

FILED

JAN 04 2018

IN THE SUPREME COURT OF THE STATE 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

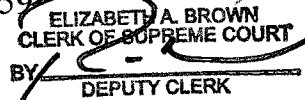
DOUGLAS MCEACHERN, EDWARD
KANE, WILLIAM GOULD, JUDY
CODDING, MICHAEL WROTONIAK,

AND READING INTERNATIONAL,
INC.,

Real Parties in Interest.

Supreme Court No. 74759

District Court Case No. A-15-719860-B, Coordinated with
Case No. P-14-082942-E and
Case No. A-16-735305-B

BY  ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

**REAL PARTY IN INTEREST
READING INTERNATIONAL,
INC.'S RESPONSE TO
EMERGENCY MOTION
UNDER RULE 27(e)**

Mark E. Ferrario, Esq., NBN 1625
Kara B. Hendricks, Esq., NBN 7743
Tami D. Cowden, Esq., NBN 8994
GREENBERG TRAUIG, LLP
3773 Howard Hughes Pkwy, Ste. 400N
Las Vegas, Nevada 89169
Telephone (702) 792-3773
Facsimile (702) 792-9002

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Real Party in Interest Reading International, Inc. has no parent corporation. No publicly held corporation owns 10% or more of the aggregate outstanding common stock of Reading International, Inc.

Real Party in Interest Reading International, Inc. has been represented by the following law firm in the proceedings below:

Dated this 3rd day of January, 2018.

GREENBERG TRAURIG, LLP.

/s/ Tami D. Cowden

Mark E. Ferrario, Esq., NBN 1625

Kara B. Hendricks, Esq., NBN 7743

Tami D. Cowden, Esq., NBN 8994

3773 Howard Hughes Pkwy, Ste. 400N

Las Vegas, Nevada 89169

Telephone (702) 792-3773

Facsimile (702) 792-9002

Attorneys for Real Party in Interest Reading International, Inc.

Real Party in Interest Reading International, Inc.¹ submits its Response to Petitioner's Emergency Motion Under NRAP 27(3). The Motion for a Stay should be denied, as Petitioner's writ relief is premature.

The District Court's December 28, 2017 ruling, which was made in response to *renewed* motions for summary judgment previously denied while discovery was still pending, necessitates additional motion practice. RDI's Motion to Dismiss, **attached here to as Exhibit A**, based on a lack of demand futility, is been set on an order shorting time for Monday, January 8. Additionally, in its Joinder to the Independent Directors' Opposition to the Motion for Rule 54(b) certification and Stay, **attached here to as Exhibit B**, RDI has informed the District Court of the case dispositive implications of its December 28, 2017 ruling. Furthermore, it is RDI's understanding that the remaining Director Defendants will today submit a Motion for Judgment as a Matter of Law addressing the claims against the remaining defendants, and that a request for an order shortening time will be made.

The case dispositive issues arising as a result of the District Court's determination that a majority of RDI's board of Directors has acted independently of the claimed influence may be summarized as follows:

¹ While Petitioner did not include Reading International, Inc. ("RDI") as a real party in interest on the caption of its Petition and related pleadings, it did include RDI in the Certificate of Service. RDI has participated in this writ petition

a. Petitioner's standing as a derivative plaintiff cannot be maintained, as the Court's ruling demonstrates that his demand futility allegations cannot be proven. *See Shoen v. SAC Holding Corp*, 122 Nev. 621, 645, 137 P.3d 1181, (2006) (District Court required to determine, as a matter of law, whether "demand was, in fact, futile.") .

b. The transactions challenged by Petitioner were either approved or ratified by a majority of disinterested directors, rendering such transactions "valid interested director actions," to which Nevada's business judgment rule is applicable. *See Shoen v. SAC Holding Corp*, 122 Nev. 621, 645, 137 P.3d 1181, (2006).

c. The transactions challenged by Petitioner, and now ratified by a majority of disinterested directors cannot be deemed void or voidable on the basis of the interest alleged by Petitioner. *See NRS 78.140(2)(a)*.

d. Plaintiff cannot establish the essential element of damage to the corporation. Because the transactions challenged by Petitioner were either approved or ratified by a *majority* of disinterested directors, the remaining defendants cannot be held to have caused any damage to RDI on the basis of such decisions, as the transactions would have occurred regardless of their participation. *See Fin. Am. Group, LLC v. CH Montrose, LLC*, 127 Nev. 1133, 373 P.3d 913 (2011) (causation is a required element for breach of fiduciary duty).

e. Because Cotter, Jr. cannot prevail on any claim for breach of fiduciary duty as to the remaining defendants, neither can he prevail on a claim for aiding and abetting a breach of fiduciary duty. An essential element of aiding and abetting a breach of fiduciary duty is that the fiduciary have actually breached his or her duty. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 225, 252 P.3d 681, 702 (2011) (stating element for a claim of aiding and abetting breach of fiduciary duty).

This Court should deny the requested stay, and allow the District Court to address the above issues, and to shepherd this case to a final judgment. That will allow the appellate court to review the issues based on the entire record, involving all of the defendants and all of the claims.

CONCLUSION

Petitioner seeks an opportunity for review of what he claims was an erroneous ruling that did not dispose of all claims in this case. RDI disputes that the ruling was erroneous. RDI acknowledges Petitioner's entitlement to appellate review of a decision with which he disagrees. Nevertheless, such appellate review can and in this case should be obtained through an appeal of a final judgment resolving the entirety of this litigation. The requested stay would preclude this matter proceeding to a final judgment, and instead, leave the parties in limbo for a

piecemeal review. Accordingly, the request for emergency relief pursuant to NRAP 27(e) should be denied.

Dated this 3rd day of January, 2018.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden

Mark E. Ferrario, Esq., NBN 1625
Kara B. Hendricks, Esq., NBN 7743
Tami D. Cowden, Esq., NBN 8994
3773 Howard Hughes Pkwy, Ste. 400N
Las Vegas, Nevada 89169
Telephone (702) 792-3773
Facsimile (702) 792-9002
*Attorneys for Real Party in Interest Reading
International, Inc.*

CERTIFICATE OF SERVICE

Pursuant to NRAP 25,1 certify that I am an employee of GREENBERG TRAURIG, LLP , that in accordance therewith, I caused a copy of *Real Parties' Reading International, Inc.'s Response to Emergency Motion Under Rule 27(e)* to be served to Petitioner and Real Parties in Interest via the Supreme Court's e-filing system on January 4, 2018, and upon

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

via hand delivery on January 4, 2018.

Dated this 4th day of January, 2018.

/s/ Andrea Lee Rosehill
An Employee of Greenberg Traurig

EXHIBIT A

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

1 **MDSM**
2 **MARK E. FERRARIO, ESQ.**
3 (NV Bar No. 1625)
4 **KARA B. HENDRICKS, ESQ.**
5 (NV Bar No. 7743)
6 **TAMI D. COWDEN, ESQ.**
7 (NV Bar No. 8994)
8 **GREENBERG TRAUERIG, LLP**
9 3773 Howard Hughes Parkway
10 Suite 400 North
11 Las Vegas, Nevada 89169
12 Telephone: (702) 792-3773
13 Facsimile: (702) 792-9002
14 Email: ferrariom@gtlaw.com
15 hendricksk@gtlaw.com
16 cowdent@gtlaw.com

17 *Counsel for Reading International, Inc.*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 **JAMES J. COTTER, JR., individually and**
21 **derivatively on behalf of Reading**
22 **International, Inc.,**

23 **Plaintiff,**

24 **v.**

25 **MARGARET COTTER, et al,**

26 **Defendants.**

27 **In the Matter of the Estate of**

28 **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

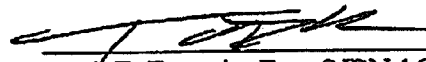
MOTION TO DISMISS
FOR FAILURE TO SHOW
DEMAND FUTILITY

Hearing Date: 1/8/18
Hearing Time: 8:30a.m.

1 Nominal Defendant Reading International, Inc. ("RDI"), a Nevada corporation, by and
2 through its undersigned counsel of record, hereby moves this Court to dismiss this action due to
3 the inability of Plaintiff James J. Cotter, Jr. ("Cotter, Jr.") to prove his allegations of demand
4 futility. This motion is based upon the files and records in this matter, the attached memorandum
5 of authorities, and any argument allowed at the time of hearing.

6 DATED this 3rd day of January, 2018.

7 GREENBERG TRAUERIG, LLP

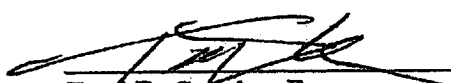
8
9 
10 Mark E. Ferrario, Esq. (NBN 1625)
11 Kara B. Hendricks, Esq. (NBN 7743)
12 Tami D. Cowden, Esq. (NBN 8994)
13 3773 Howard Hughes Parkway, Suite 400N
14 Las Vegas, Nevada 89169
15 Counsel for Reading International, Inc.

16
17
18
19
20
21
22
23
24
25
26
27
28
GREENBERG TRAUERIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Executed on this 3rd day of January, 2018, at Las Vegas, Nevada.


Tami D. Cowden, Esq.


GREENBERG TRAUBIG, LLP
1773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-1773
Facsimile: (702) 792-9002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER SHORTENING TIME


GOOD CAUSE APPEARING, it is hereby ordered that the foregoing *Reading International, Inc.'s Motion to Dismiss for Failure to Show Demand Futility* shall be heard on shortened time on the 5th day of January, 2018, at the hour of 8:30 A.m.in Department XI.

DATED this 3rd day of January, 2018.

 CR

DISTRICT COURT JUDGE CR

Respectfully submitted by:
GREENBERG TRAURIG, LLP



Mark E. Ferrario, Esq. (NBN 1625)
Kara B. Hendricks, Esq. (NBN 7743)
Tami D. Cowden, Esq. (NBN 8994)
3773 Howard Hughes Parkway, Suite 400N
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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This Court's recent determination that, as a matter of law, Directors Judy Coddling,
3 William Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak establishes that the
4 making of a demand to file an action against the remaining defendants would not have been
5 futile. Accordingly, this action must be dismissed for lack of standing by Cotter, Jr. to maintain
6 a derivative action on behalf of RDI.

7 **FACTS RELEVANT TO THIS MOTION TO DISMISS**

8 Cotter, Jr. first filed his complaint in this action on June 12, 2015. The original complaint
9 combined both individual claims and claims brought derivatively on behalf of RDI. The
10 Defendants for the derivative claims included RDI Directors Margaret Cotter, Ellen Cotter, Guy
11 Adams, Edward Kane, Douglas McEachern, and Timothy Storey, with RDI as a Nominal
12 Defendant. As relevant here, the individual directors moved to dismiss the derivative claims for a
13 failure to make demand; RDI joined that motion. At a hearing on September 10, 2015, this Court
14 determined that Cotter, Jr. had "adequately alleged demand futility and interestedness," but
15 partially granted the motion to dismiss due to a failure to adequately plead damages. *See*
16 *Transcript, Sept. 10, 2015, 15:24-16:3.*

17 Cotter, Jr. thereafter filed his First Amended Complaint, to which Defendants Judy
18 Coddling and Michael Wrotniak were added. On November 12, 2015, the Individual Director
19 Defendants again filed motions to dismiss, including a failure to allege demand futility among
20 the grounds.¹ RDI moved to dismiss on additional grounds. This Court denied those motions in
21 an order filed March 1, 2016, noting that the denial was without prejudice for the Defendants'
22 rights to file motions for summary judgment. On May 6, 2016, Cotter, Jr. voluntarily dismissed
23 Defendant Timothy Storey from the action. Cotter, Jr. subsequently sought leave, over the
24 objection of Defendants, to file a Second Amended Complaint, again naming as defendants all of
25 the members of RDI's Board of Directors, other than himself.

26 ///

27
28 ¹ Defendants William Gould and Timothy Storey filed such motion separately from the other defendants.

1 On September 23, 2016, the Individual Directors (except for Director Gould) filed a
2 motion for partial summary judgment on the issue of the independence of each of them (save
3 Gould). RDI joined that motion. Defendant Gould filed a motion for summary judgment, in
4 which the issue of his independence was one of the claimed grounds. This Court denied those
5 motions finding there were material issues of fact regarding the independence of the Directors.
6 Those motions were subsequently renewed, however, and, as noted above, this Court granted
7 them on December 28, 2017.

8 **LEGAL ARGUMENT**

9 **THE DETERMINATION THAT A MAJORITY OF RDI'S DIRECTORS WERE**
10 **INDEPENDENT ESTABLISHES THAT COTTER, JR. CANNOT PROVE HIS**
11 **DEMAND FUTILITY ALLEGATIONS, REQUIRING DISMISSAL**

12 This Court's determination that Directors Coddington, Gould, Kane, McEachern, and
13 Wrotniak are disinterested with respect to the decisions cited in the Second Amended Complaint
14 establishes that such complaint must be dismissed for failure of demand.

15 Pursuant to NRCP 23.1, a plaintiff must allege efforts made to have the corporation file
16 the action, or to show that the making of a demand to sue is futile. When a court determines that
17 the allegations of purported interest of a majority of members of the board of directors are
18 sufficient to withstand a motion to dismiss for failure to make demand, the court must "later
19 conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement
20 nevertheless deprives the shareholder of his or her standing to sue." *In re Amerco Derivative*
21 *Litig.*, 127 Nev. 196, 222, 252 P.3d 681, 700 (2011), quoting *Shoen v. SAC Holding Corp.*, 122
22 Nev. 621, 636, 137 P.3d 1171, 1181 (2006). In fact, in *In Re Amerco*, the remand to the district
23 court instructed the court to determine "whether demand was, in fact, futile." 127 Nev. at 222,
24 252 P.3d at 700.

25 Here, this Court's ruling on summary judgment has taken the place of such evidentiary
26 hearing; Cotter, Jr. was unable to show that demand was futile. Accordingly, the matter should
27 be dismissed. This is true regardless of which of the three iterations of the complaint the Court
28 considers. the Court considers the time the initial complaint was filed, wherein the majority of

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

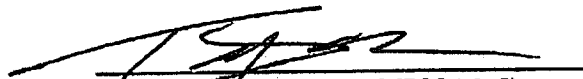
1 the RDI Directors included William Gould, Edward Kane, Douglas McEachern, and Timothy
2 Storey, or if the Court considers the time of the filings of the First or Second Amended
3 Complaints, wherein the majority of RDI's Board was comprised of Judy Coddling, William
4 Gould, Edward Kane, Douglas McEachern and Michael Wrotniak. Accordingly, a majority of
5 RDI's Directors were independent as of the filing of each version of Cotter, Jr.'s complaint, and
6 demand would not have been futile.

7 CONCLUSION

8 This Court has determined that a majority of RDI's Directors were independent with
9 respect to the decisions challenged by Cotter, Jr. Therefore, none of these Directors faced
10 liability based on Cotter, Jr.'s claims. Cotter, Jr. cannot prove his allegations that demand on the
11 Board to file his claims was futile. Accordingly, Cotter, Jr. has no standing to serve as a plaintiff
12 in this derivative action.

13 DATED this 3rd day of January, 2018.

14 GREENBERG TRAURIG, LLP

15 

16 Mark E. Ferrario, Esq. (NBN 1625)
17 Kara B. Hendricks, Esq. (NBN 7743)
18 Tami D. Cowden, Esq. (NBN 8994)
19 3773 Howard Hughes Parkway, Suite 400N
20 Las Vegas, Nevada 89169
21 *Counsel for Reading International, Inc.*

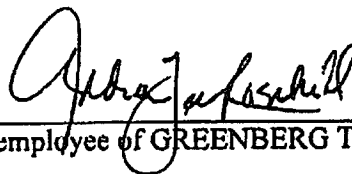
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 *Motion to Dismiss for Failure to Show Demand Futility* to be filed and served via the Court's Odyssey eFileNV Electronic Service system on all registered and active parties. 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 3rd day of January, 2018.



An employee of GREENBERG TRAUIG, LLP

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

EXHIBIT B

1 JOIN
2 MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
3 KARA B. HENDRICKS, ESQ.
(NV Bar No. 7743)
4 TAMI D. COWDEN, ESQ.
(NV Bar No. 8994)
5 GREENBERG TRAUERIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
6 Telephone: (702) 792-3773
Facsimile: (702) 792-9002
7 Email: ferrariom@gtlaw.com
hendricksk@gtlaw.com
8 cowdent@gtlaw.com

9 *Counsel for Reading International, Inc.*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 v.

16 MARGARET COTTER, et al,

17 Defendants.

18 In the Matter of the Estate of

19 JAMES J. COTTER,

20 Deceased.

21 JAMES J. COTTER, JR.,

22 Plaintiff,

23 v.

24 READING INTERNATIONAL, INC., a
25 Nevada corporation; DOES 1-100, and ROE
ENTITIES, 1-100, inclusive,

26 Defendants.
27
28

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 JOINDER TO THE
INDIVIDUAL DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR RULE 54(B)
CERTIFICATION AND STAY**

HEARING
DATE: January 4, 2018
TIME: 8:30 A.M.

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

1 Nominal Defendant Reading International, Inc. ("RDI"), a Nevada corporation, by and
2 through undersigned counsel of record, hereby submits its Joinder to *The Individual Defendants'*
3 *Opposition To Plaintiff's Motion For Rule 54(B) Certification And Stay*. RDI joins in the
4 arguments advanced on behalf of the Individual Defendants in their Motion. Additionally, RDI
5 opposes the certification on the basis of the issues set forth in the attached memorandum of
6 points and authorities.

7 DATED this 3rd day of January, 2018

8 GREENBERG TRAUERIG, LLP

9
10 By: /s/ Mark E. Ferrario
11 Mark E. Ferrario, Esq. (NBN. 1625)
12 Kara B. Hendricks, ESQ. (NBN 7743)
13 Tami D. Cowden, Esq. (NBN 8994)
14 3773 Howard Hughes Parkway, Suite 400N
15 Las Vegas, Nevada 89169
16 *Counsel for Reading International, Inc.*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 This Court should deny the Motion for Rule 54(b) certification. This Court recently
19 determined that, as a matter of law, Directors Judy Coddling, William Gould, Edward Kane,
20 Douglas McEachern, and Michael Wrotniak were independent of the influence of Ellen Cotter
21 and Margaret Cotter. Thus, the ruling is a determination that acknowledges that a majority of
22 RDI's Board of Directors is independent, and therefore, disinterested, as to nearly all of the
23 decisions challenged by Cotter, Jr., This ruling has an inevitable effect on the rest of the
24 litigation, presenting multiple grounds for ending this litigation in its entirety. Accordingly, it is
25 reasonable to anticipate that there will be only a short time before there is a final judgment in this
26 matter, mooting any need for a Rule 54(b) certification. Accordingly, the Motion should be
27 denied.

28 **FACTS RELEVANT TO THIS MOTION**

As this Court is aware, Plaintiff filed this action after he was terminated from his position
as President and CEO of RDI in June 2015. His original complaint alleged derivative claims

1 against every other member of RDI's Board of Directors at the time, and also individual claims
2 against both certain defendants and RDI. The primary relief sought by Plaintiff was his own
3 reinstatement. Following motion practice, Plaintiff was required to file an amended complaint,
4 which removed all individual claims, and left only the derivative claims. By the time the first
5 amended complaint was filed, the composition of RDI's board of directors had changed, and
6 Plaintiff included the new members of the Board of Directors as defendants in the derivative
7 claims. However, the claims against a former board member, Timothy Storey, were dismissed.
8 In mid-2016, Plaintiff was permitted to amend his complaint again, in the Second Amended
9 Complaint, the derivative claims were again alleged against all other members of RDI's Board of
10 Directors.

11 Based on the Second Amended Complaint, Plaintiffs claims include four causes of
12 action: 1) Breach of Fiduciary Duty of Care; 2) Breach of Fiduciary Duty of Loyalty; 3) Breach
13 of Fiduciary Duty of Candor; and 4) Aiding and Abetting Breach of Fiduciary Duty. The first
14 three causes of action were alleged against all of the individual director defendants: Guy Adams,
15 Judy Coddling, Ellen Cotter, Margaret Cotter, William Gould, Edward Kane, Douglas
16 McEachern, and Michael Wrotniak. The fourth cause of action was alleged only against Ellen
17 Cotter and Margaret Cotter.

18 On December 28, 2017, this Court entered an Order which granted summary judgment to
19 Defendants Coddling, Gould, Kane, McEachern, and Wrotniak, having determined that Plaintiff
20 had failed to present evidence to show that there was 1) a material issue of fact as to the
21 independence of these directors with respect to any Board decision made by them, and 2) a
22 material issue of fact as to whether the presumption created by the business judgment rule had
23 been rebutted. As a result of this ruling, there are only three remaining defendants: Guy Adams,
24 Ellen Cotter, and Margaret Cotter. While RDI is a nominal defendant; Cotter, Jr. has not alleged
25 any claims against the Company.

26 **Facts Underlying the Claims**

27 In the Pre-trial memorandum, Plaintiff recited the actions he claims constituted the
28

1 breaches of fiduciary duty.¹ See Pre-Trial Memorandum, pp. 3-9. Those actions consisted of
2 the following:

3 1. The Termination of Cotter, Jr, and the related process and events (claimed
4 relevant as to breach of the duty of care, duty of loyalty, and aiding and abetting).

5 2. Use of an Executive Committee (claimed relevant as to breach of they duty of
6 care and duty of loyalty – however, no specific acts by the Executive Committee are cited).

7 3. Selection of Ellen Cotter as President and CEO of RDI, along with the process of
8 the CEO search (claimed relevant as to breach of the duty of care, duty of loyalty, and aiding and
9 abetting).

10 4. Making erroneous or materially misleading statements in board materials, such as
11 agendas and minutes, and in public disclosures - the alleged misleading statements in public
12 disclosures are all based on Plaintiff's claims that relevant facts were not included or
13 misdescribed by not including motives that Plaintiff imputes to the Directors (claimed relevant as
14 to breach of the duty of care, duty of loyalty, duty of candor)

15 5. Appointment of Directors Coddington and Wrotniak (claimed relevant to breach of
16 they duty of loyalty and aiding and abetting by Ellen Cotter and Margaret Cotter).

17 6. Appointment of Margaret Cotter as Vice President of Real Estate Development,
18 and award of compensation to her (claimed relevant to the breach of the duty of loyalty, duty of
19 care, aiding and abetting) .

20 7. Awarding special compensation to Guy Adams (claimed relevant to the breach of
21 they duty of loyalty, duty of care, aiding and abetting).

22 8. The authorization of the exercise of the 100,000 share option by the Estate of
23 Cotter, Sr. (claimed relevant to breach of duty of loyalty, aiding and abetting)

24 Plaintiff had claimed the above actions had been taken by interested directors, based on
25 the theory that all of the directors were beholden to Ellen Cotter and Margaret Cotter.

26 **Effect of Court's Ruling as to Independent Directors**

27 _____
28 ¹ In addition to the actions listed here, Plaintiff had also asserted that the treatment of the expression of interest from
Patton Vision supported his claims; however, this Court determined that RDI suffered no harm from such treatment.

1 The Defendants have always maintained that all of the above actions were taken by a
2 majority of disinterested directors. With respect to the majority of the actions, this Court's
3 December 28, 2017 order has confirmed Defendants' assertions. Specifically, the evidence
4 shows the following actions were originally approved by a majority of Independent Directors:

- 5 • *Selection of Ellen Cotter as President and CEO* - On January 8, 2016, the Board of
6 Directors appointed Ellen Cotter President and CEO of RDI. This vote to select Ellen
7 Cotter necessarily included acceptance of the Search Committee's recommendation, and
8 thus, changes in the prior determination of criteria for selection and the cessation of a
9 search for an outside CEO. Votes in favor: Adams, **Codding**, M. Cotter, **Gould**, **Kane**,
10 **McEachern**, **Wrotniak**. Votes Opposed: J. Cotter. Abstention: E. Cotter. Discounting
11 the purportedly interested votes of Adams and Margaret Cotter, the vote was 5-1 in favor.
12 [Defendants Proposed Tr. Ex. 417].
- 13 • *Appointment of Margaret Cotter as Vice President of Real Estate Development*- On
14 March 10, 2016, the Board of Directors voted on the appointment of Margaret Cotter to
15 the position of Executive Vice President of Real Estate Development. The Votes in favor
16 of such appointment included Adams, **Codding**, **Gould**, **Kane**, **McEachern**, **Wrotniak**.
17 Ellen Cotter and Margaret Cotter did not participate in the Vote. James Cotter, Jr.
18 abstained. Discounting the purported interested vote of Adams, the vote was 5-0 in
19 favor. [Defendants Proposed Tr. Ex. 452]
- 20 • *Appointment of Director Codding*- On October 5, 2015, the Board of Directors met and
21 voted on the appointment of Judy Codding to fill an open seat on the Board of Directors.
22 The votes in favor of such appointment included Adams, Ellen Cotter, Margaret Cotter,
23 **Gould**, **Kane**, and **McEachern**. James J. Cotter, Jr. voted against the appointment.
24 Timothy Storey abstained. Discounting the votes of purportedly interested directors, the
25 vote was 3-1-1 in favor. [Defendants Proposed Tr. Ex. 361]
- 26 • *Appointment of Director Wrotniak*-On October 12, 2015, the Board of Directors met and
27 voted on the appointment of Michael Wrotniak to fill the seat vacated by the resignation
28 of Tim Storey. The votes in favor of such appointment included Adams, **Codding**, Ellen

1 Cotter, Margaret Cotter, **Gould, Kane, and McEachern**. James J. Cotter, Jr. voted
2 against the appointment. Discounting the votes of purportedly interested directors, the
3 vote was 4-1 in favor. [Defendants Proposed Tr. Ex. 372]

- 4 • *Awarding special compensation to Adams-* On March 10, 2016, the Board of Directors
5 voted on the award of special compensation in the amount of \$50,000 to Guy Adams.
6 The Votes in favor of such an award included **Codding, Ellen Cotter, Margaret Cotter**
7 **Gould, Kane, McEachern, Wrotniak**. James Cotter, Jr. voted against the award.
8 Discounting the purported interested vote of Ellen and Maragaret Cotter, the vote was 5-1
9 in favor. [Defendants Proposed Tr. Ex. 452].
- 10 • *The authorization of the exercise of the 100,000 share option using Class A nonvoting*
11 *stock by Cotter, Sr.'s Estate-*The September 21, 2015 meeting of the Compensation and
12 Stock Options Committee was attended by Committee members Edward Kane and Guy
13 Adams. The James Cotter, Sr. Estate had requested permission to use Class A nonvoting
14 common stock in the exercise of the Estate's option to purchase 100,000 shares of Class
15 B voting common stock. Section 6.1.6.b. of the 1999 stock option plan gives discretion
16 to the administrator of the plan to accept shares of common stock already owned by the
17 optionee in payment of the option price. The Vote in favor of permitting the use of the
18 Class A stock was made by **Kane** and Adams. There were no opposing votes.
19 Discounting the purportedly "interested" vote by Adams, the vote was 1-0 in favor.
20 [Defendants Proposed Tr. Ex. 356]
- 21 • *Use of the Executive Committee-* Plaintiff has not identified any specific action taken by
22 RDI's Executive Committee which he claims is indicative of a breach of fiduciary duty.
23 However, each action taken by the Executive Committee was taken with the approval of
24 Edward Kane, who was a member of the Executive Committee, and whom this Court has
25 determined to have been independent.
- 26 • *SEC filings and press releases* – to the extent that Plaintiff claims SEC filings or press
27 releases reporting the above actions were misleading based on failures to disclose
28 purported interest of members of the board of directors (*see* SAC ¶¶ 101(d), (f), (g)),

1 because the actions in question were approved by a majority of disinterested directors, a
2 failure to disclose purported interests cannot be misleading.

3
4 Significantly, even without the votes of Guy Adams, Ellen Cotter and Margaret Cotter,
5 each of the above actions passed by a majority vote and thus are not issues that should be
6 considered by the jury. Moreover, each of the above actions by the RDI board of directors
7 occurred subsequent to the filing of the initial complaint in this matter, in which Cotter, Jr.
8 alleged, *inter alia*, that Directors Ellen Cotter, Margaret Cotter, and Guy Adams were motivated
9 by interests other than the best interests of RDI in making their decisions. Accordingly, each of
10 the above actions were undertaken with full knowledge of the lack of independence and the self-
11 interest that Cotter, Jr. attributed to Ellen Cotter, Margaret Cotter, and Guy Adams.

12 In addition to the above actions *originally* approved by a majority of independent
13 directors, on December 29, 2017, the RDI Board of Directors met in a duly noticed meeting, and
14 voted to ratify certain actions challenged by Cotter, Jr. Specifically, the RDI Board of Directors,
15 of which a majority consists of Directors **Codding, Gould, Kane, McEachern, and Wrotniak**,
16 voted to ratify the June 12, 2015 termination of Cotter, Jr. as President and CEO of RDI, as well
17 as other actions approved by the board of directors related to such termination, as outlined in the
18 Minutes of the Meetings of the Board of Directors for May 21, 2015, May 28, 2015 and June 12,
19 2015. Additionally, lest there be any doubt with respect to the approval of the exercise of the
20 100,000 stock option by Cotter, Sr.'s estate using Class A nonvoting stock by the Compensation
21 Committee, the Board of Directors ratified that action as well. [See Ex. 1, Draft Minutes of
22 December 29, 2017 RDI Board of Directors Meeting. Directors **Codding, Gould, Kane,**
23 **McEachern, and Wrotniak** voted in favor of each of the actions. Director James Cotter, Jr.
24 voted against. Directors Guy Adams, Ellen Cotter, and Margaret Cotter abstained. The votes in
25 favor of each of these actions were 5-1-3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LEGAL ARGUMENT

I. DUE TO THIS COURT’S DECEMBER 28, 2017 ORDER, AND DUE TO THE RATHIFICATION OF ACTIONS TAKEN ON DECEMBER 29, 2017, THE REMAINING ISSUES IN THE CASE ARE SIGNIFICANTLY REDUCED IF NOT ENTIRELY ELIMINATED, AND THEREFORE, THERE IS JUST CAUSE TO DENY CERTIFICATION UNDER RULE 54.

The bulk of Plaintiff’s claims were premised on the theory that all of RDI’s directors (other than himself) were beholden to Ellen Cotter and Margaret Cotter, and therefore, unable to exercise their own independent judgment with respect to decision making on behalf of RDI. However, Cotter, Jr. was unable to present sufficient evidence from which a jury could reasonably find that five of the Directors – Coddington, Gould, Kane, McEachern and Wrotniak – actually lacked such independence. This Court’s ruling as to the independence of these five directors has significant impact on the remaining issues in the case. Indeed, as shown below, the case should be dismissed for a lack of standing, or failing, that, summary judgment granted on all remaining issues. In either case, there is unlikely to be any significant delay prior to a final order being entered in this matter. Accordingly, the Motion for Rule 54(b) certification should be denied.

A. This Court’s Determination that a Majority of the Directors are Disinterested Requires Dismissal of the Suit for Failure of Demand.

This Court’s determination that Directors Coddington, Gould, Kane, McEachern, and Wrotniak are disinterested with respect to the decisions cited in the Second Amended Complaint establishes that such complaint must be dismissed for failure of demand. The futility of demand must be determined based on the board at the time an amended complaint has been filed. *Braddock v. Zimmerman*, 906 A.2d 776, 786 (Del. 2006). When a court determines that the allegations of purported interest are sufficient to withstand a motion to dismiss for failure to make demand, the Court must “later conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement nevertheless deprives the shareholder of his or her standing to sue.” *Shoen* at 645, 137 P.3d at 1187, quoted by *In re Amerco Derivative Litig.*, 127 Nev. 196, 222, 252 P.3d 681, 700 (2011). This Court’s ruling on summary judgment has taken

1 the place of such evidentiary hearing; Cotter, Jr. was unable to show that demand was futile.
2 Accordingly, this Court's ruling establishes that Cotter, Jr. has no standing to proceed.

3 **B. The Approval and/or or Ratification by a Majority of Disinterested**
4 **Directors of Decisions Challenged By Cotter, Jr.'s Renders Such**
5 **Decisions Immune From Scrutiny For Interest.**

6 Pursuant to NRS 78.140(2)(a), any decision approved by a majority of disinterested
7 directors who have knowledge of the facts that would create an interest in the decision by
8 another director is not subject to being found void or voidable on the basis of the purported
9 interest held by the director. Here, Plaintiff seeks to undo two decisions that have been ratified
10 by the a majority of disinterested directors: the decision to terminate him from his position as
11 President and CEO and the approval of the use of Class A stock in the exercise of an option for
12 Blass B stock, based on his claim that Guy Adams was unable to exercise his independent
13 judgment in voting in favor of both of these decisions. However, because of the ratification, any
14 purported lack of independence of Mr. Adams is no longer relevant, and cannot justify voiding
15 the actions.

16 **C. The Approval and/or or Ratification by a Majority of Disinterested Directors**
17 **of Decisions Challenged By Cotter, Jr. Entitles the Purported Interested**
18 **Directors to the Protections of the Business Judgment Rule as to Such**
19 **Decisions.**

20 In *Shoen v. SAC Holding Corp.*, the Nevada Supreme court held that Nevada's business
21 judgment rule applies to "valid interested director action." 122 Nev. 621, 636, 137 P.3d 1171,
22 1181 (2006). In so stating, the *Shoen* Court cited to NRS 78.140. Accordingly, if a transaction
23 satisfies the requirements of that statute, it constitutes a "valid interested director action." As
24 relevant here, that statute provides that a board action cannot be voided when:

25 The fact of the common directorship, office or financial interest is known to the
26 board of directors or committee, and the directors or members of the committee,
27 other than any common or interested directors or members of the committee,
28 approve *or ratify the contract or transaction in good faith.*

NRS 78.140(2)(a).

Here, all members of the RDI Board of Directors have long been aware of Cotter, Jr.'s
claims that the decisions of Ellen Cotter, Margaret Cotter, and Guy Adams are influenced by
their own financial interests. Allegations of facts from which Cotter, Jr. infers self-interest were

1 not only made at the time of Cotter, Jr.'s termination, but have also been included in every
2 iteration of Cotter's Jr.'s complaints. *See, e.g.*, SAC ¶¶ 1, 6, 21, 33,35,37, 48, 49, 64-71.
3 Additionally, in the course of the ratification actions taken on December 29, 2017, the specific
4 claims of self-interest made by Cotter, Jr. were noted by the Board.

5 With knowledge of such facts, and the inferences that Cotter, Jr. has drawn from them,
6 Directors that this Court has determined are disinterested nevertheless voted to ratify decisions
7 relating to the termination and the exercise of the 100,000 share option. As a result, pursuant to
8 *Shoen*, the Remaining Defendants are entitled to the protections of the business judgment rule as
9 to such transaction.

10 Significantly, nothing in NRS 78.140 places any deadline or time limitation upon
11 ratification. The potential dispositive effect of such ratification occurring years after the
12 challenged conduct has been acknowledged by the Nevada Supreme Court. *See In re Amerco*
13 *Derivative Litig.*, 127 Nev. at 217, 252 P.3d at 697, ns. 6 (to majority opinion) and 4(to dissent)
14 (noting that a ratification that had apparently occurred in 2007, which date was after the remand
15 of the *Shoen* decision, the precursor to the *In re Amerco* opinion, yet could still have a dispositive
16 effect). Here, the ratification occurred *one day* after this Court executed the order finding the five
17 Directors Independent. Since the effect of such ratification would not be acknowledged without
18 a determination of the independence of those who ratified the conduct, any protests based on
19 timing are defy logic.

20 Furthermore, as noted above, many of the actions claimed by Cotter, Jr. to indicate
21 breaches of fiduciary duty were *originally* approved by directors that this Court has determined
22 are disinterested. All such actions were taken subsequent to the filing of this action, and
23 accordingly, with knowledge of the allegations of self-interest made against Defendants Ellen
24 Cotter, Margaret Cotter, and Guy Adams. Accordingly, Defendants Ellen Cotter, Margaret
25 Cotter, and Guy Adams are each entitled to the protections of the business judgment rule as to
26 such actions as well.

27 As this Court has already determined the evidence proffered by Cotter, Jr. to overcome
28 the presumption created by the business judgment rule was insufficient, judgment should be

1 entered in favor of the Remaining Defendants on all claims.

2 **D. Cotter, Jr. Cannot, as a Matter of Law, Prevail on a Claim**
3 **of Breach of Fiduciary Duty Against the Remaining Defendants**
4 **As Cotter, Jr. Cannot Establish Causation.**

5 Even if, despite their clear entitlement, the remaining Defendants are not granted the
6 protection of Nevada's business judgment rule, it would still be impossible for Cotter, Jr. to
7 prevail on his claims for fiduciary duty. This is because Cotter, Jr. cannot show that any loss to
8 RDI was proximately caused by any of the remaining Defendants. In Nevada, an essential
9 element for a claim for breach of fiduciary duty is that the beneficiary of the duty suffer damages
10 as a result of the purported breach. *Foster v. Dingwall*, 126 Nev. 56, 69, 227 P.3d 1042, 1051
11 (2010), citing *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009) ("fiduciary duty
12 claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to
13 another by virtue of the fiduciary relationship"); see also, *Fin. Am. Group, LLC v. CH Montrose,*
14 *LLC*, 127 Nev. 1133, 373 P.3d 913 (2011) (finding that causation is a required element for
15 several causes of actions, including breach of fiduciary duty); see also Principles of Corp.
16 Governance § 7.18 (1994); Restatement (Second) of Torts, § 431. Here, because a majority of
17 disinterested directors voted in favor of the board actions cited by Cotter, Jr., the votes of the
18 remaining Defendants were actually irrelevant to the passage of the actions. Accordingly,
19 Cotter, Jr. cannot show that any action by the Remaining Defendants was the cause of any
20 purported injury to RDI.

21 **E. Cotter, Jr. Cannot Prevail on A Claim of Aiding and Abetting a Breach of**
22 **Fiduciary Duty, as He Cannot Prevail on Any Claim for Breach against any**
23 **Defendant.**

24 Cotter, Jr. is unable to satisfy the elements for a claim of aiding and abetting a breach of
25 fiduciary duty against Ellen or Margaret Cotter, as he cannot establish that any other Defendant
26 is liable for a breach of fiduciary duty. In order to prevail on a claim for aiding and abetting a
27 breach of fiduciary duty, Cotter, Jr. would have to show that (1) a fiduciary relationship exists,
28 (2) the fiduciary breached the fiduciary relationship, (3) the third party knowingly participated in
the breach, and (4) the breach of the fiduciary relationship resulted in damages. *In re Amerco*
Derivative Litig., 127 Nev. 196, 225, 252 P.3d 681, 702 (2011). As shown above, Cotter, Jr.

1 cannot prevail on a claim of breach of fiduciary duty against any director. Accordingly, he
2 cannot prevail on a claim for aiding and abetting such a fiduciary breach.

3 **CONCLUSION**

4 As shown above, this Court's determination that a majority of RDI's directors were
5 independent with respect to a majority of the decisions challenged by Cotter, Jr., coupled with
6 the subsequent ratification of the remaining decisions challenged by Cotter, Jr., results in the
7 negation of both Cotter, Jr.'s standing, and his substantive claims. Accordingly, there is unlikely
8 to be any significant delay in the grant of a final judgment in this matter. Granting the motion
9 for Rule 54(b) certification would result in piecemeal appellate review, which would be a waste
10 of judicial resources.

11 For this reason, as well as those set forth in the Opposition presented by the Individual
12 Director Defendants, the Motion for Rule 454(b) certification and for a stay should be denied.

13 DATED this 3rd day of January, 2018

14 GREENBERG TRAURIG, LLP

15 By: /s/ Mark E. Ferrario

16 Mark E. Ferrario, Esq. (NBN. 1625)

17 Kara B. Hendricks, ESQ. (NBN 7743)

18 Tami D. Cowden, Esq. (NBN 8994)

19 3773 Howard Hughes Parkway, Suite 400N

20 Las Vegas, Nevada 89169

21 *Counsel for Reading International, Inc.*

1 CERTIFICATE OF SERVICE

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I
3 caused a true and correct copy of the forgoing *RDI's Joinder to the Individual Defendants'*
4 *Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay* to be filed and served via
5 the Court's Wiznet E-Filing system on all registered and active parties. The date and time of the
6 electronic proof of service is in place of the date and place of deposit in the mail.

7 DATED this 3rd day of January, 2018.

8
9 /s/ Andrea Lee Rosehill
10 An employee of GREENBERG TRAUIG, LLP

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

1 ERR
2 MARK E. FERRARIO, ESQ.
3 (NV Bar No. 1625)
4 KARA B. HENDRICKS, ESQ.
5 (NV Bar No. 7743)
6 TAMI D. COWDEN, ESQ.
7 (NV Bar No. 8994)
8 GREENBERG TRAUERIG, LLP
9 3773 Howard Hughes Parkway, Suite 400 North
10 Las Vegas, Nevada 89169
11 Telephone: (702) 792-3773
12 Facsimile: (702) 792-9002
13 Email: ferrariom@gtlaw.com
14 hendricksk@gtlaw.com
15 cowdent@gtlaw.com

16 *Counsel for Reading International, Inc.*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 v.

24 MARGARET COTTER, et al,

25 Defendants.

26 In the Matter of the Estate of

27 JAMES J. COTTER,

28 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

**ERRATA TO READING
INTERNATIONAL, INC.'S
JOINDER TO THE INDIVIDUAL
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR RULE
54(B) CERTIFICATION AND STAY**

HEARING
DATE: January 4, 2018
TIME: 8:30 A.M.

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

1 Nominal Defendant Reading International, Inc. ("RDI"), a Nevada corporation, by and
2 through undersigned counsel of record, respectfully submits the following errata to RDI's Joinder
3 to the Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and
4 Stay ("Joinder"). The Joinder, submitted for filing on January 3, 2018, inadvertently omitted
5 Exhibit 1 referenced therein. Attached to this Errata is Exhibit 1 to the Joinder.

6 DATED this 3rd day of January, 2018

7 GREENBERG TRAUERIG, LLP

8
9 By: /s/ Mark E. Ferrario

10 Mark E. Ferrario, Esq. (NBN. 1625)
11 Kara B. Hendricks, ESQ. (NBN 7743)
12 Tami D. Cowden, Esq. (NBN 8994)
13 3773 Howard Hughes Parkway, Suite 400N
14 Las Vegas, Nevada 89169
15 *Counsel for Reading International, Inc.*

16
17
18
19
20
21
22
23
24
25
26
27
28
GREENBERG TRAUERIG, 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 *Errata to RDI's Joinder to the Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay* to be filed and served via the Court's Wiznet E-Filing system on all registered and active parties. 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 3rd day of January, 2018.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAUIG, LLP

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Reading International, Inc.

Minutes of the Board of Directors Meeting

December 29, 2017

A duly noticed and called special telephonic meeting of the Board of Directors (“Board”) of Reading International, Inc. (the “Company”), was held on December 29, 2017. Participating by telephone conference were Chair, Chief Executive Officer and President Ellen Cotter; Vice-Chair and Executive Vice President-Real Estate Management and Development – NYC, Margaret Cotter, and Directors Guy Adams, Judy Codding, William Gould, Edward L. Kane, Douglas McEachern, Michael Wrotniak and James Cotter, Jr.

Participating at the invitation of the Chair were S. Craig Tompkins, Esq., General Counsel, who served as recording secretary for the meeting, and Michael J. Bonner, Esq., and Mark E. Ferrario, Esq., of Greenberg Traurig LLP, outside legal counsel to the company.

The notice of meeting and materials provided to each member of the Board (“Board Materials”) are attached to these minutes as Exhibit A.

Call to Order

Chair Cotter, having taken a roll-call vote and verified that all of the participants could hear one another, called the meeting to order at approximately 9:35 a.m. (Pacific Time). Chair Cotter thanked the directors for accommodating the request for the special meeting. Chair Cotter reminded the directors that the Board’s proceedings were confidential, and that the information shared should not be disclosed or traded upon. Chair Cotter next verified with the participants that the meeting was not being recorded by any of the participants and that there were no participants other than the individuals identified above participating on the call. Chair Cotter also confirmed with the participants that no additional participants would be added to the meeting without being introduced to the meeting.

2017 Cash Compensation Expense – U.S. Based Personnel (including Ellen Cotter and Margaret Cotter)

Chair Cotter gave a brief overview and directed the Board’s attention to the Board Materials, including the report prepared by management for the Compensation and Stock Options Committee (the “Compensation Committee”) and considered by the Compensation Committee at its meeting on December 28, 2017. Chair Cotter reported that the Compensation Committee had, following such consideration and discussion, during which various questions were asked of management, approved a bonus accrual in the amount of \$1.1 million, as set forth in the resolution adopted by the Compensation Committee that day and provided to the Board. The action is expected to save more than \$135,000 in taxes. Compensation Committee Chair Ed Kane verified the Compensation Committee’s approval, and recommended to the full Board that the action by the Compensation Committee be ratified by the Board. Chair Kane expressed his thanks for the work done by the Reading staff and by Chair Cotter and other executives in putting together detailed data and information to prepare the Compensation Committee, especially in light of the fact that the Compensation Committee’s approval was instigated by the

new tax reform bill just recently signed on December 22, 2017. Chair Cotter echoed Mr. Kane's comments regarding the work done by the Reading staff. It was further noted that Ellen Cotter and Margaret Cotter are likely recipients of the bonuses to be paid in 2018 pursuant to the accrual, but that the accrual was a general accrual and did not constitute an award to any given executive or employee.

Director James Cotter, Jr. objected on the basis that the Board's materials were only received one evening before the Board Meeting. Mr. Cotter stated that the volume of material sent made it unreasonable for him to adequately prepare for today's meeting. Chair Cotter responded that while she apologized for the timing, the tax reform bill had only been signed into law on December 22, 2017, which necessitated extensive work to prepare materials for the Compensation Committee on December 27, 2017. She noted that the Compensation Committee met in the late afternoon of December 28, 2017, and she believed that distribution of the materials prior to affording the Compensation Committee to review and comment upon such materials and to take action would not have been appropriate. No other director joined in Mr. Cotter's complaint.

Compensation Committee member Michael Wrotniak stated that the bonus accrual approved by the Compensation Committee was, in his view, on the conservative side. Director Codding also stated her similar view that the accrual was on the conservative side, and – as she understood it – was not intended to put a cap on the bonuses ultimately determined and paid in 2018.

After further discussion and upon motion made by Mr. Kane and seconded by Mr. Adams, the following resolution was adopted on a vote of eight directors in favor, one Director (Director James Cotter, Jr.) against (with Directors Ellen Cotter and Margaret Cotter voting in favor of the motion, based on the understanding that the setting of the accrual did not establish any entitlement on their part to receive any particular bonus payment):

WHEREAS, the Board having reviewed the Compensation's Committee approval of bonus accruals for US Personnel for 2017 Cash Compensation and the form of its resolution approved on December 28, 2017 ("Compensation Committee Resolution") and noting that such compensation may include bonus compensation to Ellen Cotter and Margaret Cotter in 2018, but did not constitute an award of any bonus amount to any executive of employee at this time;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Compensation Committee Resolution is approved and ratified..

2017 Cash Compensation for Members of Special Independent Committee

Chair Kane reported that the Compensation Committee recommended at its December 28, 2017 meeting compensation for the members of the Special Independent Committee. Chair Kane asked Mr. Bonner to summarize the information considered. Mr. Bonner advised the Board that the Special Independent Committee was formed in early August 2017, had already held eight meetings, (in person and by telephone); that Chair Bill Gould had

met with certain potential advisors; and that certain of the meetings required the review of extensive materials by committee members.

Chair Kane reported that, to save consultant expenses, he had determined not to engage a compensation consultant for Special Independent Committee compensation, but had instead relied on information he had obtained, information obtained by Mr. Bonner from Willis Towers Watson, consideration of current fees paid to directors serving on other Board Committees, and information derived from the "Reading International, Inc. Director Pay Assessment, dated January 27, 2016" which contained compensation data for certain special committees. Mr. Bonner advised that Willis Towers Watson had confirmed informally that the proposed fees were within the range of reasonable compensation for such committee members. Chair Cotter explained that the compensation was only with respect to services rendered in 2017, and was not intended to set a precedent for future compensation to be paid to the Special Independent Committee, as the Special Independent Committee was a limited purpose committee and not a standing committee of the Board.

The Compensation Committee's recommendation was discussed, and, upon motion made by Mr. Kane and seconded by Mr. Wrotniak (and abstentions from Mr. Gould, Mr. McEachern and Ms. Coddling), the following resolution was adopted on a vote of five yes, and one no (Mr. Cotter, Jr. voting no):

BE IT HEREBY RESOLVED that recommendation of the Compensation Committee is accepted to pay 2017 compensation to the Special Committee as follows: William Gould, Chairman: \$20,000; Douglas McEachern and Judy Coddling, members: \$15,000.

Request by a Majority of the Directors (Judy Coddling, William Gould, Edward Kane, Douglas McEachern and Michael Wrotniak) for the Calling for a Special Meeting Pursuant to Reading International, Inc. Bylaws Section Article 2, Section 7

Chair Cotter turned the meeting over to Lead Independent Director William Gould. Mr. Gould explained that while the five directors who had made the request for the special meeting did not include Guy Adams, the five named directors continued to be of the belief that Director Adams is in fact an independent and disinterested director, and by not including him in their deliberations or their request were neither conceding nor waiving any argument that Director Adams is not, in fact, an independent director and a "disinterested director" for any purpose related to the matters being considered today for ratification. Mr. Gould asked Mr. Bonner and Mr. Ferrario to make introductory comments. The five named directors expressed their high level of respect for Director Adams, and their confidence that he has acted in the best interests of the Company and not out of any personal self interest.

Mr. Bonner summarized the request for a special meeting at the behest of the five named Directors (Coddling, Gould, Kane, McEachern and Wrotniak) pursuant to a letter dated December 27, 2017 delivered to the Chair, pursuant to the Company's Bylaws, Article 2, Section 7. Mr. Bonner also stated that the five requesting directors were the directors found to have been independent and disinterested and who were each dismissed as defendants by the December 11, 2017 ruling of the Nevada District Court in the derivative litigation.

Mr. Bonner stated that the agenda items to be considered were brought under Nevada Revised Statute Section 78.140, a copy of which is attached as Exhibit B to these minutes. Mr. Bonner quoted from section 2(a) of NRS 78.140 for the record of the meeting.

Mr. Bonner briefed the Board of their fiduciary duties under Nevada law, including the duty of due care and the duty of loyalty.

In order to put the proposed ratification into perspective, Mr. Ferrario summarized the nature of the allegations by the plaintiff in the derivative action (specifically reading into the record the allegations relating to lack of independence of Director Adams) and referred the Directors to the Board Materials.

- (a) Ratification of actions taken by Board members relating to the termination of James J. Cotter, Jr. as President and CEO, as such actions are outlined in the minutes of the Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015.

Mr. Gould generally summarized the first issue for consideration, being ratification of the actions taken by Board members related to the termination of James J. Cotter, Jr. as President and CEO, as such actions are outlined in the minutes of the Board meetings held on May 21, 2015, May 29, 2015 and June 12, 2015. Mr. Gould stated that all members of the Board had been provided with copies of the referenced meeting minutes and other materials in the Board Materials. In addition, Mr. Gould stated that all directors, those who were members of the Board at the time of the termination of Mr. Cotter, and the two new directors who joined the Board after such termination (directors Codding and Wrotniak) through their involvement in the litigation, Board meetings and otherwise been privy to detailed information regarding the termination and the Board's reasons therefor. Mr. Gould inquired whether any Directors had any questions or comments based on the Board Materials or other information they had.

Director Judy Codding stated that she had thoroughly reviewed the Board Materials and had extensive knowledge about the Board's reasons for the termination of Mr. Cotter, Jr. She further stated that she had had ample opportunity to observe Mr. Cotter Jr.'s behavior and demeanor in Board meetings since she had joined the Board. Ms. Codding stated that in her view, Mr. Cotter, Jr. did not possess the knowledge, experience, ability, temperament or demeanor to be the chief executive officer of the Company, and believed that the actions taken by the Board to terminate him as CEO and President were appropriate.

Mr. Wrotniak also expressed his views that he had understood and appreciated the information provided in the Board Materials and concurred with Ms. Codding's comments. He stated that in his view, the Board had attempted to work with Mr. Cotter, Jr., but ultimately, in his view, had no alternative but to take the action that it did – termination of Mr. Cotter, Jr., as CEO and President.

There was a brief discussion of the Board Materials, including the fact that the "Highpoint Associates contract and invoice" had been included in the materials. Mr. Ferrario stated that this was to assist the Board in understanding information that had not been disclosed by Mr. Cotter, Jr. at the time of the May and June 2015 Board meetings, but which were subsequently learned in litigation discovery and that Board members might consider to be

relevant when considering whether or not to ratify the Board's decision to terminate Mr. Cotter, Jr., as CEO and President.

Mr. Gould inquired whether there were any other questions. Mr. McEachern made a motion, seconded by Ms. Coddling, as follows:

BE IT HEREBY RESOLVED that that the Board ratifies the actions taken by the Company's Board members relating to the termination of James J. Cotter, Jr. as President and CEO as such actions are outlined in the minutes of the Board meetings held on May 21, 2015, May 29, 2015 and June 12, 2015.

Mr. Gould asked whether there was further discussion and invited Director Cotter, Jr. to provide his thoughts to the Board. Mr. Cotter, Jr. thanked Mr. Gould and expressed his view that the ratification items were solely designed for a litigation purpose and, accordingly, that there was no need for him to comment, although he objected fully and completely to any of the statements made in connection with the ratification vote and the substance thereunder. He stated that he felt there was no purpose to be served in going into an extensive discussion given what he believed to be the true purpose of today's ratification actions: to support the position of the Company and the Board in the ongoing Derivative Litigation.

The resolution was adopted by the following vote: In favor: Directors Coddling, Gould, Kane, McEachern and Wrotniak; "Objecting"/no: James Cotter, Jr. ; Abstaining: Directors Ellen Cotter, Margaret Cotter and Guy Adams.

- (b) Ratification of the decision of the Compensation Committee, as outlined in the minutes of September 21, 2015 meeting of the Compensation Committee, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment for the exercise of an option to purchase 100,000 shares of Class B voting stock of RDI

Mr. Gould introduced this agenda item and referred to the Board Materials and inquired whether there were any questions. Mr. Bonner briefly summarized certain of the information regarding the matter considered by the Compensation Committee in 2015, at which time the Compensation Committee had authorized the acceptance of Class A non-voting stock owned by the James J. Cotter, Sr. Estate to pay for exercise of an option to purchase 100,000 shares of the Company's Class B voting stock owned by the Estate. Mr. Bonner referred to the extensive record made by the Compensation Committee in 2015, and the fact that the acceptance of stock was within the discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan under which the stock option was granted.

Mr. Gould inquired whether there were any questions. Board members generally expressed their awareness of the information as well as their review of the Board Materials.

Mr. Cotter, Jr. once again expressed his continuing objection to any vote stating that he did not feel it necessary to go into any detail for his objections given his prior comments that these actions were being taken merely as a litigation device. Mr. Cotter stated that he did not agree with some of the "inaccurate" and "incorrect" statements made. To this, Director McEachern interjected that he believed that "no inaccurate or incorrect statements had been made." Director McEachern also noted his view that the allegations made by Mr. Cotter in this

regard had caused a waste of Company resources, as it was perfectly clear that neither the Cotter Estate nor Ellen and Margaret Cotter had gained any advantage from the transaction, given that the Cotter Estate could have sold Class A shares in the market and used the cash to exercise the option in question. He stated that he saw no harm to the Company nor any advantage to the Cotter Estate, Ellen Cotter or Margaret Cotter resulting from the action of the Compensation Committee of which Mr. Cotter, Jr., complained. Mr. Cotter responded that there was no sense in engaging in a debate, but that he did not agree with accuracy of a number of the statements made.

Upon motion duly made by Director McEachern and seconded by Director Wrotniak, the following resolution was adopted:

BE IT HEREBY RESOLVED that the Board ratifies the decision of the Compensation Committee of the Company, as outlined in the minutes of its September 21, 2015 meeting, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment for the exercise of an option to purchase 100,000 shares of Class B voting stock of the Company.

The motion was approved as follows: In favor: Directors Coddling, Gould, Kane, McEachern and Wrotniak; "Objecting"/no: James Cotter, Jr.; Abstaining: Ellen Cotter, Margaret Cotter and Guy Adams.

Next, it was noted without objection that the foregoing approved resolutions included authorization to take such other actions as may be necessary to accomplish the matters approved therein.

Lead Independent Director Gould returned the chair to Chair Cotter. Directors Judy Coddling and Douglas McEachern each echoed comments made earlier by Director Kane and thanked Ellen Cotter in particular and the entire Reading staff who had sacrificed their personal time, vacation/ Christmas time to prepare the materials necessary for consideration of the compensation matters considered at the meeting. Chair Cotter thanked the Board members and joined in the comments thanking the staff.

Adjournment

Chair Cotter thanked all for participating in today's meeting. There was no further business, and the meeting was adjourned at approximately 10:25 a.m., Pacific Time.

Ellen M. Cotter, Chairman

S. Craig Tompkins, Recording Secretary

Rosehill, Andrea (Secy-LV-LT)

From: efilings@nvcourts.nv.gov
Sent: Thursday, January 04, 2018 10:09 AM
To: Rosehill, Andrea (Secy-LV-LT)
Subject: Rejection of Electronic Document. No. 74759.

Docket Number: 74759
Case Category: Original Proceeding
Submitted by: Tami D. Cowden
Date Submitted: Jan 04 2018 09:45 a.m.
Date Rejected: Jan 04 2018 10:08 a.m.
Note from Clerk: You are not currently a party to this petition. You will need to file a motion.
Document Category: Letter/Incoming
Document Title: Real Party in Interest Reading International, Inc.'s Response to Emergency Motion Under Rule 27(e)
Filing Status: Rejected

This notice was automatically generated by the electronic filing system. Do not respond to this email. If you have any questions, contact the Nevada Supreme Court Clerk's office at 775-684-1600 or 702-486-9300.

EXHIBIT B
