaret Cotter to the role of executive vice president with the advice and consent of the Board of Directors. Ex. 7. The Board voted 6-0 in favor of the appointment with Ellen and Margaret Cotter not participating and Plaintiff abstaining.[5] *Id.* Plaintiff contends that Mr. Gould breached his fiduciary duty by approving Ellen Cotter's choice of an executive because in Plaintiff's opinion, Margaret Cotter was unqualified for the role. Gould

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[4] Plaintiff claims here it was unusual to provide payments to directors in the range of $50,000 dollars, but Mr. Gould pointed out in his opening brief that the company had provided additional payments to directors ranging from $25,000 -$75,000. Motion for Summary Judgment at 27

[5] As Plaintiff testified, board cohesion and unanimity is in and of itself a consideration that director may take into account when voting. Ex. 5 at 1055:6-14 (Cotter, Jr. Dep. Vol IV)

approved Ellen Cotter's recommendation because it is his view that a CEO should be able to build his or her own team.[6] Motion for Summary Judgment at p. 27 n. 17. If Ellen Cotter's choice of Margaret Cotter was a poor one, the directors would hold Ellen Cotter accountable. This is a reasonable position to take and is consistent with a director's fiduciary duties. *See* Ex. 6 at 23-24 (Expert rebuttal report of Dr. Alfred Osborne). *See also* Nev. Stat. Rev. § 78.138(4) (permitting directors to take into account all relevant facts, circumstances, contingencies, or constituencies).

Margaret Cotter had ably handled the land-marking process and pre-development of the New York properties, as well as supervised an arbitration win when a difficult tenant, Stomp, vacated one of Reading's New York properties. As a result of these experiences, Ellen Cotter and the other directors, were convinced that Margaret Cotter would put together the right team to develop the New York real estate. *See, e.g.*, Ex. 8 at 55-60 (Ellen Cotter Dep.); Ex. 8 at 57; 72-73 (Kane Dep.); Ex. 10 at 262-63 (McEachern Dep.) That Margaret Cotter's brother, who she had been warring with, had a different view, is not evidence that it was a breach of fiduciary duty to approve the CEO's choice of an executive team, and it certainly does not show that Mr. Gould acted with intentional misconduct, fraud, or a knowing violation of law.[7]

III. CONCLUSION

For the foregoing reasons, and the reasons stated in the Defendant William Gould's Motion for Summary Judgment, the Reply Brief, and the Independent Directors MPSJ No. 3 and Gould's Request for Hearing, all of Plaintiff's claims against Defendant Gould should be summarily adjudicated in favor of Gould.

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[6] Mr. Gould acted entirely consistently when Plaintiff was CEO and Plaintiff did not want to appoint Margaret Cotter to be EVP New York real estate. Mr. Gould supported Plaintiff's decision, then, because the CEO should get to build his or her own team. Declaration of James Cotter, Jr., ¶ 36.

[7] Plaintiff contends that the $200,000 payment to Margaret Cotter was improper because it was in exchange for a position that she was previously willing to accept for free. Plaintiff cites nothing more than his say so for this position. As discussed in Mr. Gould's Motion for Summary Judgment, two separate committees, the Audit Committee and the Compensation Committee approved this payment and found it was appropriate for Margaret Cotter's prior work and for releases and waivers granted in winding up her company. Motion for Summary Judgment at 26. It was reasonable and appropriate for Mr. Gould to rely on these two separate committees in deciding to approve the payment. *Id.*

December 4, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By _____

Ekwan E. Rhow *(admitted pro hac vice)*
Shoshana E. Bannett *(admitted pro hac vice)*
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561

MAUPIN, COX & LeGOY
Donald A. Lattin (SBN 693)
Carolyn K. Renner (SBN 9164)
4785 Caughlin Parkway
Reno, NV 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185

Attorneys for Defendant William Gould

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Cir. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing **DEFENDANT WILLIAM GOULD'S SUPPLEMENTAL REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 4th day of December, 2017.

Kaitlin Ahern
EMPLOYEE

on behalf of the individual defendants. RDI denies the allegations of paragraph 59 of the Complaint, in all other respects.

60. RDI denies the allegations of paragraph 60 of the Complaint.

61. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 61 of the Complaint, in all other respects.

62. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 62 of the Complaint, in all other respects.

63. RDI denies the allegations of paragraph 63 of the Complaint.

64. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 64 of the Complaint, in all other respects.

65. RDI denies the allegations of paragraph 65 of the Complaint, and therefore denies them.

66. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Complaint, and therefore denies them.

67. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 67 of the Complaint, in all other respects.

68. RDI denies the allegations of paragraph 68 of the Complaint.

69. RDI denies the allegations of paragraph 69 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

70. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 70 of the Complaint, in all other respects.

71. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 71 of the Complaint, in all other respects.

72. RDI admits that Ellen Cotter distributed an agenda for the May 21, 2015 RDI board meeting on or about May 19, 2015, and that the first action item on the agenda was entitled "Status of President and CEO." RDI denies the remaining allegations of paragraph 72 of the Complaint.

73. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 73 of the Complaint, in all other respects.

74. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 74 of the Complaint, in all other respects.

75. RDI denies the allegations of paragraph 75 of the Complaint.

76. RDI denies the allegations of paragraph 76 of the Complaint.

77. RDI admits that James Cotter, Jr. was not terminated at the May 21, 2015 board meeting. RDI denies the allegations of paragraph 77 of the Complaint, in all other respects.

78. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78 of the Complaint, and therefore denies them.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

79. RDI admits EC sent an email to RDI Directors on May 27, 2015. The email is a document of independent significance and speaks for itself.

80. RDI denies the allegations of paragraph 80 of the Complaint.

81. The allegations of paragraph 81 of the Complaint are purportedly based on written documents, which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the remaining allegations of paragraph 81 of the Complaint, in all other respects.

82. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 82 of the Complaint in all other respects.

83. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 83 of the Complaint in all other respects.

84. To the extent the allegations in this paragraph relate to action taken in board meetings, the minutes of the meetings are the best evidence of the same. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 84 of the Complaint in all other respects.

85. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 85 of the Complaint in all other respects.

86. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 86 of the Complaint in all other respects.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

87. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 87 of the Complaint in all other respects.

88. RDI admits that the RDI Board meeting reconvened. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 88 of the Complaint, in all other respects.

89. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89 of the Complaint, and therefore denies the same.

90. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90 of the Complaint, and therefore denies the same.

91. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 91 of the Complaint in all other respects.

92. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 92 of the Complaint in all other respects.

93. The allegations of paragraph 93 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 93 of the Complaint.

94. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 94 of the Complaint, in all other respects.

95. RDI denies the allegations of paragraph 95 of the Complaint.

96. RDI denies the allegations of paragraph 96 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

97. RDI denies the allegations of paragraph 97 of the Complaint.

98. RDI denies the allegations of paragraph 98 of the Complaint.

99. RDI denies the allegations of paragraph 99 of the Complaint.

100. RDI denies the allegations of paragraph 100 of the Complaint, and therefore deny them.

101. Documents filed with the SEC are of independent significance and speak for themselves. RDI denies the remaining allegations of paragraph 101 of the Complaint and its subparts.

102. RDI admits Class B Voting Stock is held in the name of James J. Cotter Living Trust and that litigation is pending. RDI denies the allegations of paragraph 102 of the Complaint in all other aspects.

103. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 103 of the Complaint in all other respects.

104. RDI denies the allegations of paragraph 104 of the Complaint.

105. RDI denies the allegations of paragraph 105 of the Complaint.

106. RDI denies the allegations of paragraph 106 of the Complaint.

107. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 107 of the Complaint in all other respects.

108. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 108 of the Complaint in all other respects.

109. The allegations of paragraph 109 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 109 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

110. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 110 of the Complaint, in all other respects.

111. The allegations of paragraph 111 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 111.

112. RDI denies the allegations of paragraph 112 of the Complaint.

113. RDI denies the allegations of paragraph 113 of the Complaint.

114. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 114 of the Complaint, in all other respects.

115. The allegations of paragraph 115 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 115 of the Complaint.

116. The allegations of paragraph 116 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 116 of the Complaint.

117. The allegations of paragraph 117 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 117 of the Complaint.

118. RDI denies the allegations of paragraph 118 of the Complaint.

119. RDI denies the allegations of paragraph 119 of the Complaint.

120. RDI denies the allegations of paragraph 120 of the Complaint.

121. RDI denies the allegations of paragraph 121 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

122. RDI denies the allegations of paragraph 122 of the Complaint.

123. RDI denies the allegations of paragraph 123 of the Complaint.

124. RDI admits that Mary Cotter knows Judy Codding. RDI denies the allegations of paragraph 124 of the Complaint in all other respects.

125. RDI admits that, on October 5, 2015, Judy Codding was made a director of RDI. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 125 of the Complaint in all other respects.

126. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 126 of the Complaint in all other respects.

127. RDI denies the allegations of paragraph 127 of the Complaint.

128. RDI denies the allegations of paragraph 128 of the Complaint.

129. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 129 of the Complaint in all other respects.

130. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 130 of the Complaint in all other respects.

131. RDI admits Michael Wrotniak was nominated as a director of RDI. RDI denies the allegations of paragraph 131 of the Complaint in all other respects.

132. RDI denies the allegations of paragraph 132 of the Complaint.

133. RDI admits Michael Wrotniak was nominated as a director of RDI. RDI denies the allegations of paragraph 133 of the Complaint in all other respects.

134. RDI denies the allegations of paragraph 134 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

135. RDI admits is issued a Proxy Statement which is a written document, which speaks for itself. RDI denies the remaining allegations of paragraph 135 of the Complaint.

136. RDI admits is issued a Proxy Statement which is a written document, which speaks for itself. RDI denies the remaining allegations of paragraph 136 of the Complaint.

137. RDI admits a Board meeting was held on June 30, 2015 and that a CEO Search Committee was formed. RDI denies the allegations of paragraph 137 of the Complaint in all other respects.

138. RDI admits that Korn Ferry was selected as an outside search firm. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 138 of the Complaint in all other respects.

139. RDI admits Korn Ferry interviewed candidates for the position of CEO. Defendants deny the allegations of paragraph 139 of the Complaint. To the extent the allegations of paragraph 139 of the Complaint are purportedly are based on written documents, such documents speak for themselves. RDI denies the remaining allegations in paragraph 139.

140. RDI admits Ellen Cotter resigned from the CEO Search Committee and decided to be a candidate for the positions of President and CEO of RDI. RDI denies the allegations in paragraph 140 of the complaint in all other respects.

141. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 141 of the Complaint in all other respects.

142. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 142 of the Complaint in all other respects.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

143. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 143 of the Complaint in all other respects.

144. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 144 of the Complaint in all other respects.

145. RDI admits the allegations of paragraph 145 of the Complaint.

146. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 146 of the Complaint in all other respects.

147. The allegations of paragraph 147 of the Complaint are purportedly based on written documents which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 147 of the Complaint, in all other respects.

148. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 148 of the Complaint in all other respects.

149. RDI admits Margaret Cotter was appointed as an Executive Vice President of RDI and has real estate responsibilities in New York. RDI denies the allegations in paragraph 149 of the Complaint in all other respects.

150. RDI admits the allegations of paragraph 150 of the Complaint.

151. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 151 of the Complaint in all other respects.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

152. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 152 of the Complaint in all other respects.

153. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 153 of the Complaint in all other respects.

154. RDI admits it received an unsolicited expression of interest from a third party. RDI denies the allegations of paragraph 154 of the Complaint in all other respects.

155. The allegations of paragraph 155 of the Complaint are purportedly based on written documents which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 155 of the Complaint, in all other respects.

156. RDI admits the unsolicited expression of interest of was distributed to RDI Board Members and a meeting was held on June 2, 2016. RDI denies the allegations of paragraph 156 of the Complaint in all other respects.

157. RDI admits its Board of Directors reconvened on June 23, 2016 and that the majority of its Board agreed the price offered was not adequate. RDI denies the allegations of paragraph 157 of the Complaint in all other respects.

158. RDI denies the allegations of paragraph 158 of the Complaint.

159. RDI denies the allegations of paragraph 159 of the Complaint.

160. RDI denies the allegations of paragraph 160 of the Complaint.

161. RDI denies the allegations of paragraph 161 of the Complaint.

162. RDI denies the allegations of paragraph 162 of the Complaint.

163. RDI denies the allegations of paragraph 163 of the Complaint.

164. RDI denies the allegations of paragraph 164 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

165. RDI denies the allegations of paragraph 165 of the Complaint.

166. RDI denies the allegations of paragraph 166 of the Complaint.

167. RDI denies the allegations of paragraph 167 of the Complaint.

168. RDI denies the allegations of paragraph 168 of the Complaint.

169. RDI denies the allegations of paragraph 169 of the Complaint.

170. RDI denies the allegations of paragraph 170 of the Complaint.

171. RDI denies the allegations of paragraph 171 of the Complaint.

172. RDI denies the allegations of paragraph 172 of the Complaint.

RESPONSE TO "FIRST CAUSE OF ACTION

(For Breach of Fiduciary Duty – Against All Defendants)"

173. RDI reasserts and incorporates its responses to paragraphs 1 through 173 of the Complaint.

174. The allegations of paragraph 174 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 174 of the Complaint are denied.

175. The allegations of paragraph 175 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 175 of the Complaint are denied.

176. RDI denies the allegations of paragraph 176 of the Complaint.

177. RDI denies the allegations of paragraph 177 of the Complaint.

178. RDI denies the allegations of paragraph 178 of the Complaint.

179. RDI denies the allegations of paragraph 179 of the Complaint.

RESPONSE TO "SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

180. RDI reasserts and incorporates its responses to paragraphs 1 through 180 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

181. The allegations of paragraph 181 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 181 of the Complaint are denied.

182. The allegations of paragraph 182 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 182 of the Complaint are denied.

183. RDI denies the allegations of paragraph 183 of the Complaint.

184. RDI denies the allegations of paragraph 184 of the Complaint.

185. RDI denies the allegations of paragraph 185 of the Complaint.

186. RDI denies the allegations of paragraph 186 of the Complaint.

RESPONSE TO "SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

187. RDI reasserts and incorporates its responses to paragraphs 1 through 187 of the Complaint.

188. The allegations of paragraph 188 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 188 of the Complaint are denied.

189. The allegations of paragraph 189 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 189 of the Complaint are denied.

190. RDI denies the allegations of paragraph 190 of the Complaint.

191. RDI denies the allegations of paragraph 191 of the Complaint.

192. RDI denies the allegations of paragraph 192 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

RESPONSE TO "THIRD CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty – Against MC and EC)"

193. RDI reasserts and incorporates its responses to paragraphs 1 through 193 of the Complaint.

194. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 194 of the Complaint.

195. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 195 of the Complaint.

196. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 196 of the Complaint.

197. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 197 of the Complaint.

198. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 198 of the Complaint.

199. RDI denies the allegations of paragraph 199 of the Complaint.

200. RDI denies the allegations of paragraph 200 of the Complaint.

Irreparable Harm

201. RDI denies the allegations of paragraph 201 of the Complaint.

202. RDI denies the allegations of paragraph 202 of the Complaint.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

RESPONSE TO "PRAYER FOR RELIEF"

203. Responding to the unnumbered WHEREFORE paragraph following paragraph 203 of the Complaint, RDI admit that Plaintiff demands and prays for judgment as set forth therein, but denies that it caused or contributed to Plaintiff's or RDI's alleged injuries and further denies that Defendants are liable for damages or any other relief sought in the Complaint.

AFFIRMATIVE DEFENSES

Subject to the responses above, RDI alleges and assert the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to their responses above, RDI specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery.

1. FAILURE TO STATE A CLAIM

The Complaint, and each purported cause of action therein, is barred, in whole or in part, for failure to state a claim.

2. FAILURE TO MAKE DEMAND

Plaintiff has failed to make a demand prior to filing the purported derivative suit.

3. CORPORATE GOVERANCE

Plaintiff's claims are barred because RDI has at all times acted, through its Board of Directors, in good faith consistent with corporate governance standards.

4. IRREPAIRABLE HARM TO COMPANY

Plaintiff's claims are barred because RDI would be irreparably harmed by the relief Plaintiff seeks.

5. STATUTES OF LIMITATIONS AND REPOSE

The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the applicable statutes of limitations and/or statutes of repose.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
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Telephone: (702) 792-3773
Facsimile: (702) 792-9002

6. UNCLEAN HANDS

The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of unclean hands.

7. SPOLIATION

The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's spoliation of evidence and obstruction of justice.

8. WAIVER, ESTOPPEL, AND ACQUIESCENCE

The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrines of waiver, estoppel, and acquiescence because Plaintiff's acts, conduct, and/or omissions are inconsistent with his requests for relief.

9. RATIFICATION AND CONSENT

The Complaint, and each purported cause of action therein, is barred, in whole or in part, because any purportedly improper acts by RDI, if any, were ratified by Plaintiff and his agents, and/or because Plaintiff consented to the same.

10. NO UNLAWFUL ACTIVITY

The Complaint, and each purported cause of action therein, is barred, in whole or in part, because to the extent any of the activities alleged in the Complaint actually occurred, those activities were not unlawful.

11. PRIVILEGE AND JUSTIFICATION

The Complaint, and each purported cause of action therein, is barred, in whole or in part, because the actions complained of, if taken, were at all times reasonable, privileged, and justified.

12. GOOD FAITH AND LACK OF FAULT

The Complaint, and each purported cause of action therein, is barred, in whole or in part, because, at all times material to the Complaint, RDI acted in good faith and with innocent intent.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
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Telephone: (702) 792-3773
Facsimile: (702) 792-9002

13. NO ENTITLEMENT TO INJUNCTIVE RELIEF

Plaintiff is not entitled to injunctive relief because, among other things, he has not suffered irreparable harm, he has an adequate remedy at law, and injunctive relief is not supported by any purported cause of action alleged in the Complaint and is not warranted by the balance of the hardships and/or any other equitable factors.

14. DAMAGES TOO SPECULATIVE

Plaintiff is not entitled to damages of any kind or in any sum or amount whatsoever as a result of RDI's acts or omissions alleged in the Complaint because any damages sought are speculative, uncertain and not recoverable.

15. MITIGATION OF DAMAGES

Plaintiff has failed to properly mitigate the damages, if any, he has sustained, and by virtue thereof, Plaintiff is barred, in whole or in part, from maintaining the causes of action asserted in the Complaint against RDI.

16. COMPARATIVE FAULT

Plaintiff's recovery is barred, in whole or in part, based on principles of comparative fault, including Plaintiff's own comparative fault.

17. EQUITABLE ESTOPPEL

The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by the doctrine of equitable estoppel.

18. NEVADA REVISED STATUTE 78.138

The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by Nevada Revised Statute 78.138, which provides that 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 or officer unless it is proven that: (a) the director's or officer's act or failure to act constituted a breach of his or her fiduciary

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

duties as a director or officer; and (b) the breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

19. CONFLICT OF INTERST AND UNSUITABLITY TO SERVE AS REPRESENTATIVE

The Complaint, and each purported cause of action alleged therein is barred, in whole or Part because Plaintiff has a conflict of interest and is unsuitable to serve as a derivative representative.

WHEREFORE, RDI requests that Plaintiff's Second Amended Complaint be dismissed in its entirety with prejudice, that judgment be entered in favor of RDI, that RDI be awarded costs and, to the extent provided by law, attorney's fees, and any such other relief as the Court may deem proper.

DATED this 20th day of December, 2016.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
MARK E. FERRARIO, ESQ. (NV Bar No. 1625)
KARA B. HENDRICKS, ESQ. (NV Bar No. 7743)
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169

Counsel for Reading International, Inc.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Reading International, Inc.'s Answer to Second Amended Complaint*** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 20th day of December, 2016.

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

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CLERK OF THE COURT

ORDR

Mark G. Krum (SBN 10913)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702-949-8200
Fax: 702-949-8398
E-mail:mkrum@lrrc.com

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,

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.

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,

Defendants.

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

Business Court

[PROPOSED] ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1–6 AND MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY

Date of Hearing: October 27, 2016
Time of Hearing: 8:30 a.m.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

THESE MATTERS HAVING COME BEFORE the Court on October 27, 2016, Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Mark E. Ferrario and Kara Hendricks appearing for Reading International, Inc.; and Ekwan Rhow, Shoshana E. Bannett appearing for William Gould, on the following motions:

- Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer;
- Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO;
- Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams; and
- Defendants' Motion *In Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty;

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

IT IS HEREBY ORDERED THAT the Motion for Partial Summary Judgment No. 1 is DENIED. There are genuine issues of material fact as to the issues related to interested directors participating in the process.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 2, and supplemental briefing will be discussed once the relevant discovery is complete. The independence issue needs to be evaluated on a transaction or action-by-action basis, because the independence related to each needs to be separately evaluated; even though facts overlap, the Court cannot evaluate this in a vacuum. Motion for Partial Summary Judgment No. 2 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 3, because depositions have not been completed and the relevant documents have not been produced. Motion for Partial Summary Judgment No. 3 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Motion for Partial Summary Judgment No. 4 is GRANTED IN PART. As to the formation and revitalization (activation) of the Executive Committee, the motion is GRANTED; as to utilization of the committee, the motion is DENIED. Formation and revitalization includes a decision by the company to make use of their previously dormant Executive Committee and put people on that Executive Committee.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 5. Motion for Partial Summary Judgment No. 5 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 6. Motion for Partial Summary Judgment No. 6 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT the Motion *in Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty is GRANTED IN PART. With respect to Chief Justice Steele, he may testify only for the limited purpose of

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. As to Dr. Finnerty, the Motion *In Limine* was WITHDRAWN. As to the other experts, the motion is DENIED.

DATED this 19 day of December, 2016.

DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
MARK G. KRUM (SBN 10913)
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorneys for Plaintiff

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

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CLERK OF THE COURT

NEOJ
Mark G. Krum (SBN 10913)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702-949-8200
Fax: 702-949-8398
E-mail:mkrum@lrrc.com

Attorneys for Plaintiff
James J. Cotter, Jr.

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.

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,

Defendants.

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

Business Court

NOTICE OF ENTRY OF ORDER

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

PLEASE TAKE NOTICE that on the 21st day of December, 2016, an "Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion *in Limine* to Exclude Expert Testimony on Order Shortening Time" was entered in the above-entitled action. A copy of said Order is attached hereto.

DATED this 22nd day of December, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
Mark G. Krum (SBN 10913)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5958
(702) 949-8200
Attorneys for Plaintiff
James J. Cotter, Jr.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2016, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically served to all parties of record via this Court's electronic filing system to all parties listed on the E-Service Master List.

/s/ Jessie M. Helm
An employee of Lewis Roca Rothgerber Christie LLP

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

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CLERK OF THE COURT

ORDR

Mark G. Krum (SBN 10913)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702-949-8200
Fax: 702-949-8398
E-mail:mkrum@lrrc.com

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,

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.

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,

Defendants.

CASE NO.: A-15-719860-B
DEPT. NO. XI

Coordinated with:

Case No. P-14-082942-E
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Case No. A-16-735305-B
Dept. No. XI

Jointly Administered

Business Court

[PROPOSED] ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1–6 AND MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY

Date of Hearing: October 27, 2016
Time of Hearing: 8:30 a.m.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

THESE MATTERS HAVING COME BEFORE the Court on October 27, 2016, Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Mark E. Ferrario and Kara Hendricks appearing for Reading International, Inc.; and Ekwan Rhow, Shoshana E. Bannett appearing for William Gould, on the following motions:

- Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer;
- Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO;
- Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams; and
- Defendants' Motion *In Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty;

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

IT IS HEREBY ORDERED THAT the Motion for Partial Summary Judgment No. 1 is DENIED. There are genuine issues of material fact as to the issues related to interested directors participating in the process.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 2, and supplemental briefing will be discussed once the relevant discovery is complete. The independence issue needs to be evaluated on a transaction or action-by-action basis, because the independence related to each needs to be separately evaluated; even though facts overlap, the Court cannot evaluate this in a vacuum. Motion for Partial Summary Judgment No. 2 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

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IT IS FURTHER ORDERED THAT Motion for Partial Summary Judgment No. 4 is GRANTED IN PART. As to the formation and revitalization (activation) of the Executive Committee, the motion is GRANTED; as to utilization of the committee, the motion is DENIED. Formation and revitalization includes a decision by the company to make use of their previously dormant Executive Committee and put people on that Executive Committee.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 5. Motion for Partial Summary Judgment No. 5 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 6. Motion for Partial Summary Judgment No. 6 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT the Motion *in Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty is GRANTED IN PART. With respect to Chief Justice Steele, he may testify only for the limited purpose of

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identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. As to Dr. Finnerty, the Motion *In Limine* was WITHDRAWN. As to the other experts, the motion is DENIED.

DATED this 20 day of December, 2016.

DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
MARK G. KRUM (SBN 10913)
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorneys for Plaintiff

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

A-15-719860-B

DISTRICT COURT
CLARK COUNTY, NEVADA

NRS Chapters 78-89	COURT MINUTES	September 28, 2017

A-15-719860-B James Cotter, Jr., Plaintiff(s)
vs.
Margaret Cotter, Defendant(s)

September 28, 2017 11:16 AM Minute Order re: Trial Setting

HEARD BY: Gonzalez, Elizabeth **COURTROOM:**

COURT CLERK: Dulce Romea

PARTIES PRESENT: None. Minute order only – no hearing held.

JOURNAL ENTRIES

- COURT ORDERED, per the communication of counsel to the Judicial Executive Assistant, this matter is SET on the stacked trial calendar beginning January 2, 2018, with Calendar Call on December 18, 2017. This is not a firm setting. Judicial Executive Assistant to send a new trial setting order.

CLERK'S NOTE: Parties notified by distributing a copy of this minute order via the E-Service list. / dr 9-28-17

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES COTTER, JR. ET AL, Plaintiff(s), vs MARGARET COTTER, ET AL, Defendant(s), READING INTERNATIONAL, INC, Nominal Defendant. AND ALL COORDINATED MATTERS.	**Case No.** 15 A 719860 Coordinated With; 16-A-735305 14-P-082942 **Dept. No.** XI **Date of Hearing:** 09/25/17 **Time of Hearing:** 8:30a.m.

1st AMENDED ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL CONFERENCE AND CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to a Jury on a **Five week stack** to begin,

#35 **January 2, 2018 at 1:30 p.m.**

B. A calendar call will be held on **December 18, 2017 at 8:15 a.m.** Parties must bring to Calendar Call the following:

(1) Typed exhibit lists;
(2) List of depositions;
(3) List of equipment needed for trial, including audiovisual equipment;[1] and
(4) Courtesy copies of any legal briefs on trial issues.

The Final Pretrial Conference will be set at the time of the Calendar Call.

[1] If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3300 or via E-Mail at CourtHelpDesk@clarkcountycourts.us

C. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on **December 4, 2017 at 8:30 a.m.**

D. The Pre-Trial Memorandum must be filed no later than **December 3, 2017,** with a courtesy copy delivered to Department XI. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the Memorandum an identification of orders on all motions in limine or motions for partial summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

E. All motions in limine, must be in writing and filed no later than **November 9, 2017.** ***Omnibus Motions in Limine are not allowed.*** **Orders shortening time will not be signed except in extreme emergencies.**

F. All original depositions anticipated to be used in any manner during the trial must be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference commencement. Counsel shall advise the clerk prior to publication.

G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or make specific objections to individual

proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into evidence.

H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or make specific objections to items to be included in the Jury Notebook.

I. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall provide the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and proposed form of verdict along with any additional proposed jury instructions with an electronic copy in Word format.

J. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand, two (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted pursuant to conducted pursuant to EDCR 2.68.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 29th day of September, 2017.

ELIZABETH GONZALEZ, DISTRICT JUDGE

Certificate of Service

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List or mailed to the proper party as follows:

James L Edwards, Esq. (Cohen Johnson, et al)

Mark E Ferrario, Esq. (Greenberg Traurig)

Erik J Foley, Esq. (Lewis Roca)

Dan Kutinac

FILED UNDER SEAL PA 3088-3138

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11/27/2017 9:46 AM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR. Plaintiff vs. MARGARET COTTER, et al. Defendants	CASE NO. A-719860 A-735305 P-082942 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR EVIDENTIARY HEARING RE JAMES COTTER, JR. MOTION TO SEAL EXHIBITS 2, 3, AND 5 TO JAMES COTTER'S MOTION IN LIMINE NO. 1

MONDAY, NOVEMBER 20, 2017

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. STEVE L. MORRIS, ESQ.
FOR THE DEFENDANTS:	H. STANLEY JOHNSON, ESQ. MARSHALL M. SEARCY, ESQ. CHRISTOPHER TAYBACK, ESQ. SHOSHANA E. BANNETT, ESQ. MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ.

LAS VEGAS, NEVADA, MONDAY, NOVEMBER 20, 2017, 9:47 A.M.

(Court was called to order)

THE COURT: Mr. Ferrario, you cannot leave.

MR. FERRARIO: I'm not.

THE COURT: You're at the defense table.

If I can go to Cotter.

MR. MORRIS: Good morning, Your Honor.

THE COURT: Good morning, Mr. Morris. How are you?

MR. MORRIS: I'm fine. I hope I remain that way.

THE COURT: Good morning, Mr. Krum.

MR. KRUM: Good morning, Your Honor.

THE COURT: I have all counsel here. I'm going to have everyone, starting with Mr. Morris, identify themselves for purposes of the record. If you cannot hear them as we go through this process, please let me know, and then I'll figure out some other option.

Mr. Morris, you're up.

MR. MORRIS: I'm Steve Morris for James Cotter, Jr., and I'm here in association with Mr. Krum, whose motion is -- or our motion, but he is going to speak to it. It's on calendar this morning, the motion for an evidentiary hearing.

THE COURT: When did you become honorary counsel to Germany?

MR. MORRIS: Several weeks ago.

THE COURT: It was a very nice sign.

All right, guys.

MR. MORRIS: You won't hold that against me, will you?

THE COURT: No. I thought it was a nice sign.

MR. MORRIS: All right.

MR. TAYBACK: Good morning, Your Honor. Christopher Tayback on behalf of the individual director defendants, except Mr. Gould, who's separately represented.

MR. SEARCY: Good morning, Your Honor. Marshall Searcy, also here with Mr. Tayback on behalf of certain individual defendants.

MR. FERRARIO: Mark Ferrario for Reading.

MS. HENDRICKS: Kara Hendricks for Reading.

MS. BANNETT: Shoshana Bannett for William Gould.

MR. JOHNSON: Stan Johnson on behalf of the individual defendants.

THE COURT: Mr. Krum, could you hear everyone who identified themselves? Mr. Krum, can you hear me?

MR. KRUM: No.

THE COURT: Mr. Krum, it's your motion.

MR. TAYBACK: It's actually our motion.

MR. FERRARIO: It's actually our motion -- or his motion.

THE COURT: Okay. Well, I've got to make sure he can hear.

MR. KRUM: Okay. Now I can hear you. Thank you.

THE COURT: All right. Now I'm going to have Mr. Tayback argue the motion.

MR. TAYBACK: Good morning, Your Honor. I'll reserve whatever time I have left for whatever questions you have.

I'm going to start by saying that I think the basic principle here is the Nevada Supreme Court has said to their satisfaction, at least, Your Honor has not decided the adequacy of Mr. Cotter, Jr., the plaintiff in this case, to be a class representative on behalf of the other stockholders in Reading. That's obviously a concern, because there is a threshold issue, because Your Honor well knows --

Should we stop? The phone's on the ground. Can I approach?

MR. FERRARIO: That's pretty good, Jill.

THE MARSHAL: Is Mr. Krum still there?

MR. KRUM: Yes, I am. Thanks.

THE COURT: I guess you missed the Three Stooges act from being by telephone. But now we're going to go back to the argument.

MR. TAYBACK: I usually don't get the phone kind of reacting back to my argument, but --

In this case it's a threshold issue to know that the -- and, as Your Honor well knows, the Court has obligations to

the class which include making sure that the plaintiff, whoever's sitting there, is not just pursuing a personal vendetta, a personal issue. What we now know and what we have suspected but we certainly know has been confirmed by the filings in the trust case in California is that this plaintiff, Mr. Cotter, Jr., is using this derivative case to pursue solely personal remedies. One of those --

THE COURT: And you're surprised by the fact that he and his sisters have been fighting this whole time?

MR. TAYBACK: I am not surprised they've been fighting.

THE COURT: Okay. Because we've known that and I've known that when I did not dismiss the derivative portion of the case. It wasn't like this is new.

MR. TAYBACK: That is not new. But what is new is his efforts to seek the sale of a certain subset of stock in the trust case, which --

THE COURT: I'm aware of that. That's new. But how does that impact this decision? I know that you've got something that's not in the briefing that's this nugget that's going to make a light come on for me, and I've been waiting for it all weekend.

MR. TAYBACK: Okay. Well, I'm going to try and find that nugget that I think we tried to communicate and obviously didn't do it clearly enough in the papers. But the nugget

here is this, which is to say there are two different classes of stock, one of which --

THE COURT: Uh-huh. I knew that.

MR. TAYBACK: -- one of which is stock that is called Class B stock, that if it's sold the plaintiff has asked for there to be a control premium. That control premium is something that he's advocating in the trust case be used by the guardian ad litem, by the trustee ad litem in that case, to negotiate for the sale of just that stock, that is to say, just the stock that will inure to the benefit of Mr. Cotter, Jr., and his children. That is a problem when you are a class representative. That is to say, he's advocating in that action that that trustee negotiate the sale of a stock, of a portion of stock, not of all the stock, not of the stock held by all the stockholders that he purports to represent, and that he do so at a premium that would inure to the benefit of his children.

What does that mean for this case? What it means is he is now taking positions that would benefit just himself and that this case is an obvious leverage, obvious issue, proceeding that can be manipulated by a plaintiff who's got private litigation to negotiate something that if he's looking to negotiate a control premium through that trustee, then in fact the status of this derivative case, which is in his control, is something that would be the subject of that

negotiation. Will it be dismissed, will it be proceeded, what remedies will be sought? All of this really just underscores what, yes, Your Honor, we all suspected right away. These siblings fight, and --

THE COURT: Well, and the judge in California is unhappy with this.

MR. TAYBACK: And the plaintiff. I believe that there's language in there that he in fact exercised undue influence. And that's a large part of what the court's decision was.

THE COURT: Yeah. But there were no forgeries.

MR. TAYBACK: I'm sorry, Your Honor?

THE COURT: No forgeries.

MR. TAYBACK: No forgeries. The question is whether or not the case that's here he's an adequate representative, Mr. Cotter, Jr., the plaintiff.

THE COURT: I understand that's the issue. I'm trying to find out where the new information is other than that you guys have all pissed off the judge in California.

MR. TAYBACK: Well, it's true that the judge is unhappy with all the litigants there. But the new information is this. The remedy he's seeking --

THE COURT: The trustee ad litem is your new information.

MR. TAYBACK: No. The imploring by this plaintiff

that the trustee ad litem be empowered to sell a certain subset of stock that inures only to the benefit of this plaintiff and that this proceeding is leverage in that negotiation. And from that one I think has to conclude that he's not situated like all the other shareholders. All the other shareholders he purports to represent who aren't here, none of whom have joined his action, stand to benefit from that.

THE COURT: Well, there were some who joined, but they settled with you.

MR. TAYBACK: They walked away. And that's the way that that settlement played out. But they are not here now. They certainly could join if they felt that the sale of stock that would benefit solely this plaintiff was advantageous to them. They have not.

THE COURT: Well, but that's not the whole allegations that he's made as part of his derivative claim. You understand that.

MR. TAYBACK: I certainly understand that. But it's not -- but it is reflective of his status as it relates to the other stockholders.

THE COURT: I understand. Anything else you want to tell me to try and shine that light so I'm going to realize that something new has occurred that I don't know?

MR. TAYBACK: No, Your Honor. But I will reserve

the rest of my time to respond.

THE COURT: Thank you. Mr. Krum.

MR. KRUM: Thank you, Your Honor. I don't really have anything to add to what we've said in our papers. And you saw from those papers what actually transpired, and it transpiring in a California trust action is far different than the moving papers and Mr. Tayback's argument depicts it. But I don't need to repeat what we wrote and what you read, so I will wait, volunteer to answer any questions you have.

THE COURT: I don't have any questions for you.

Anything else?

MR. TAYBACK: Any questions for me, Your Honor?

THE COURT: No.

The motion's denied.

Mr. Ferrario, what happened with the settlement in California? It didn't happen, did it? I told you we would be surprised if it occurred.

MR. FERRARIO: Well, I -- well, can we -- let me just put it to you this way. It isn't dead yet, I don't think.

THE COURT: Well, we've got a trial in January, first and second week of January.

MR. FERRARIO: Your Honor, when we caucused with -- no, we want the trial. When we caucused with all the lawyers and called the Court and we had asked if we could go starting

I think mid January --

THE COURT: And I said no.

MR. FERRARIO: No, you didn't say no.

THE COURT: I said probably not.

MR. FERRARIO: No, you didn't say that, either.

THE COURT: What'd I say?

MR. FERRARIO: You said that would work, that probably will work. And then we ended up on the January 2nd stack.

THE COURT: Well, that is the stack.

MR. FERRARIO: I know. It would help everybody for a variety of reasons, not the least of which since I just had a Supreme Court argument set on -- what's the first day we're back?

THE COURT: January 2.

MR. FERRARIO: Yeah. They set an argument in Carson on the 2nd.

THE COURT: Cool.

MR. MORRIS: On January the 3rd.

MR. FERRARIO: January the 3rd?

MR. MORRIS: Yes.

MR. FERRARIO: The 3rd?

THE COURT: It'll be snowy then.

MR. FERRARIO: I know. I'm not --

THE COURT: And really cold.

MR. FERRARIO: -- really happy about this. But there's nothing I can do.

So now what I would ask, and I think Shoshana is --

You've got problems early January; right?

THE COURT: Well, they had problems forever. They had problems the whole spring.

MR. FERRARIO: I called the Court -- this isn't a heavy stack. It would help us all if we could --

THE COURT: So that would be number one.

MR. FERRARIO: -- like go on the 15th or whatever the --

THE COURT: But here's the problem with that. And I think I've told you guys this a little bit. I have no courtroom.

MR. FERRARIO: I know that.

THE COURT: I've got to beg for a courtroom to try and get space. This is a jury trial, so I need a jury-suitable courtroom. And that means sometimes my days aren't as long as I would hope they are. I have Mental Health Court on Tuesday afternoons where my staff supports Mental Health Court unless I can get coverage, and I have to go down and do any terminations that have to occur.

MR. FERRARIO: So we don't go Tuesday afternoons?

THE COURT: Well, unless we can get coverage and unless there's no orders to show cause, which I haven't had an

order to show cause in four weeks. Everybody's been doing really well in Mental Health Court, which is good.

But the problem is my weeks aren't like they were when I had a courtroom that was my own and I could manage my schedule. Right now I'm at the whim of other judges. Last week I was lucky enough to be able to take the courtroom of a judge who was at an educational thing, and so I got the courtroom full days for three days, and it was great, I got done. But the problem is I can't count on that.

MR. FERRARIO: I understand.

THE COURT: So what I'm trying to tell you is, yes, I will try and work with your schedule as I get closer. But my recollection is it got worse the later we went on in January, and I do not trust you guys to be able, given my limited schedule that I think I can get a courtroom, to be able to get done in three or four weeks.

MR. FERRARIO: And the only fallback I would ask -- because, again, I just got the argument on --

THE COURT: I'm going to let you guys go to Carson City and argue this case.

MR. FERRARIO: If we could -- if we could -- no, that's not the argument.

MR. TAYBACK: It is on the 3rd.

MR. FERRARIO: That is the one.

MR. TAYBACK: Yeah.

MR. FERRARIO: And I've got another one, too.

THE COURT: It's been a long morning, Mr. Ferrario.

MR. FERRARIO: It has. It's been a long couple weeks. But actually I had some fun in there, too. If we could start the first -- what's the next week? What's the next Monday?

MR. TAYBACK: The 9th.

THE COURT: That's the 8th, January 8th.

MR. FERRARIO: I think that would help everybody if we could know that was it. Then we could go to Carson City, we could come back, we could do our trial prep, and show up on the 8th, and that'll help everybody.

THE COURT: I need you all as a group to give me an estimate on the number of hours you need for the presentation of your case and cross-examination of the other side.

MR. FERRARIO: Okay.

THE COURT: I'm then going to do math to try and figure out how long that is so that I can do an analysis as to how long this is going to take so I can see how late I can start and still get you done.

MR. FERRARIO: Okay. We'll --

THE COURT: How's that?

MR. FERRARIO: That's great.

Mark?

MR. KRUM: Yes.

MR. FERRARIO: Can you be available to do that today?

MR. KRUM: Probably not. But let's try. Let's get it started.

MR. FERRARIO: Well, we another -- we have that other call today, so this dovetails into that nicely.

MR. KRUM: Right. That's what I meant.

MR. FERRARIO: Okay. Then I misunderstood. Okay. So I guess we are going to do it today. Good. Thank you.

THE COURT: He said he's not going to know the answer today, but he's going to start the process with you. That's what he said.

MR. FERRARIO: We have another call that relates to your pretrial order, and it will all -- this will all fit nicely within that.

THE COURT: So I'm going to ask you the same question I'm going to ask Wynn in a couple of weeks. Are you going to do electronic of exhibits?

MR. FERRARIO: Yes.

THE COURT: I'll do the draft protocol and send it over to you guys.

MR. FERRARIO: Okay.

THE COURT: Anything else?

Mr. Morris, it's a pleasure seeing you.

MR. MORRIS: Thank you, Your Honor. It's a pleasure

to be here.

THE COURT: Mr. Krum, sorry the phone flew off.

MR. MORRIS: There is another matter --

MR. KRUM: Well, no apologies necessary. Thank you, Your Honor.

THE COURT: Mr. Morris has something else. What?

MR. MORRIS: There are actually two. But the one -- the first one I'm want to address is the motion practice that has yet to resolve that is scheduled for mid December, the motions for summary judgment or the renewed partial motions for summary judgment and motions in limine. Those have -- the outcome on those motions will have a -- I believe a substantial impact on the evidence that is going to be presented at trial. And that's of special concern to me, because we're the plaintiff.

So what I'm prefacing is this request. With respect to the identification of exhibits, a topic we briefly discussed at our last joint counsel conference under Rule 2.67 or trying to reach accommodation of Rule 2.67 could we have an extension of the time to identify exhibits until the motions that are pending are decided?

THE COURT: When are they scheduled for decision?

MR. MORRIS: I believe they're scheduled for argument on --

MS. BANNETT: December 11.

MR. MORRIS: Yes.

THE COURT: Are you guys going to need a special setting for that?

MR. FERRARIO: You mean so we have a little more time?

THE COURT: That's what I asked, yes.

MR. FERRARIO: I think that might be prudent so nobody has to sit through that.

THE COURT: Okay. So how about we move it to a couple days after that hearing, the 13th. Would that be enough time?

MR. FERRARIO: That would be good for us.

MR. MORRIS: I assume you're going to make a decision on the 11th.

THE COURT: Oh, absolutely.

MR. MORRIS: All right. So --

THE COURT: You know me. I make a decision. Right or wrong, I make it, and then you guys go to Carson if you want.

MR. MORRIS: We're going to be going to Carson in any event on the 3rd.

THE COURT: On a different issue.

So let me see what time I can put it there. The issue's going to be whether Randall Jones finishes his bench trial the week before. I do not know if he's going to finish.

But even if he doesn't finish, since it's a bench trial, I can carve out about an hour for you guys.

MR. FERRARIO: That'd be great.

MR. MORRIS: That would be good.

THE COURT: Okay. I've got to see if I have a settlement conference that morning. So let me look on the 11th and see what time I have that day for you.

MR. MORRIS: So we can have until the --

MR. KRUM: We're scheduled to be back on the 18th for the calendar call.

THE COURT: Yes. I may be done with you for the calendar call at the 11th, but we'll know that then and we may be able to cancel that.

Anything else?

MR. MORRIS: There's one other item, but it's not contested, and that is our motion to seal our first motion in limine. We have some documents that should be sealed or partially sealed. We presented a motion to that effect. There's been no opposition. I have an order I'd like you to sign unless they --

THE COURT: Be happy to. Be happy to sign it.

MR. TAYBACK: No objection.

MR. MORRIS: Okay.

THE COURT: So I have two homework assignments for me. One, I'm going to get the electronic exhibit protocol

tuned up for you, get it distributed to see if you have any comments before we enter it, and then find a special time for you on December 11th for the argument of your motions.

Anything else?

MR. TAYBACK: Nothing, Your Honor.

THE COURT: Have a lovely Thanksgiving.

MR. FERRARIO: Thank you, Your Honor.

MR. KRUM: You likewise.

THE COURT: Mr. Morris.

MR. MORRIS: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:04 A.M.

* * * * *

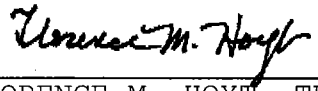
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

11/20/17

DATE

ANS
COHEN|JOHNSON|PARKER|EDWARDS
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 823-3500

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 S. Figueroa St., 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

EIGHTH JUDICIAL 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.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Defendants") hereby set forth the following Answer to the Second Amended Verified Complaint, filed by Plaintiff James Cotter, Jr. ("Plaintiff") on September 2, 2016 ("Complaint"). Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted is denied. Defendants respond to each of the paragraphs of the Complaint as follows:

RESPONSE TO "NATURE OF THE CASE"

1. Defendants deny the allegations of paragraph 1 of the Complaint.

2. Defendants deny the allegations of paragraph 2 of the Complaint.

3. Defendants deny the allegations of paragraph 3 of the Complaint.

4. Defendants admit that Ellen Cotter correctly asserted that Plaintiff's employment agreement required him to resign from the Board of Directors ("Board") of Reading International, Inc. ("RDI" or the "Company") upon his termination. To the extent that the allegations of paragraph 4 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 4 of the Complaint in all other respects.

5. Defendants admit that Ellen Cotter and Margaret Cotter have referred to Edward Kane as "Uncle Ed." Defendants admit that "family disputes" between Ellen Cotter and Margaret Cotter, on the one hand, and James Cotter, Jr., on the other hand, included certain trust and estate litigation commenced by Ellen Cotter and Margaret Cotter against James Cotter, Jr. following the passing of their father, James J. Cotter, Sr., in September 2014. Defendants deny the allegations of paragraph 5 of the Complaint in all other respects.

6. Defendants admit that Ellen Cotter was appointed CEO in January 2016 and Margaret Cotter was appointed Executive Vice President-Real Estate Management and Development-NYC in March 2016. Defendants deny the allegations of paragraph 6 of the Complaint in all other respects.

///

7. Defendants deny the allegations of paragraph 7 of the Complaint.

8. Defendants admit that Ellen Cotter, Margaret Cotter, Edward Kane, and Guy Adams are members of RDI's Executive Committee. Defendants admit that, pursuant to its Charter, the Executive Committee is authorized, to the fullest extent permitted by Nevada law and RDI's Bylaws, to take any and all actions that could have been taken by the full Board between meetings of the full Board. Defendants deny the allegations of paragraph 8 of the Complaint in all other respects.

9. Defendants deny the allegations of paragraph 9 of the Complaint.

10. Defendants admit that Ellen Cotter and Margaret Cotter, acting in the capacities as the Co-Executors of the Estate of James J. Cotter, Sr. (the "Cotter Estate"), exercised on behalf of the Cotter Estate an option held by the Cotter Estate to acquire 100,000 shares of RDI Class B voting stock. Defendants admit that the use of Class A shares to effect such exercise was approved by the Compensation Committee. Defendants deny the allegations of paragraph 10 of the Complaint in all other respects.

11. Defendants admit that, on or about October 5, 2015, Ellen Cotter proposed adding Judy Codding to RDI's Board of Directors. Defendants admit that Mary Cotter knows Ms. Codding. Defendants admit that Mary Cotter is the mother of Plaintiff, Ellen Cotter, and Margaret Cotter. Defendants admit that Judy Codding had not previously served on the board of directors of a public company. Defendants deny the allegations of paragraph 11 of the Complaint in all other respects.

12. Defendants admit that Timothy Storey retired from the RDI Board. Defendants admit that Edward Kane, Guy Adams, and Douglas McEachern were members of RDI's nominating committee. Defendants admit that RDI's Annual Stockholder Meeting was scheduled for November 10, 2015. Defendants admit that Michael Wrotniak had not previously served on the board of directors of a public company. Defendants admit that Michael Wrotniak's wife is a friend of Margaret Cotter. Defendants deny the allegations of paragraph 12 of the Complaint in all other respects.

///

13. Defendants deny the allegations of paragraph 13 of the Complaint.

14. Defendants admit that Ellen Cotter was appointed interim CEO after Plaintiff was terminated. Defendants admit that Ellen Cotter selected Korn Ferry to be the outside search firm the Company would use to search for a permanent CEO. Defendants admit that Ellen Cotter, Margaret Cotter, Douglas McEachern, and William Gould were members of the CEO search committee ("Search Committee"). Defendants admit that members of the Search Committee and others provided input to Korn Ferry, which prepared a position specification. Defendants admit that, prior to initial interviews of candidates, Ellen Cotter announced that she would be a candidate for President and CEO and resigned from the Search Committee. Defendants admit that Margaret Cotter remained on the Search Committee. Defendants admit that Korn Ferry was instructed to cease its services. Defendants admit that after interviewing six external candidates and Ellen Cotter, the Search Committee recommended to the RDI Board that Ellen Cotter be appointed CEO. Defendants admit that the RDI Board appointed Ellen Cotter as CEO. Defendants deny the allegations of paragraph 14 of the Complaint in all other respects.

15. Defendants admit that Margaret Cotter became Executive Vice President-Real Estate Management and Development-NYC on or about March 10, 2016. Defendants admit that Margaret Cotter is responsible for the development of RDI's properties in New York City. Defendants admit that the RDI Board approved a compensation package for Margaret Cotter that includes a base salary of $350,000, a target bonus of $105,000 (30% of her base salary), and a long-term incentive of a stock option for 19,921 shares of Class A common stock and 4,184 restricted stock units under the Company's 2010 Stock Incentive Plan, as amended, which long term incentives vest over a four year period. Defendants admit that, in or about March 2016, the Compensation Committee, consisting of Guy Adams, Edward Kane, and Judy Codding, and the Audit Committee, comprised of Edward Kane, Douglas McEachern, and Michael Wrotniak, approved an additional consulting fee compensation of $200,000 to Margaret Cotter. Defendants admit that the RDI Board of Directors approved payment of $50,000 to Guy Adams for extraordinary services provided to the Company and devotion of time in providing such services. Defendants deny the allegations of paragraph 15 of the Complaint in all other respects.

16. Defendants admit that on or about May 31, 2016, the Company received an unsolicited, non-binding indication of interest in purchasing all of the outstanding stock of RDI at a price of $17 per share from third parties unrelated to the Cotters. Defendants admit that they did not engage a financial advisor with respect to the non-binding indication of interest. Defendants admit that RDI's management presented a conservative valuation of the Company at a value greater than the value suggested by the non-binding indication of interest. Defendants admit that they agreed the $17 per share price indicated in the non-binding indication of interest was inadequate. Defendants deny the allegations of paragraph 16 of the Complaint in all other respects.

RESPONSE TO "PARTIES"

17. Defendants admit that, at all times relevant hereto, James Cotter, Jr. was a stockholder of RDI. Defendants admit that James Cotter, Jr. has been a director of RDI. Defendants admit that James Cotter, Jr. was appointed Vice Chairman of RDI's Board of Directors, then later President of RDI. Defendants admit that James Cotter, Jr. was appointed CEO by RDI's Board of Directors after James Cotter, Sr. resigned from that position. Defendants admit that James Cotter, Jr. is the son of the late James Cotter, Sr. and the brother of Ellen Cotter and Margaret Cotter. Defendants admit that the James J. Cotter Living Trust became irrevocable upon the passing of James Cotter, Sr. in September 2014. Defendants deny the allegations of paragraph 17 of the Complaint in all other respects.

18. Defendants admit that Margaret Cotter is engaged in trust and estate litigation against James Cotter, Jr. Defendants admit that Margaret Cotter is a director of RDI. Defendants admit that Margaret Cotter was the owner and President of OBI, LLC, a company that provided theater management services to live theaters indirectly owned by RDI through Liberty Theatres, LLC, of which Margaret Cotter is President. Defendants admit that Margaret Cotter wanted to become an employee of RDI. Defendants admit that Margaret Cotter was involved in development of real estate in New York owned directly or indirectly by RDI. Defendants admit that Margaret Cotter wanted to be, and now is, responsible for the development of RDI's real estate in New York City. Defendants admit that Margaret Cotter was appointed Executive Vice President-Real Estate

Management and Development-NYC on or about March 10, 2016. Defendants deny the allegations of paragraph 18 of the Complaint in all other respects.

19. Defendants admit that Ellen Cotter is and at all times relevant hereto was a director of RDI. Defendants admit that Ellen Cotter is engaged in trust and estate litigation against James Cotter, Jr. Defendants admit that Ellen Cotter served as the Chief Operating Officer of RDI's domestic cinema operations. Defendants admit that Ellen Cotter was appointed interim CEO on or about June 12, 2015 and was appointed CEO in January 2016. Defendants deny the allegations of paragraph 19 of the Complaint in all other respects.

20. Defendants admit that Edward Kane is an outside director of RDI. Defendants admit that Edward Kane has been a director of RDI since approximately October 15, 2009. Defendants admit that Edward Kane was a friend of James Cotter, Sr. Defendants deny the allegations of paragraph 20 of the Complaint in all other respects.

21. Defendants admit that Guy Adams is an outside director of RDI. Defendants admit that Guy Adams became a director of RDI in January 2014. Defendants admit that Guy Adams was granted stock options in or about January 2016. Defendants admit that, in or about March 2016, Guy Adams was paid $50,000 for extraordinary services provided to the Company and devotion in time in providing such services. Defendants admit that Guy Adams was a member of RDI's Compensation Committee until he resigned in or about May 2016. Defendants deny the allegations of paragraph 21 of the Complaint in all other respects.

22. Defendants admit that Douglas McEachern is an outside director of RDI. Defendants admit that Douglas McEachern became a director of RDI in May 2012. Defendants deny the allegations of paragraph 22 of the Complaint in all other respects.

23. Defendants admit that William Gould is an outside director of RDI. Defendants admit that William Gould became a director of RDI in October 2004. Defendants deny the allegations of paragraph 23 of the Complaint in all other respects.

24. Defendants admit that Judy Codding is an outside director of RDI. Defendants admit that Judy Codding became a director on October 5, 2015. Defendants admit that Judy Codding had not previously served as a director of a public company. Defendants admit that Mary

Cotter knows Ms. Codding. Defendants admit that Judy Codding voted to appoint Ellen Cotter as CEO and Margaret Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants deny the allegations of paragraph 24 of the Complaint in all other respects.

25. Defendants admit that Michael Wrotniak is an outside director of RDI. Defendants admit that Michael Wrotniak became a director of RDI on October 12, 2015. Defendants admit that Michael Wrotniak had not previously served as a director of a public company. Defendants admit that Michael Wrotniak is not an expert in real estate development or cinemas. Defendants admit that Michael Wrotniak voted to appoint Ellen Cotter as CEO and Margaret Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants deny the allegations of paragraph 25 of the Complaint in all other respects.

26. Defendants admit that RDI is a Nevada corporation. Defendants admit that RDI has two classes of stock—Class A stock and Class B stock. The other allegations of paragraph 26 of the Complaint are purportedly based on written documents, which speak for themselves. Defendants deny the remaining allegations of paragraph 26 of the Complaint.

27. Defendants deny the allegations of paragraph 27 of the Complaint.

RESPONSE TO "ALLEGATIONS COMMON TO ALL CLAIMS"

28. Defendants admit that, since approximately 2000 and until he resigned as Chairman and CEO of RDI, James J. Cotter, Sr. was the CEO and Chairman of the Board of Directors of RDI. Defendants deny the allegations of paragraph 28 of the Complaint in all other respects.

29. Defendants deny the allegations of paragraph 29 of the Complaint.

30. Defendants deny the allegations of paragraph 30 of the Complaint.

31. Defendants admit that James Cotter, Jr. was appointed Vice Chairman of the RDI Board in 2007. Defendants admit that the RDI Board appointed James Cotter, Jr. President of RDI on or about June 1, 2013. Defendants deny the allegations of paragraph 31 of the Complaint in all other respects.

32. Defendants admit that James J. Cotter, Sr. passed away in September 2014. Defendants admit that Ellen Cotter and Margaret Cotter are in litigation with James Cotter, Jr. Defendants deny the allegations of paragraph 32 of the Complaint in all other respects.

33. Defendants admit that, as President and CEO of RDI, James Cotter, Jr. worked to push his sisters out of RDI. Defendants deny the allegations of paragraph 33 of the Complaint in all other respects.

34. Defendants deny the allegations of paragraph 34 of the Complaint.

35. Defendants deny the allegations of paragraph 35 of the Complaint.

36. Defendants deny the allegations of paragraph 36 of the Complaint.

37. Defendants admit that Ellen Cotter sought an employment agreement. Defendants admit that Ellen Cotter believed that James Cotter, Jr. would try to fire her without cause. Defendants deny the allegations of paragraph 37 of the Complaint in all other respects.

38. Defendants admit that Margaret Cotter and Ellen Cotter have called Edward Kane "Uncle Ed." To the extent that the allegations of paragraph 38 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 38 of the Complaint in all other respects.

39. Defendants admit that, in October 2014, RDI reimbursed Ellen Cotter $50,000 for income taxes she incurred as a result of her exercise of stock options as further detailed in RDI's public filings. Defendants deny the allegations of paragraph 39 of the Complaint in all other respects.

40. Defendants admit that, on or about November 2014, RDI's Board of Directors approved an increase in compensation for each nonemployee director. Defendants deny the allegations of paragraph 40 of the Complaint in all other respects.

41. Defendants admit that, in 2014, Ellen Cotter proposed that Ellen Cotter and Margaret Cotter report to an executive committee, rather than Plaintiff. Defendants deny the allegations of paragraph 41 of the Complaint in all other respects.

42. Defendants admit that, on or about January 15, 2015, RDI's Board of Directors approved purchase of a directors and officers insurance policy. Defendants deny the allegations of paragraph 42 of the Complaint in all other respects.

43. Defendants admit that the quoted resolution was approved. Defendants deny the allegations of paragraph 43 of the Complaint in all other respects.

44. Defendants deny that Plaintiff's work as CEO was recognized as successful by the stock market. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 44 of the Complaint, and therefore deny them.

45. To the extent that the allegations of paragraph 45 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint, and therefore deny them.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Complaint, and therefore deny them.

47. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint, and therefore deny them.

48. Defendants deny the allegations of paragraph 48 of the Complaint.

49. Defendants deny the allegations of paragraph 49 of the Complaint.

50. Defendants admit that Timothy Storey was appointed to function as ombudsman to work with James Cotter, Jr. Defendants deny the allegations of paragraph 50 of the Complaint in all other respects.

51. Defendants deny the allegations of paragraph 51 of the Complaint.

52. Defendants deny the allegations of paragraph 52 of the Complaint.

53. Defendants admit that Margaret Cotter asked for an employment agreement with RDI. To the extent that the allegations of paragraph 53 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 53 of the Complaint in all other respects.

54. Defendants admit that the non-Cotter directors sought additional compensation for time expended on RDI matters. Defendants deny the allegations of paragraph 54 of the Complaint in all other respects.

55. Defendants admit that director Timothy Storey resides in New Zealand and that he took trips to Los Angeles on RDI business. Defendants deny the allegations of paragraph 55 of the Complaint in all other respects.

56. Defendants deny the allegations of paragraph 56 of the Complaint.

57. The allegations of paragraph 57 of the Complaint are purportedly based on written documents, which speak for themselves. Defendants deny the remaining allegations of paragraph 57 of the Complaint.

58. Defendants admit that the Stomp Producers gave notice of termination of Stomp's lease at the Orpheum Theatre on or about April 23, 2015. Defendants deny the allegations of paragraph 58 of the Complaint in all other respects.

59. To the extent that the allegations of paragraph 59 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 59 of the Complaint in all other respects.

60. Defendants deny the allegations of paragraph 60 of the Complaint.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61 of the Complaint, and therefore deny them.

62. Defendants deny the allegations of paragraph 62 of the Complaint.

63. Defendants deny the allegations of paragraph 63 of the Complaint.

64. Defendants admit that Guy Adams has testified: "I took a sabbatical, basically." To the extent that the allegations of paragraph 64 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 64 of the Complaint in all other respects.

65. Defendants deny the allegations of paragraph 65 of the Complaint.

66. Defendants admit that Guy Adams has been paid and is paid $1,000 per week from the Cotter Family Farms. Defendants admit that Guy Adams received carried interests in certain

real estate projects, including in Shadow View. Defendants deny the allegations of paragraph 66 of the Complaint in all other respects.

67. To the extent that the allegations of paragraph 67 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 67 of the Complaint in all other respects.

68. Defendants deny the allegations of paragraph 68 of the Complaint.

69. Defendants deny the allegations of paragraph 69 of the Complaint.

70. Defendants admit that on March 26, 2015, Guy Adams sold all RDI options he then had. To the extent that the allegations of paragraph 70 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 70 of the Complaint in all other respects.

71. Defendants admit that Guy Adams resigned from the Compensation Committee on or about May 14, 2016. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 71, and therefore deny them.

72. Defendants admit that Ellen Cotter distributed an agenda for the May 21, 2015 RDI Board meeting on or about May 19, 2015, and that the first action item on the agenda was entitled "Status of President and CEO." Defendants deny the allegations of paragraph 72 of the Complaint in all other respects.

73. Defendants deny the allegations of paragraph 73 of the Complaint.

74. Defendants admit there was a request that the non-Cotter directors meet before the RDI Board meeting on May 21, 2015. Defendants deny the allegations of paragraph 74 of the Complaint in all other respects.

75. Defendants admit that Akin Gump attended the RDI Board meeting on May 21, 2015 at the request of Chairperson Ellen Cotter. Defendants deny the allegations of paragraph 75 of the Complaint in all other respects.

76. Defendants deny the allegations of paragraph 76 of the Complaint.

IN THE SUPREME COURT OF NEVADA

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

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

DOUGLAS MCEACHERN, EDWARD KANE, JUDY CODDING, WILLIAM GOULD, AND MICHAEL WROTNIAK,

Real Parties in Interest.

CASE NO.:

District Court Case No. A-15-719860-B

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS

VOLUME XIII (PA3001–3235)

Steve Morris, Esq. (NSB #1543)
Akke Levin, Esq. (NSB #9102)
Morris Law Group
411 E. Bonneville Ave., Ste. 360
Las Vegas, NV 89101
Telephone: (702) 474-9400

Mark G. Krum (NSB #10913)
Yurko, Salvesen & Remz, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108
Telephone: (617) 723-6900

Attorneys for Petitioner
James J. Cotter, Jr.

PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS

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CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below. I hereby certify that on the 2nd day of January, 2018, a true and correct copy of the foregoing **PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS, XIII (PA3001–3235)** was served by the following method(s):

☑ United States Postal Service:

Stan Johnson
Cohen-Johnson, LLC
255 East Warm Springs Road, Ste. 110
Las Vegas, Nevada 89119

Christopher Tayback
Marshall Searcy
Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA

Attorneys for Real Parties in Interest Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak

Donald A. Lattin
Carolyn K. Renner
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, Nevada 89519

Ekwan E. Rhow
Shoshana E. Bannett
Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C.
1875 Century Park East, 23rd Fl.
Los Angeles, CA 90067-2561

Attorneys for Real Parties in Interest William Gould

Mark Ferrario
Kara Hendricks
Tami Cowden
Greenberg Traurig, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, NV 89169

Attorneys for Nominal Defendant
Reading International, Inc.

Courtesy Copy Hand Delivered

To:

Judge Elizabeth Gonzalez
Eighth Judicial District
Court of Clark County,
Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Dated: January 2, 2018

By: /s/ PATRICIA FERRUGIA

passing in the night. I wrote far less when I listened to the arguments than I normally did, but I do have one more thing. And that's on the remedy. This is on page 27 of our reply brief, and we've briefed it before. You've seen it. Courts may fashion any form of equitable relief as may be appropriate. When they aborted the CEO search and made Ellen Cotter the CEO I was dumbfounded, Your Honor. If I was -- you know, it was a good thing for the company that they were going to do a CEO search, they're going to bring in a CEO, they're going to act like a public company. And then they didn't do that. And as a practical matter it's no big deal. As a legal matter the Court absolutely can provide that equitable relief. Chief Justice Steele was asked about that, and he said the saying in equity, for every wrong there is a remedy. And with respect to this he said, it is void the action and order reinstatement.

And so the last thing on this particular motion to which I want to speak is the contention that, well, no, you can't order -- you can't or at least you shouldn't provide equitable relief because, you know, the Cotter sisters are controlling shareholders, they'll just undo it. Your Honor, that is a very, very telling statement. Because what it is is an unequivocal announcement that the Cotter sisters don't view themselves as having an fiduciary obligations as controlling shareholders. That's wrong as a matter of law, but clearly

the manner in which they've conducted themselves throughout.

And, yes, the answer is were they to do that we'd be back and we'd be entitled to relief again. It's not a matter of the board substituting its judgment, it's a matter of the -- excuse me, the Court substituting its judgment for the board, it is a matter of protecting the interests of all RDI shareholders, the minority shareholders, who obviously don't exist in the decision-making minds of Kane and Adams and Margaret and Ellen Cotter. And that the brief says, well, you know, we're going to act like they don't exist again, simply confirms why it is equitable relief can and should be ordered. Thank you.

THE COURT: Thank you.

MR. TAYBACK: There are no other shareholders who are seeking to have the plaintiff reinstated or undo his termination. And to answer the question -- that's telling, by the way, and we make an argument about the plaintiff's inadequacy of understanding for this case based in part on that. But I'll say -- I'll start with this. If everything that Mr. Krum said is true were true, this motion should still be granted. And it's not --

THE COURT: I disagree with you, Counsel. Anything else?

MR. TAYBACK: Well, I would say yes. I would say why I think that that's true, which is to say that as -- from

the first principles it's true that if it's the -- if it's the -- just because it is the -- one of the most important powers that a board has, it is one that there is a long record of allowing boards the entire latitude to terminate for no reason at all. And how it can ever be a breach of fiduciary duty when the law provides unequivocally that right to boards of directors is the reason that there is no case that supports the plaintiff's claim. The best case that he cites concludes with the language, "Plaintiffs have neither articulated a theory as to how the plaintiff's removal as president and director could be a basis for fiduciary duty claims, nor proved any such breach." And that's the best case they cite. The fact is the law is clear and unequivocal that there is no basis for a breach of fiduciary duty claim in Nevada and frankly or any other jurisdiction for this action.

MR. FERRARIO: Your Honor, just very quickly.

The bylaws parrot the employment contract, clearly states that Mr. Cotter held the position at the pleasure of the board of directors, could be terminated with or without cause at any time by a vote of not less than the majority of the entire board at any meeting thereof by written consent. This whole nonsense about process that we've been hearing is inconsistent with the bylaws. I don't know what process Mr. Krum thinks should be invoked. We haven't been able to get that from him. When we asked Mr. Storey what he was talking

about in terms of process he was saying, well, he thought that the -- this mentoring process that had to be employed by the board prior to Mr. Cotter's termination should have been allowed to run its course. The fact that you have to mentor a CEO or ombudsman a CEO kind of tells you what was really going on there. And this is before the May event.

But I think the thing that's missing from Mr. Krum's argument -- and he talks about this unprecedented effort by the board to try to resolve this familial dispute, and he talks about that, but he doesn't go to the next step. The familial dispute was impacting the operation of the company. When that happens the board then has to deal with that. And that's what they did here. But he doesn't say that. He acts like the board came in as mediator for no reason to try to settle the Trust case. That's not what happened. He concedes that this familial dispute was impacting the operation of the company. So the board looked at its options and then what is in the record happened. And at the end of the day the board made a very basic decision, I'm going -- because the family dispute would not resolve despite the parties' best efforts, despite Mr. Krum's client at once agreeing to the terms of the deal and then reneging, despite his client enlisting the services of Uncle Ed and trying his damnedest to get this thing resolved, he couldn't do it. So the board then is left with the same situation that occurred before all of these

meetings, three siblings who are fighting. And the board picks two Cotters over one. That's it. And that -- there's no case that he's -- he always talks about law, law. Where's the law that that decision could ever be challenged? And then what's the remedy he says that the Court could fashion? Because no matter how you cut it you would be substituting your judgment for the judgment of the board there, who is sitting there living with this day to day. And they look at it and because the underlying dispute doesn't resolve, they cannot afford, consistent with their fiduciary duties, to let that dispute impact the operation of this company. Had they done that, they would have probably gotten sued by T2 or by other folks, because then you would have heard the claim, you should have taken action. The only action that's left when the parties can't voluntarily resolve it is you have to do what they did, fire one, fire two, or fire all three. I submit they made the prudent decision. They took the ones with the most experience.

So matter how Mr. Krum wants to sidestep the bylaws, no matter how he wants to sidestep Nevada law, no matter how many times he's says there law to support this and then doesn't cite it, the simple fact of the matter is the board could have done this by simply calling a meeting and saying nothing other than, Mr. Cotter, you're terminated without cause, we don't have to have a reason to do it.

And so the only way this claim could survive is for this Court to rewrite the bylaws, rewrite Nevada law, and import a doctrine into this case, the entire fairness, that has no application -- I can't find a case in Nevada, and I argued this in a case in front of Judge Scann a couple years ago, whether that doctrine even has any application in Nevada. It's an open question. He cites to 78.140 that deals with restrictions on transactions involving interested directors. What he doesn't say, that even in that context in Nevada if those holding a majority of the voting power approve or ratify the interested transaction, it's good. Nevada's adopted that statute. So even if this was an interested party -- even if there was lack of independence, the majority of those controlling the voting power voted to ratify that act. So there's just nowhere for him to turn here.

So, you know, again, Judge, these decisions have to apply just beyond this case. And, you know, of all the things that he's alleged here, from the beginning we've been saying this isn't a derivative case, there's no case he cites. Justice Steele certainly didn't come up with any. I don't remember Justice Steele saying for every wrong there's a remedy, because I don't know what the wrong is here. You got fired. You signed a contract that said they could fire you. That's not a wrong. And if he thinks it's wrong, he's got a remedy. Go to the arbitration. Here he's a derivative

plaintiff. There's no wrong to the company for the company following the bylaws, following Nevada law, following the terms of the contract, and on these facts, taking them as he said, where people are fighting and its infecting the operation of the company for the board to say, I'm picking these two over that one. It's literally that simple.

THE COURT: Okay. Are you done?

MR. FERRARIO: Yes.

THE COURT: All right. The motion's denied, as there are genuine issues of material fact and issues related to interested directors participating in a process.

If I could go to the motion in limine related to plaintiff's experts.

So, for the record, in September of 2013 I spoke on a panel called Multijurisdiction Case Management Litigation Being Pursued in Multiple Forums with Chief Justice Myron Steele. I don't think it affects my ability to be fair and impartial, but I make that disclosure to you just in case you need it.

MR. SEARCY: Thank you, Your Honor. I'll try and go through the four experts that were touched upon in our motion in limine fairly briefly, because it's getting late.

THE COURT: And I've got to find them in the book. So you keep going.

MR. SEARCY: Okay. If the Court has any questions,

please --

THE COURT: You keep going. No. There are no Post-It notes on this one.

MR. SEARCY: All right. I'll start --

THE COURT: I went through the Post-It notes already.

MR. SEARCY: I'll start with Justice Steele. His name has come up a couple of times today. I took the deposition of Mr. -- of Chief Justice Steele, the former chief justice.

THE COURT: They get to keep their titles when they retire here in Nevada.

MR. SEARCY: And by his own admission Chief Justice Steele agreed that he was submitting a legal opinion. It's not meant to assist a jury. What Chief Justice Steele did is he took the facts that were given to him by plaintiff and he assumed that they were true, and then he provided a legal analysis under Delaware law as to how he thought that might come out in a Chancery Court. He didn't look to Nevada law, he doesn't claim any expertise in Nevada law, he didn't conduct any research of Nevada law. His opinion in short, Your Honor, is really a research memo that's aimed to assist you, the Court, and not the jury. And because of the fact that Chief Justice Steele in a prior opinion simply assumed the facts, didn't have any expertise on the facts, didn't

offer any opinion on the facts, didn't even go to ultimate facts, another court has already excluded an opinion just like the one he submitted here.

Now, Your Honor, if I may, from his deposition testimony Chief Justice Steele wrote -- or he said -- he testified about his opinion, "I'm definitely not impertinent enough to suggest what the Nevada court should do, nor am I suggesting that they would follow this pattern that's used in Delaware, just that this opinion is designed to be helpful to the court should the court choose to look at it and understand how the analysis would occur in Delaware. That's all. That's all I was asked to do." So, Your Honor, he's not providing anything that would be helpful to a finder of fact, and he's not providing anything to the Court that the Court can't do on its own. That's Chief Justice Steele.

THE COURT: So let's do all of them together.

MR. SEARCY: Okay.

THE COURT: Okay. Because then I'm going to ask Mr. Krum questions. Because I was wrong. I did have a Post-It note. Luckily, I found it.

MR. SEARCY: Moving now to the damages expert that plaintiff has put forth, that's Dr. Duarte-Silva, Dr. Silva -- or Duarte-Silva has literally just thrown out numbers. He's thrown out two numbers to say that the EBITDA of the company and the share price of the company haven't risen as much as he

thought that they might if you compare them to what he considers to be the comparable companies. He doesn't engage in any sort of statistical methodology here, Your Honor. But more importantly, he doesn't seek to opine on any causal connection between the numbers that he throws out and what is being examined, namely, that is the term of Ellen Cotter as CEO. And when he was asked at his deposition, do you have any opinion on causation, he said, no. Do you agree that your opinion is not statistically significant; he agreed with that, Your Honor. So he has literally just thrown out large numbers without any causation connecting those numbers to any allegations in this case that will have no other purpose than to prejudice the jury. And, Your Honor, for those numbers to be presented to a jury plaintiff has to show that they encompass, they involve some sort of causation of damages. Otherwise it's just prejudicial. Otherwise it's irrelevant. And, Your Honor, that's Dr. Duarte-Silva. Do you have any questions on Dr. Silva?

THE COURT: Nope. So let's go to Spitz.

MR. SEARCY: Spitz. He's the expert on the CEO search. Mr. Spitz does not provide anything more in his opinion other than a subjective opinion. He doesn't cite to any literature about CEO searches, he doesn't cite to any standards, he doesn't even cite to his own personal experience, other than the occasional anecdotal way about how

a CEO search would be conducted. Instead, what Mr. Spitz does is he provides credibility determinations, questioning the motives of various persons on the CEO search committee, various persons on the board, of Ellen Cotter that he's -- he has no expertise and shouldn't be able to provide those types of opinions anyway about the credibility of witnesses for a jury. He wasn't there, he wasn't involved in the CEO search. That's completely inadmissible. And in terms of what he opines on for the CEO search, notwithstanding his prior experience at Korn Ferry, he doesn't provide you with any standards, any methodologies, anything that shows a basis of expertise by which to judge the CEO search that was conducted.

Finally, Your Honor, that's expert Nagy. He was offered as a rebuttal expert. He is clearly, however, just a late-submitted report. His opinion went to the qualifications and salary of Margaret Cotter. That's not anything that was submitted in Mr. Osborne's report that he is supposedly rebutting. Mr. Osborne's report was instead confined to a one-time payment that was made to Margaret Cotter. Mr. Nagy's report clearly is not a rebuttal to that, and therefore should also be excluded as untimely. Thank you.

THE COURT: Are we still talking about Mr. Finnerty?

MR. SEARCY: Mr. Finnerty -- we've withdrawn our motion with regard to Mr. Finnerty.

THE COURT: Thank you.

For what purpose are you offering Chief Justice Steele's conclusions?

MR. KRUM: The very same purposes for which they are offering two defendants -- two experts, Mr. Osborne and Mr. Klausner. And the difference between Chief Justice Steele on one hand and those two gentlemen on the other is that the analytical framework Chief Justice Steele offers is based on Delaware, and the analytical framework their experts offer is based on, so they say, industry practice. So Chief Justice Steele is not opining about Nevada law, he's not opining about the ultimate facts. The assertion that he was unfamiliar with the facts is incorrect, staggering, because he testified about what he did, which was read depositions, including the four half-day volumes of Mr. Kane and read the summary judgment motions. But, of course, that postdated his initial report. But what he does, Your Honor, is he explains an analytical framework based on Delaware law that could have been used by the director defendants at the time they were engaging in the activities in which they engaged, and could be helpful to the finder of fact, I submit, Your Honor, far more so than some assertion that, the boards on which I haven't done it this way, or, I haven't heard about it, or, this is what industry practice is, which is what Osborne and Klausner are saying.

It's undisputed that Nevada courts, like many other jurisdictions, may and do look to Delaware corporate law and

jurisprudence for guidance in the absence of a Nevada law on point. You're going to -- we're going to have instructions about what Nevada law is, presumably, right?

THE COURT: Yes, we are.

MR. KRUM: And this is in effect opinions with respect to how it might have been done using a framework. But that doesn't go to the instructions, and as our summary judgment papers demonstrated, I hope, Nevada law is consistent with Delaware law insofar as there is Nevada law. It's an issue about which we've disagreed from time to time today.

The motion with respect to Chief Justice Steele also asserts some erroneous legal conclusions that are repeated in the summary judgment motion. And they challenge his opinions that are not about what Nevada law is by erroneous assertions of Nevada law. But the short answer, Your Honor, is he's speaking to exactly the same issues as Osborne and Klausner, which is what should the directors have considered, did they do it in a manner consistent with one case Delaware law and practice and another case industry practice, whatever that is, which I'll find out, I hope, when I take their depositions.

THE COURT: Okay. Anything else?

MR. KRUM: Not with respect to Chief Justice Steele.

THE COURT: Okay. Duarte-Silva.

MR. KRUM: Duarte-Silva. Exact same thing. He analyzed the same set of events, namely, the performance of

RDI stock following the termination of plaintiff and under the guidance of Ellen Cotter as CEO that were analyzed by defendants' expert Richard Roll. The two of them reached different conclusions about what that performance showed. According to Professor Roll, based on his conclusions about that performance, there were no damages, there was no irreparable harm. Dr. Duarte-Silva says otherwise. In point of fact, he comes up with a number, which obviously has troubled the defendants.

So what we have here, Your Honor, is clearly expert testimony that the defendants acknowledge is appropriate, because they're offering the very same testimony but using a different methodology and reaching a different conclusion. And it's not appropriate, I respectfully submit, to make a decision on a motion of this nature that a methodology is unacceptable without hearing the witness himself describe it. And we haven't had that happen. So that's Dr. Duarte-Silva.

Richard Spitz. This is -- this is pretty easy, except for I don't have Mr. Osborne's report here, so I can't cite you to the exact line and page. But I can certainly provide it, because it's highlighted sitting in my office or my litigation bag or perhaps my closet when I unpacked the bag and got on the next plane.

Defendants effectively have invoked NRS 78.138.2(b) with respect to the CEO search by their use of an outside

search firm, Korn Ferry. Setting aside the factual issues about whether they themselves undermine that by effectively firing Korn Ferry and aborting the search, Mr. Spitz is offered to testify about whether the search was conducted in a manner in which he as a search executive, a former Korn Ferry executive, would have conducted it and ultimately as to whether as a search process it succeeded or failed. And, yes, Mr. Ferrario's right, process is important. That's the basis on which the individual defendants are going to claim they fulfilled their duty of care. And in this instance Mr. Spitz is going to speak to the failed process. So he's going to go to the issue of their invocation of NRS 78.138.2(b). And I'm sure they're going to claim -- I know they're going to claim, we've seen it in the briefing, well, we didn't really terminate the process and it was all fine and we just made a decision and so we stopped. Well, okay. He's going to speak to how CEO searches go. We have percipient witness testimony from the Korn Ferry witness, which is, interestingly, pretty consistent with Mr. Spitz's opinions, but he goes to an issue that they're going to raise in this case. They have raised it. That's the point -- that was the very point from the outset of hiring a search firm.

Mr. Nagy -- I misspoke, Your Honor. It's not Mr. Spitz, it's Mr. Nagy who responds to a particular paragraph or two in the Osborne report. Mr. Nagy's an expert on real

estate matters, including with respect to the qualifications of executives with responsibilities for development of real estate. As of March 2016 that's Margaret Cotter.

One of the matters as to which the director defendants' conduct is challenged is their decision to hire Margaret Cotter in March 2016 as the senior executive at RDI, a public company, responsible for the development of its valuable New York state -- New York City real estate. And this is in one of their summary judgment motions, Your Honor, under 6, I think, to compensate her in a manner that apparently reflects those responsibilities. And the Osborne report does in fact have a paragraph or two that refers to hiring Margaret Cotter in that position and paying her the money she's being paid. And the director defendants are going to defend their decision by relying on a third-party compensation consultant that advised the compensation committee regarding salary for the position. They, you know, had committees do it, they had the board approve it, and Mr. Osborne talks at length about this wonderful process. So Mr. Osborne's with Mr. Krum and not Mr. Ferrario about how important process is. And he talks about the process, he talks about the position, and among other conclusions Osborne reaches in his original expert report is that the compensation paid to Margaret Cotter is appropriate.

Well, that's -- what am I going to do, hire somebody

that says the compensation committee exercise was a ruse? No. But how about this? Starting in the fall of 2014 all the way up to March of 2015 when they made the decision there had been discussions about what role, if any, Margaret Cotter would have in terms of the city's [sic] valuable New York City real estate. And from the fall of 2014 through at least the spring of 2015 most, if not all, of the five non-Cotter director defendants had articulated, orally and in contemporaneous emails, the view that Margaret Cotter did not have the qualifications to be the senior person in that role. As a matter of fact, undisputed fact, Your Honor, she has no prior real estate development experience. What is her job? She supervises their live theater operations, which amount to next to nothing. It's not even in the company's description of its two principal businesses. And she was there with her father, now deceased, in the early pre-development stages.

So Mr. Nagy's opinion is that Margaret Cotter is not qualified to hold the position she holds and that the compensation paid to her therefore is not appropriate. And he says, as to Osborne, Osborne neglects to address and analyze her qualifications or lack of qualifications. He says it's industry custom and practice for the two, qualifications and compensation, to be closely linked, it's my opinion that she's not qualified, and because she's not qualified -- I'm paraphrasing -- her compensation is not proper. He directly

disagrees with one of the conclusions of Mr. Osborne.

THE COURT: Anything else?

MR. KRUM: No. Thank you.

THE COURT: Okay. Anything else?

MR. SEARCY: Yes, Your Honor.

A couple of points that lack of foundation raised in their argument just now in just responding to my reply, first there was the statement that Chief Justice Steele, the former Vice Chancellor, was familiar with the facts of the case. The deposition showed otherwise. And if I may also just read to you this portion of his deposition testimony, he assumed simply for this purpose, for his expert analysis that the allegations in the complaint were true. It's Exhibit A to our reply, Your Honor, at page 44, 19, through 45, 2, where I asked him the question, "I take it that in looking at the pleadings you assumed that the allegations contained in the pleadings were true; correct?" Answer, "Yes, that's correct." "As you might on a motion to dismiss, in other words?" "Very similar perhaps in Delaware, not quite as strict as a motion to dismiss, but very similar."

So it's clear that what Chief Justice Steele did is he provided a legal opinion based upon assumed facts about Delaware law. It's not going to assist a jury, and, to be honest, Your Honor, I don't think it will assist you any more than having a clerk do the same research if you're called upon

to look at an issue of Delaware law for this case. So Chief Justice Steele's opinions should be excluded. He should not be able to provide testimony in this case.

With respect to Dr. Duarte-Silva there was never any statement made in the opposition just now or otherwise that Dr. Duarte-Silva has any information about causation. He doesn't show any causation, any connection between the big numbers that he throws out and any of the allegations in this case. And he doesn't even purport to. He admits that he doesn't have any information and not offering any opinion about causation of any damages.

With respect to Mr. Spitz you heard the argument. Mr. Spitz doesn't offer any analysis, he doesn't offer any methodology. You heard Mr. Krum make reference to a failed process. There's nothing, however, in Mr. Spitz's report that would lead you to know what a successful process would be, what's the methodology for that, what's the analysis for how a CEO search under Mr. Spitz's view is supposed to go. There's no comparison there. It's strictly for Mr. Spitz a credibility determination that he's making on the witnesses in this case. That's inappropriate. Mr. Spitz's opinions should also be excluded.

Finally, Mr. Nagy, notwithstanding the fact that plaintiff said he didn't have the papers here to show that it was actually a rebuttal, there wasn't a showing in their

opposition, either, Your Honor, that Mr. Nagy's opinion was anything other than a late opinion and not a rebuttal to anything that was in Mr. Osborne's report. And so, as a result, Mr. Nagy's opinion should also be excluded.

THE COURT: Thanks.

The motion is granted in part. With respect to Chief Justice Steele, he may testify the limited purpose of what appropriate corporate governance activities would have been, included activities where directors are interested. It's on his list of things. He's got it in his list. Let me read it. Because I read it from your motion.

MR. FERRARIO: Did you read his report?

THE COURT: I didn't read his whole report. I read your motion. So here's what you say in your motion. I'm on page -- hold on, let me get there -- the one you did in small type. It's on page 6. To the extent he is talking about the interested and disinterested directors and the process that would be followed based upon the governance of an appropriate company for disinterested and interested directors, that testimony is permitted. And every one of these goes to that. I'm on page 6.

MR. KRUM: That's from his report, Your Honor. That's what they're quoting.

THE COURT: I know it's from his report. That's why I read that. Because it says, "Based on the facts as I

understand them," which I assume to be Chief Justice Steele and not Mr. Ferrario.

MR. FERRARIO: We're lost here, Judge. Sorry.

THE COURT: Okay.

MR. FERRARIO: Where are you at?

THE COURT: So you understand how at least today I've told you that the issues as to whether people are interested or disinterested on particular actions or transactions is a factual issue that we may have to resolve later. The framework of what the appropriate activities for someone who is interested or disinterested are appropriate for Chief Justice Steele to talk about, and they appear to appear here on 1(a), 1(b), 2, 3, and 4. Because every single one of those talks about independent and disinterested or interested.

MR. FERRARIO: What Justice Steele says is if the jury finds that --

THE COURT: That is correct.

MR. FERRARIO: -- then --

THE COURT: "So here's an appropriate corporate governance activity for a corporation to find if directors are interested. You don't have the interested directors participate." Next step. "Okay. So how do you evaluate if they're interested or not?" "You do an evaluation to determine if they have a financial interest, if they have some other binding interest.

MR. FERRARIO: That's under Delaware law, though.

THE COURT: It's under Nevada law, too.

MR. FERRARIO: No. He's only testified under Delaware law.

THE COURT: Then tell me why these conclusions are not the same as what they'd be under Nevada law. I understand your problem and your concern, but the framework is --

MR. FERRARIO: Well, I'll tell you what. There's not a case in Nevada that uses the entire fairness doctrine. Not one.

THE COURT: It doesn't use that term. It says you evaluate the entire transaction.

MR. FERRARIO: What's the transaction?

THE COURT: In this case there are multiple different activities that we may be submitting questions to the jury on.

MR. FERRARIO: What's the transaction? Just speak to terminating the CEO. Is that a transaction?

THE COURT: Yes.

MR. FERRARIO: Then who's on --

THE COURT: It's an activity.

MR. FERRARIO: Who's on what -- wow. Where does activity show in the statute or in a case? This is part of the problem, Judge.

THE COURT: So, Mr. Ferrario, I'm back to the we're

going to give the jury special interrogatories, I'm going to let Chief Justice Steele and your expert testify about what the appropriate activities for a company to use when they are faced with a situation of interested or disinterested shareholders and how they should govern themselves if we get to that point.

MR. FERRARIO: I think the problem I'm having here -- and I listened in for most of Justice Steele -- all of his deposition, quite frankly, and Mr. Searcy took it. It's this Court's role to say what law applies, not Justice Steele, and not an expert.

THE COURT: So do you want me to exclude your experts who are talking about industry practices? Because it's exactly the same thing on what appropriate corporate governance is.

MR. FERRARIO: Ah. No, that's different.

THE COURT: No, it's not different.

MR. FERRARIO: It's a completely different inquiry, because Justice Steele only opined on Delaware law, not specific practices employed -- Justice Steele's never been on a board. The only board he said he was on was some volunteer board, I think it was a volunteer board for what, a hospital or something?

MR. TAYBACK: Right.

MR. FERRARIO: He didn't come at this from an

industry practice standpoint. He didn't say, I serve on a number of boards. He said, I am giving you --

THE COURT: It doesn't have to be industry practice. What I'm trying to say is I am comparing this to your industry practice experts. If you don't want any of them to testify, then I'm happy to go there. If your position is that I shouldn't let any of those folks testify, then we'll handle it through jury instructions. But that's not the position you're presenting me. You're presenting me in a case where you have experts on industry standards, and am I going to exclude someone who has information that may be of assistance to the jury in a limited framework, not the entire framework, not the memo, not what the law is, but what the options for a board are under the law.

MR. FERRARIO: But, again, the threshold issue there is what's the law. That's Your Honor's job.

THE COURT: Absolutely it's my job.

MR. FERRARIO: Okay. So he -- not Justice Steele.

THE COURT: I understand that.

MR. FERRARIO: So Your Honor has to say what the law is, then Justice Steele would then have to give his opinion. We're not there yet. That's what I'm saying. That was the problem with his --

THE COURT: No. Let me see if I can say it a different way. Boards and companies have certain corporate

governance structures that they're supposed to follow when they have a --

MR. FERRARIO: I read the bylaws to you earlier.

THE COURT: Yeah. Well, okay. And when we are faced with a situation where a board has interested members, whether they're directors or shareholders participating in a vote, there are certain things that need to happen.

MR. FERRARIO: Depending on what the deal is.

THE COURT: Sometimes.

MR. FERRARIO: I mean, we have NRS 78.140 that talks about interested party transactions.

THE COURT: Yes, there are some --

MR. FERRARIO: That Justice Steele never read, by the way.

THE COURT: There are some interested-party transactions that are permissible under bylaws, but they have to be disclosed interested-party transactions; right?

MR. FERRARIO: 78.140 dictates exactly what --

THE COURT: Right.

MR. FERRARIO: -- has to happen, and they can become void or voidable.

THE COURT: Right. But --

MR. FERRARIO: I agree that that's Nevada law. He didn't even read this.

THE COURT: But let's go back to the Schoen case,

okay. The Schoen case we have interested parties who may not be interested in a way that people would find under NASDAQ or SEC reporting requirements. But the Nevada Supreme Court found that for purposes of us discussing that case, at least at the pleading stage, those individuals were interested or at least were alleged to be interested, where it was very different than what you would see in a publicly traded case. You have a similarities here with people being called Uncle Ed, you have similarities in the way people are receiving their primary compensation. There are similarities here that lead me to believe that there are factual issues on interested-disinterested which may cause many of the activities that have occurred to be drawn into evaluation by an ultimate finder of fact.

My position is that they need to have expert opinions if they're going to evaluate what an appropriate board would do when they're faced with those interested-disinterested conflicts in making a decision. We can either have experts testify, or you can not have experts testify. If you don't want to have experts testify, then I won't let Justice Steele testify, and we won't have your guys testify. If you want experts to testify, he's going to testify, too; but he's going to be limited to appropriate corporate governance options when faced with interested-disinterested transactions, because that's what he talks about in his

report.

MR. FERRARIO: I followed you all the way --

It's their experts, so they'll decide whether they want to call these other fellows.

-- until you got to the point of [unintelligible]. If you're saying that the actions of the board will now be evaluated under 78.140 --

THE COURT: I didn't say that.

MR. FERRARIO: I know. But that's where -- that's where -- I'm with --

THE COURT: You're making me pull out books. Because, see, I don't remember numbers. Hold on.

MR. FERRARIO: I was with you up to the point where what law is going to govern here. Because if it's 78.140, I have a framework of which I can look and we can then argue that.

THE COURT: Hold on a second. Let me go to 78.140 so you and I are talking about the same thing.

78.140 is not exclusive. Remember, the Schoen case goes beyond that. It's not exclusive. Or Americo or whatever we call it in the second or third case.

MR. FERRARIO: Americo, Schoen, whatever. I don't think --

THE COURT: Whichever decision of the group of multiple decisions it is.

MR. FERRARIO: But that was a completely -- that was a different fact pattern. It had --

THE COURT: Absolutely.

MR. FERRARIO: It had nothing to do with hiring and firing of a CEO.

THE COURT: It was a very different fact pattern. I'm not saying it's the same. I don't have a lot of law in Nevada. I have to be instructed on the law I have, and then I've got to make a jump to where I'm going to get based on the law I have. And --

MR. FERRARIO: Well, actually, I mean, you could take another contrary position. I know you heard this in the Wynn-Okada case, but Nevada actually does have a pretty robust statutory scheme that was put in place to be more protective than Delaware, to actually shield decisions from courts, you know, back in '91 and I think '97.

THE COURT: Uh-huh. We did.

MR. FERRARIO: So we actually do have a robust body of law here, and it's called NRS 78. So that's why I point to 78.140. If we're talking about --

THE COURT: Mark, we all look at that, because that's what we look at. That's what governs our corporations. That's our corporate --

MR. FERRARIO: I agree.

THE COURT: But we have case decisions from our

Nevada Supreme Court that supplement the statutory language.

So I've made my ruling on that. If there's something else you want to talk about, I can talk about it as soon as I finish my 4:30 conference call with whichever group of folks needs to talk to me.

MR. SEARCY: Your Honor, if I may, we did have an additional point on Chief Justice Steele. However, I don't believe you rendered an opinion or gave a ruling on any of the other experts.

THE COURT: It's denied on all the other experts.

MR. SEARCY: Denied on all the others. All right.

THE COURT: So did you want to ask me another question on Justice Steele?

MR. SEARCY: No. But go ahead.

MR. RHOW: I was just going to say we -- actually, Mr. Gould, on Mr. Gould's --

THE COURT: You joined in that motion.

MR. RHOW: I know. But he also has his separate motion for summary judgment.

THE COURT: I'm not on your motion for summary judgment yet. It's still on my list.

MR. RHOW: Okay. I'm just making sure. You're asking if there's other things.

THE COURT: Well, yeah. There's a lot of other things.

MR. RHOW: Understood.

THE COURT: But I'm running out of time.

MR. KRUM: Your Honor, what's going to be next? I'm running out of gas. I need to prepare.

THE COURT: I'm going to go to the Ellen Cotter appointment as CEO and compensation motion.

MR. KRUM: Okay. Thank you.

(Court recessed at 4:27 p.m., until 4:40 p.m.)

THE COURT: So we're on the issues related to appointment of Ellen Cotter, compensation of Ellen and Margaret Cotter, and those issues. And I think there's two or three different motions that are all interrelated on these.

MR. TAYBACK: These would be Motions 5 and 6, and there is a number of issues that are all interrelated.

THE COURT: Okay.

MR. TAYBACK: So I'll --

THE COURT: I'm not big on numbers, I'm big on subjects.

MR. TAYBACK: I understand. And I'll --

THE COURT: So it's hard for me on numbers.

MR. TAYBACK: I'll address them. There's probably four or five issues.

THE COURT: Okay.

MR. TAYBACK: Our motion that we entitled Number 5 was the CEO search and appointment ultimately hiring of Ellen

Cotter. You know, I'll be relatively succinct here, which is to say it's the -- it's the tag-along to the firing of Jim Cotter, Jr. Like that, there's no case which finds a board liable for hiring a long-time executive who runs -- who has run for 16 years at the time of her hiring one of the primary two business lines of the company and had served as an interim CEO such that the board actually saw how she performed. And every director, excluding the plaintiff and Ellen Cotter herself, supported her hiring. The only attack on that decision is this kind of ongoing what I'll call amorphous and shifting claim that directors lacked independence. He hasn't articulated, other than the general claims of lack of independence, that a majority of the directors had some specific interest in the hiring of Ellen Cotter or lacked independence.

THE COURT: It's the majority of directors participating in --

MR. TAYBACK: Yes.

THE COURT: -- in a process, whether it's a decision or an action, that I have to evaluate --

MR. TAYBACK: Correct.

THE COURT: -- not the majority of all the directors.

MR. TAYBACK: Correct.

THE COURT: Okay.

MR. TAYBACK: And so you're excluding only plaintiff and Ellen Cotter. The remainder of the directors -- okay. And the question, though, is what's the allegations that say that the vote of Michael Wrotniak, to take an example, or any director on any issue -- and now I'm going to look at this particular issue -- amounted to a breach of fiduciary duty. And there just isn't -- there isn't fact -- there aren't facts that have been proffered that say, you know what, with respect to this decision this director was -- lacked independence because of this. We've heard the generalized allegations that Guy Adams supported Margaret and Ellen Cotter because he thought that he might get paid, we've heard generalized allegations about some of the others, Uncle Ed Kane; but those generalized allegations of interest don't relate to the transaction that is being looked at. And I'll call it a transaction even though it's not a transaction, it's a decision.

THE COURT: And that's why I tried to use all sorts of different words, and I don't know which word to use, but it's an activity of some sort.

MR. TAYBACK: I agree with that. I do think that there's a difference, and so I've tried to be careful to not call it a transaction, because I think the law --

THE COURT: Yeah. Because they're not really transactions.

MR. TAYBACK: Because they're not. And I think the law is different when it's a transaction, because the framework for evaluating interestedness, frankly, has more applicability when it's a transaction. That's what I say. And I see you shaking your head, but I do --

THE COURT: Yeah. I agree with you. It's a hard issue. That's why we're having this long afternoon and I didn't make you come on a motion calendar where you had 10 minutes to argue all 40 or so motions you filed.

MR. TAYBACK: The second point that I would make, and really the last point I would make, on the identification and hiring of Ellen Cotter is that the -- that the nature of the claim really only sounds, I think, in corporate waste. And the standard for determining corporate waste, that is to say, the decision I think is really I think inarguable that there's the kind of latitude one would have on these undisputed facts given who she was and her connection to the company that that's a reasonable decision.

The only question is this hiring and then termination of the external search firm, Korn Ferry. And there's an argument that's --

THE COURT: In mid search.

MR. TAYBACK: In mid search -- well, not mid search. At the point of which they made the decision.

THE COURT: Near the end of the search, yeah.

MR. TAYBACK: At the point at which they made a decision. And whether there's -- I mean, I don't -- haven't seen any case or I haven't seen any theory where a company ever has an obligation to hire a search firm or to conclude the search once they've identified a candidate that they want to hire. The fact is that happens all the time. But whether it does or doesn't doesn't matter. Because, if you look back even to the plaintiff's hiring, there was no search. There wasn't a search firm at all. He was hired because he was the son of the founder. And he doesn't seem to be complaining about that. And so I don't know that the legal term is a pot-kettle issue, but it's definitely the pot calling the kettle black. The fact is they engaged an indisputably reputable search firm, they engaged in a search, and they decided on the sitting CEO, who they always are going to know better than an external candidate. That's not something that can be second guessed. And I don't think on these facts it should be second guessed. And to the extent it's a corporate waste claim the standard, as you well know, is quite high for that.

Do you want me to address the other issues, as well, while I'm up here?

THE COURT: Yeah. Because they're all interrelated.

MR. TAYBACK: Okay. The I'll call them the other four issues which are really the subject of our Motion Number 6 is the estate's exercise of options, the appointment

of Margaret Cotter, compensation for Ellen Cotter and Margaret Cotter, and the -- there was an additional compensation voted for Margaret Cotter and Guy Adams.

Just to take them in order, with respect to the exercise of the -- the estate's exercise of options plaintiff really cites zero evidence. There's additional evidence that he's seeking regarding the advice of counsel upon which two directors sought. I don't know whether Your Honor's ruling with respect to 56(f) is going to apply here, but it would seem logically that your prior rulings probably dictate how you're going to come out on this one.

THE COURT: Maybe.

MR. TAYBACK: So I'm not going to spend much time on that -- or any more time. But I think that in fact the evidence, the undisputed evidence that's proffered supports summary adjudication of that as an issue.

With respect to the appointment of Margaret Cotter if you now say that it's the board's ultimate fiduciary duty to shareholders, including in this case this one shareholder who's been the terminated CEO, to not only evaluate the board's exercise of its fiduciary duties with respect to the hiring of the CEO or firing of a CEO, but now to subordinate executives, I think you're really entering the realm of micromanagement of a company.

The challenge here is she wasn't qualified because

she hadn't engaged in sufficient real estate-related activities. The fact is, and the undisputed facts are, she'd been affiliated with the company as a consultant through her own -- her own consulting entity that was by contract with the company had been running their live theater business for years, for 15 years, I think. Even though he just -- said in a prior motion plaintiff's lawyer said, well, the live theater business isn't even one of the two main lines, the fact is when he tried to go around or fire Margaret Cotter because he believed she mismanaged other litigation related to a show called "Stomp," the fact is he described -- plaintiff describe it as one of the most significant lines of business that the company had, which was why he was so agitated with how he perceived she handled that litigation, which ultimately came out successful and vindicated her position all along.

THE COURT: And that was the litigation over the lease of the theater; right?

MR. TAYBACK: Exactly.

THE COURT: Okay.

MR. TAYBACK: My point is with respect to the hiring of Margaret Cotter she -- the record shows and we identified in our motion three or four relevant documents and facts that show she had ample qualifications to be responsible for the real estate side of the business. It's a reasonable decision. The generalized attacks on the independence of the directors

who voted on that, who approved that don't warrant piercing into the facts to justify, you know, this decision is right or this decision is wrong at that level of decision making. It's a reasonable decision under the circumstances. It doesn't rise to the level of corporate waste, and it definitely does not satisfy -- based on the evidence that the plaintiff has proffered satisfy the high standard for director liability. And that's true for all of these.

With respect to the compensation decisions obviously the argument is the same. These are decisions made by and endorsed by a subdivision or subcomponent compensation committee, and it's done through ordinary channels. The undisputed evidence is with respect to Ellen Cotter and Margaret Cotter's compensation they hired an external firm, Towers Watson. Willis Towers Watson is actually the full name. And they came in they do a study and they say, we've looked at these companies and we think that for this purpose they are comparable and they should be -- kind of give you a guide for what range you fall within. And they fall well within that range. I think it's the 25th percentile. Just objectively looking at that determination and the process in which it made, the general allegations that a director was more or less favorable to one of them on that issue doesn't say that everything that happened then goes to a trial. I think the undisputed facts on that issue, the compensation

decisions, warrant summary judgment.

The same is true with the one-time payment of $200,000 the Margaret Cotter which was intended and identified in the minutes, undisputed and not debated -- or rather debated, but not disputed, to compensate her for work that she did outside the consulting arrangement. She did work for a period of time with respect to -- ironically, given the plaintiff's contention that she didn't have experience -- with the land entitlements to one of the historical buildings that's being redeveloped in New York under her oversight.

And the same is true with respect to the single payment to Guy Adams. Interestingly, plaintiff himself approved a single payment to all the directors based on the extraordinary work they had done up to a point in time while he was the CEO. He approved that, including $75,000 to Tim Storey and $25,000 to the other directors because the tumult within the company and the family upon the death of the father warranted the directors frankly spending a lot more time on the business of the company than they had ever had to so before, and it justified that payment. Not extraordinary, well within the board's discretion. The generalized allegations that he's put forward about people be interested don't warrant overturning that. And the fact is this payment to Mr. Adams, who undertook a lot of other activities later on, the only difference between this one the one that he

previously approved is, oh, yeah, he'd been terminated. So if there was anybody who was interested in that transaction that had an axe to grind, it was the plaintiff.

I believe that addresses all of the outstanding issues on the motions. So unless you have a specific question --

MR. FERRARIO: Your Honor, I think Mr. Tayback started off by saying --

THE COURT: Yes, I'm probably going to grant 56(f) relief if Mr. Krum asks it.

MR. FERRARIO: Okay. And that's -- because then otherwise we'll just come back and argue this, because --

THE COURT: I have that note here. I'm waiting for Mr. Krum to say it, and then I'm going to wait for him to say it and then once he says --

MR. FERRARIO: Fine. Then I'm going to be quiet. I would point out, though, that if you listen to the dialogue here -- and we'll -- I'll shut up after this.

THE COURT: No, you won't.

MR. FERRARIO: I will. It shows you why courts don't get involved. These are discretionary, because this isn't like --

THE COURT: Mr. Ferrario, I know why I don't get involved in management. I've managed them in settlement conferences as part of the resolution process of these things.

I got stuck helping manage one, so I don't ever want to do it again.

MR. FERRARIO: Because this is not --

THE COURT: But I do want parties to be accountable and perform in a manner that appears to be consistent with Nevada law. So there may be something the parties decide to do between now and when I see them next.

MR. FERRARIO: It's the Nevada law we're waiting for, though.

THE COURT: But the Nevada law is the Nevada Supreme Court. And I keep telling you what I think the Schoen case says when you have interested directors.

MR. FERRARIO: Well, we're going to go back and read that. This isn't --

THE COURT: Interested directors, lots of -- you lose a lot of protections.

MR. FERRARIO: I think we'll be back.

THE COURT: And interested directors is a very intense factual analysis.

Go.

MR. KRUM: Thank you, Your Honor.

THE COURT: Are you going to ask for 56(f) relief?

MR. KRUM: Yes, Your Honor.

THE COURT: All right. It's granted on Motions 5, 6, and there was one other one related to --

MR. TAYBACK: It's 3, Your Honor. It was related to the unsolicited offer I believe is the one you identified previously.

THE COURT: No. 5 and 6 were the only two we're talking about right now; correct?

MR. TAYBACK: Oh. Yes. Got it. Yeah. 5 and 6.

THE COURT: Okay. So 5 and 6. So there. It's 4:54.

So here's the question. What do you want to do with the rest of them? Is everybody agreeable the motions to seal that are on calendar today can be granted because they include confidential and significant financial information that needs to remain protected given the company's activities?

MR. FERRARIO: Yes, Your Honor.

MR. KRUM: Yes.

THE COURT: Okay. So all the motions to seal are granted. Or redact. Seal and/or redact.

So what do you want to do next? Because I've got through in almost four hours not much.

MR. RHOW: Everyone's looking at me. I would love to. I hope we're last and least in terms of liability.

THE COURT: Well, it's 4:55.

MR. RHOW: Yeah. So, look, I want it to be heard and I do want to argue it, but --

THE COURT: Okay. Well, but you're not the last

one.

MR. RHOW: I understand. So --

THE COURT: I mean, I've got tons of them.

MR. RHOW: -- I don't want to be squeezed in --

THE COURT: But I am breaking at 5:00 o'clock, so you've got five minutes.

MR. FERRARIO: Do you want just come back on the 1st when we're going to come back anyhow?

MR. KRUM: I can't come back on the 1st.

MR. FERRARIO: Of December?

MR. KRUM: Oh. December.

MR. FERRARIO: I think that's when she reset --

MR. KRUM: Yes. Of course.

THE COURT: 12/1. 12/1.

MR. FERRARIO: We're going to get all this done, read, supplement, and come back on the 1st.

THE COURT: That was the hope. But I wasn't sure you were physically going to be here on 12/1. And here's the reason I'm not sure you're physically going to be here on 12/1. I don't have the same hope and security that you do in believing that everyone will appear for deposition in the fashion that you guys think they will. I just as a person who practiced in complex litigation with lots of people, I could never get them all to show up when they were supposed to. So -- as a judge I can't get them to show up when they're

supposed to. I don't know if you heard the conference call I just had with my trial I finished two months ago. They still can't figure out when to come back for the post-trial motions.

MR. FERRARIO: We're going to get it done.

THE COURT: I don't believe you. So do you want to have a status conference where you guys together tell me whether you want to argue anything on 12/1, or not? Will you all get together and tell me that a couple days ahead of time so I can at least re-read what needs to be read before 12/1?

MR. FERRARIO: Yes.

MR. KRUM: Of course.

THE COURT: And if there are going to be supplemental briefs, that I can pull the supplemental briefs and read them?

MR. FERRARIO: Yes.

THE COURT: So when are you going to tell me that?

MR. FERRARIO: Three weeks out set a status conference?

THE COURT: No. I don't want you to -- I want you to do depositions. I don't want you coming back here. I don't want to see you for a long time.

MR. FERRARIO: What do you want, a week before the hearing?

THE COURT: I would like a few days, at least a few days before the hearing you to say, yes, Judge, we're coming

and we're arguing A, B, and C --

MR. FERRARIO: Okay.

THE COURT: -- or, no, Judge, we're not coming, can you give us a new date.

MR. TAYBACK: I think a week before --

THE COURT: Well, let's see what you guys negotiate. I don't really care what it is as long as you do it a couple of days before.

MR. FERRARIO: We'll know by the 23rd.

MR. KRUM: What day is --

MR. FERRARIO: That's the day before Thanksgiving.

THE COURT: And you all will send an email copied on each other to my people saying, Judge, we're either coming on December 1 and here's what we're doing, or, we're not coming on December 1 and can you give us a different date.

MR. KRUM: Yes.

THE COURT: Plan.

MR. KRUM: Thank you, Your Honor.

THE COURT: Good luck on your discovery.

MR. KRUM: Thank you.

THE PROCEEDINGS CONCLUDED AT 4:56 P.M.

* * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

10/31/16

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ANAC
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
(NV Bar No. 7743)
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com

Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

JAMES J. COTTER, JR.,

Plaintiff,

v.

READING INTERNATIONAL, INC., a Nevada corporation; DOES 1-100, and ROE ENTITIES, 1-100, inclusive,

Defendants.

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

Coordinated with:

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

Case No. A-16-735305-B
Dept. XI

READING INTERNATIONAL, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

NOMINAL DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Nominal Defendant Reading International, Inc. ("Nominal Defendant" or "RDI") hereby sets forth the following Answer to the Second Amended Verified Complaint, filed by Plaintiff on September 2, 2016 ("Complaint"). Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted is denied. Nominal Defendant responds to each of the paragraphs of the Complaint as follows:

RESPONSE TO "NATURE OF THE CASE"

1. RDI denies the allegations of paragraph 1 of the Complaint.

2. RDI denies the allegations of paragraph 2 of the Complaint.

3. RDI denies the allegations of paragraph 3 of the Complaint.

4. RDI denies the allegations of paragraph 4 of the Complaint

5. RDI denies the allegations of paragraph 5 of the Complaint.

6. RDI denies the allegations of paragraph 6 of the Complaint.

7. RDI denies the allegations of paragraph 7 of the Complaint.

8. RDI denies the allegations of paragraph 8 of the Complaint.

9. RDI denies the allegations of paragraph 9 of the Complaint.

10. RDI admits that Ellen Cotter and Margaret Cotter acting in their capacity as the Co-Executors of the Estate of James J. Cotter, Sr. ("Estate") exercised on behalf of the Estate an option to acquire 100,000 shares of RDI Class B Voting Stock. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 10 in all other respect.

11. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 11 in all other respect.

12. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 12 in all other respect.

13. RDI denies the allegations of paragraph 13 of the Complaint.

14. RDI admits Ellen Cotter was appointed CEO following the termination of James Cotter, Jr. as President and CEO, that RDI retained Korn Ferry to conduct a search for a permanent CEO and that Ellen Cotter was approved by RDI's board to be the company's permanent CEO. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 14 in all other respect.

15. RDI admits Margaret Cotter was appointed as an executive Vice President of RDI and has responsibilities for real estate development in New York. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 15 in all other respect.

16. RDI admits it received an unsolicited expression of interest from a third party. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 16 in all other respect.

17. RDI admits that, at all times relevant hereto, James Cotter, Jr. was and is a stockholder of RDI. RDI admits that James Cotter, Jr. has been a director of RDI. RDI admits that James Cotter, Jr. was appointed Vice Chairman of RDI's Board of Directors, then later President of RDI. RDI admits that James Cotter, Jr. was appointed CEO by RDI's Board of Directors after James Cotter, Sr. resigned from that position. RDI admits that James Cotter, Jr. is the son of the late James Cotter, Sr. and the brother of Ellen Cotter and Margaret Cotter. RDI admits that there is a dispute regarding stock held by the James J. Cotter Living Trust, dated

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

August 1, 2006. RDI denies the allegations of paragraph 17 of the Complaint in all other respects.

18. RDI admits that Margaret Cotter is a director of RDI. RDI admits that Margaret Cotter is the owner and President of OBI, LLC, a company that, until recently, provided theater management services to live theaters indirectly owned by RDI through Liberty Theatres, LLC, of which Margaret Cotter is President. RDI admits that Margaret Cotter has been and is involved in development of real estate in New York owned directly or indirectly by RDI. RDI denies the allegations of paragraph 18 of the Complaint in all other respects.

19. RDI admits that Ellen Cotter is and at all times relevant hereto was a director of RDI and now serves as the CEO of RDI. RDI denies the allegations of paragraph 19 of the Complaint in all other respects.

20. RDI admits that Edward Kane is an outside director of RDI. RDI admits that Edward Kane has been a director of RDI since approximately October 15, 2009. RDI admits that Edward Kane was a friend of James Cotter, Sr.. RDI denies the allegations of paragraph 20 of the Complaint in all other respects.

21. RDI admits that Guy Adams is an outside director of RDI. RDI denies the allegations of paragraph 21 of the Complaint in all other respects.

22. RDI admits that Douglas McEachern is an outside director of RDI. RDI denies the allegations of paragraph 22 of the Complaint in all other respects.

23. RDI admits that William Gould is an outside director of RDI. RDI denies the allegations of paragraph 23 of the Complaint in all other respects.

24. RDI admits that Judy Codding is an outside director of RDI. RDI denies the allegations of paragraph 24 of the Complaint in all other respects.

25. RDI admits that Michael Wrotniak is an outside director of RDI. RDI denies the allegations of paragraph 25 of the Complaint in all other respects.

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3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

26. RDI admits it is a Nevada corporation. Defendants admit that RDI has two classes of stock—Class A stock and Class B stock. The other allegations of paragraph 25 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 26 of the Complaint.

27. RDI denies the allegations of paragraph 27 of the Complaint.

RESPONSE TO "ALLEGATIONS COMMON TO ALL CLAIMS"

28. RDI admits that, since approximately 2000 and until he resigned as Chairman and CEO of RDI, James J. Cotter, Sr. was the CEO and Chairman of the Board of Directors of RDI. RDI denies the allegations of paragraph 28 of the Complaint in all other respects.

29. RDI denies the allegations of paragraph 29 of the Complaint,

30. RDI denies the allegations of paragraph 30 of the Complaint.

31. RDI admits that James J. Cotter, Jr., attended management meetings in 2005, was appointed as Vice Chair of RDI's board in 2007 and appointed as President of RDI in June 2013. RDI denies the allegations in paragraph 31 of the Complaint in all other respects.

32. RDI admits James J. Cotter Sr. passed on September 13, 2014. The allegations in the trust and estate litigation speak for themselves. RDI denies the allegations in paragraph 32 of the Complaint in all other respects.

33. RDI admits that, as President and CEO of RDI, James Cotter, Jr. had disagreements with his sisters regarding RDI. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 33 of the Complaint in all other respects.

34. RDI denies the allegation of paragraph 34 of the Complaint.

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3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

35. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 35 of the Complaint in all other respects.

36. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 36 of the Complaint in all other respects.

37. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 37 of the Complaint in all other respects.

38. To the extent that the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. To the extent the allegations of paragraph 38 of the Complaint are purportedly based on written documents, the documents speak for themselves. RDI denies the remaining allegations of paragraph 38 of the Complaint.

39. RDI admits that, in October 2014, it reimbursed Ellen Cotter $50,000 for income taxes she incurred as a result of her exercise of stock options as further detailed in RDI's public filings RDI denies the allegations of paragraph 39 of the Complaint in all other respects.

40. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 40 of the Complaint in all other respects.

41. RDI denies the allegations of paragraph 41 of the Complaint.

42. RDI admits that, on or about January 15, 2015, RDI's Board of Directors approved purchase of directors and officers insurance policy. RDI denies the allegations of paragraph 42 of the Complaint in all other respects.

43. RDI admits that the quoted resolutions were approved. RDI denies the allegations of paragraph 43 of the Complaint in all other respects.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

44. RDI admits the price of RDI stock has varied over time. RDI denies the allegations in paragraph 44 in all other respects.

45. The allegations of paragraph 45 of the Complaint are purportedly based on written documents which speak for themselves. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint, and therefore denies them.

46. RDI admits the price of RDI stock has varied over time. RDI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 46 of the Complaint, and therefore denies them.

47. RDI admits the price of RDI stock has varied over time. RDI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47 of the Complaint, and therefore denies them.

48. RDI denies the allegations of paragraph 48 of the Complaint.

49. RDI denies the allegations of paragraph 49 of the Complaint.

50. RDI admits Tim Storey worked as an ombudsman with James Cotter Jr., RDI denies the allegations of paragraph 50 of the Complaint in all other respects.

51. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 51 of the Complaint in all other respects.

52. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 52 of the Complaint, in all other respects.

53. RDI admits that discussions took place between Margaret Cotter and RDI regarding her retention as a full time employee of RDI. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 53 of the Complaint, in all other respects.

54. RDI admits that the non-Cotter directors sought additional compensation for time expended on RDI matters. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 54 of the Complaint, in all other respects.

55. RDI admits that former director Storey resides in New Zealand and that Storey traveled between New Zealand and Los Angeles on RDI business. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 55 of the Complaint, in all other respects.

56. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint, and therefore denies them.

57. The allegations of paragraph 57 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 57 of the Complaint.

58. RDI admits that the Stomp Producers gave a purported notice of termination of Stomp's lease at the Orpheum Theatre on or about April 23, 2015. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 58 of the Complaint in all other respects.

59. The allegations of paragraph 59 of the Complaint are purportedly based on written documents which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed

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