IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75053

JAMES J. COTTER, JR., derivatively on behalf of READING INTERNATIONAL, INC., Appellant/Cross-Respondent, *vs.* EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, and MICHAEL WROTNIAK, Respondents/Cross-Appellants, and READING INTERNATIONAL, INC., a Nevada corporation, Respondent.	District Court No. A-15-719860-B, jointly administered with No. P-14-082942-E

DOCUMENTS PERTAINING TO ITEM NUMBER 27 OF RESPONDENTS'/CROSS-APPELLANTS' JOINT DOCKETING STATEMENT – PART 3 OF 3

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EXHIBIT 3

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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.,

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

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

ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND PLAINTIFF'S AND DEFENDANTS' MOTIONS *IN LIMINE*

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017
Time of Hearing: 8:30 a.m.

THIS MATTER HAVING COME TO BE HEARD BEFORE the Court on December 11, 2017, Mark G. Krum, Steve Morris, and Akke Levin appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); James L. Edwards, Christopher Tayback, and Marshall M. Searcy III appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak (collectively, the "Individual Defendants"); Mark E. Ferrario and Kara B. Hendricks appearing for nominal defendant Reading International, Inc. ("RDI"); and Ekwan Rhow appearing for defendant William Gould ("Gould," together, with the Individual Defendants and RDI, "Defendants"), on the following motions:

- Individual Defendants' Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) re: The Issue of Director Independence, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Relating to the Purported Unsolicited Offer, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO, and supplement thereto;
- 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 supplement thereto;

- Defendant Gould's Motion for Summary Judgment;
- Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority;
- Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence;
- RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal;
- Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.;
- Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's Opposition to Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact Portions of Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3 and Gould Summary Judgment Motion;

- Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion; and
- Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 6 and Gould Summary Judgment Motion.

IT IS HEREBY ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims is GRANTED with respect to Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak because there are no genuine issues of material fact related to the disinterestedness and/or independence of those directors, and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness and/or independence of those directors.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 2) re: The Issue of Director Independence is GRANTED with respect to Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak because there are no genuine issues of material fact related to the disinterestedness and/or independence of those directors, and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness and/or independence of those directors.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Relating to the Purported Unsolicited Offer is GRANTED because of

Plaintiff's failure to show damages related to an unenforceable, unsolicited, nonbinding offer. While Plaintiff at trial cannot claim any damages arising from Defendants' actions with respect to the Patton Vision indications of interest, Plaintiff may still attempt to use evidence regarding the Patton Vision indications to show a breach of fiduciary duty.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO is DENIED.

IT IS FURTHER ORDERED THAT the 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 is DENIED.

IT IS FURTHER ORDERED THAT Defendant Gould's Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED THAT judgment in favor of Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak is GRANTED on all claims asserted by Plaintiff.

IT IS FURTHER ORDERED THAT the Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority is DENIED.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative is DENIED.

IT IS FURTHERED ORDERED THAT Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence is DENIED as

premature, with the issues raised in the motion to be addressed at trial based upon the relevant foundation laid.

IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel is DENIED.

IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc. is DENIED.

IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence is DENIED. However, to the extent that Plaintiff's retention and use of Highpoint Associates and Derek Alderton is admitted at trial, it will be admitted with an instruction limiting the evidence solely to the issue of Plaintiff's suitability as President and CEO of RDI.

IT IS FURTHER ORDERED THAT RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal is GRANTED.

IT IS FURTHER ORDERED THAT Plaintiff's Motions to Seal and/or Redact are GRANTED.

DATED this 28th day of December, 2017.

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*

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

EXHIBIT 4

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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 **NOTICE OF ENTRY OF ORDER**

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PLEASE TAKE NOTICE that an Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions *in Limine* was entered by this Honorable Court on the 28th day of December, 2017. A copy of the Order is attached hereto as Exhibit A.

MORRIS LAW GROUP

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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 on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER**. 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 29th day of December, 2017.

By: /s/ Linda P. Daniel
An employee of Morris Law Group

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EXHIBIT A

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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.,

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

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

ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND PLAINTIFF'S AND DEFENDANTS' MOTIONS *IN LIMINE*

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017
Time of Hearing: 8:30 a.m.

THIS MATTER HAVING COME TO BE HEARD BEFORE the Court on December 11, 2017, Mark G. Krum, Steve Morris, and Akke Levin appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); James L. Edwards, Christopher Tayback, and Marshall M. Searcy III appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak (collectively, the "Individual Defendants"); Mark E. Ferrario and Kara B. Hendricks appearing for nominal defendant Reading International, Inc. ("RDI"); and Ekwan Rhow appearing for defendant William Gould ("Gould," together, with the Individual Defendants and RDI, "Defendants"), on the following motions:

- Individual Defendants' Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) re: The Issue of Director Independence, and supplement thereto;
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- Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO, and supplement thereto;
- 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 supplement thereto;

- Defendant Gould's Motion for Summary Judgment;
- Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority;
- Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence;
- RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal;
- Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.;
- Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's Opposition to Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact Portions of Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3 and Gould Summary Judgment Motion;

- Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion; and
- Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 6 and Gould Summary Judgment Motion.

IT IS HEREBY ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims is GRANTED with respect to Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak because there are no genuine issues of material fact related to the disinterestedness and/or independence of those directors, and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness and/or independence of those directors.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 2) re: The Issue of Director Independence is GRANTED with respect to Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak because there are no genuine issues of material fact related to the disinterestedness and/or independence of those directors, and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness and/or independence of those directors.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Relating to the Purported Unsolicited Offer is GRANTED because of

Plaintiff's failure to show damages related to an unenforceable, unsolicited, nonbinding offer. While Plaintiff at trial cannot claim any damages arising from Defendants' actions with respect to the Patton Vision indications of interest, Plaintiff may still attempt to use evidence regarding the Patton Vision indications to show a breach of fiduciary duty.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO is DENIED.

IT IS FURTHER ORDERED THAT the 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 is DENIED.

IT IS FURTHER ORDERED THAT Defendant Gould's Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED THAT judgment in favor of Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak is GRANTED on all claims asserted by Plaintiff.

IT IS FURTHER ORDERED THAT the Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority is DENIED.

IT IS FURTHER ORDERED THAT the Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative is DENIED.

IT IS FURTHERED ORDERED THAT Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence is DENIED as

premature, with the issues raised in the motion to be addressed at trial based upon the relevant foundation laid.

IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel is DENIED.

IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc. is DENIED.

IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence is DENIED. However, to the extent that Plaintiff's retention and use of Highpoint Associates and Derek Alderton is admitted at trial, it will be admitted with an instruction limiting the evidence solely to the issue of Plaintiff's suitability as President and CEO of RDI.

IT IS FURTHER ORDERED THAT RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal is GRANTED.

IT IS FURTHER ORDERED THAT Plaintiff's Motions to Seal and/or Redact are GRANTED.

DATED this 28th day of December, 2017.

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

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EXHIBIT 5

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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 **ORDER DENYING PLAINTIFF'S MOTION TO STAY AND MOTION FOR RECONSIDERATION** **Date of Hearing: December 28, 2017** **Time of Hearing: 9:00 a.m.**

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Case Number: A-15-719860-B

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This matter came before the Court on December 28, 2017 for hearing on plaintiff James J. Cotter, Jr.'s Motion to Stay and Motion for Reconsideration or Clarification of Ruling on Motions for [Partial] Summary judgment Nos. 1, 2, and 3 and Gould's Summary Judgment Motion ("Motion for Reconsideration"). Mark G. Krum and Akke Levin appeared for plaintiff James J. Cotter, Jr. ("Plaintiff"); Marshall M. Searcy III appeared for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak; Mark E. Ferrario appeared for nominal defendant Reading International, Inc.; and Shoshana Bannett appeared for defendant William Gould ("Gould").

The Court, having considered the papers filed in support of and in opposition to the Motion for Reconsideration and Motion to Stay, having heard oral argument of the parties, having considered (sealed) Court Exhibit 1, and for good cause appearing:

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration is DENIED. Although the Court reviewed Court Exhibit 1, the Court finds it was not provided with new factual information or new legal analysis that would cause the Court to change its decision on Motions for Partial Summary Judgment Nos. 1, 2, and Gould's Motion for Summary Judgment.

IT IS FURTHER ORDERED that Plaintiff's Motion to Stay is DENIED.

DATED this 4 day of Jan, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

By: */s/ Akke Levin*
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EXHIBIT 6

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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 **NOTICE OF ENTRY OF ORDER**

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PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration was entered in this action on the 4th day of January, 2018.

A copy of the Order is attached as Exhibit 1.

MORRIS LAW GROUP

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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: **NOTICE OF ENTRY OF ORDER,** 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.

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Attorneys for Defendant William Gould

DATED this 4th day of January, 2018.

By: [signature]

EXHIBIT 1

EXHIBIT 1

Electronically Filed
1/4/2018 10:35 AM
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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 **ORDER DENYING PLAINTIFF'S MOTION TO STAY AND MOTION FOR RECONSIDERATION** **Date of Hearing: December 28, 2017** **Time of Hearing: 9:00 a.m.**

Case Number: A-15-719860-B

MORRIS LAW GROUP
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This matter came before the Court on December 28, 2017 for hearing on plaintiff James J. Cotter, Jr.'s Motion to Stay and Motion for Reconsideration or Clarification of Ruling on Motions for [Partial] Summary judgment Nos. 1, 2, and 3 and Gould's Summary Judgment Motion ("Motion for Reconsideration"). Mark G. Krum and Akke Levin appeared for plaintiff James J. Cotter, Jr. ("Plaintiff"); Marshall M. Searcy III appeared for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak; Mark E. Ferrario appeared for nominal defendant Reading International, Inc.; and Shoshana Bannett appeared for defendant William Gould ("Gould").

The Court, having considered the papers filed in support of and in opposition to the Motion for Reconsideration and Motion to Stay, having heard oral argument of the parties, having considered (sealed) Court Exhibit 1, and for good cause appearing:

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration is DENIED. Although the Court reviewed Court Exhibit 1, the Court finds it was not provided with new factual information or new legal analysis that would cause the Court to change its decision on Motions for Partial Summary Judgment Nos. 1, 2, and Gould's Motion for Summary Judgment.

IT IS FURTHER ORDERED that Plaintiff's Motion to Stay is DENIED.

DATED this 4 day of Jan, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

By: */s/ Akke Levin*
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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 **ORDER GRANTING PLAINTIFF'S MOTION FOR RULE 54(b) CERTIFICATION AND STAY** **Date of Hearing: January 4, 2017** **Time of Hearing: 8:30 a.m.**

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THIS MATTER CAME BEFORE THE COURT on the Motion for Rule 54(b) Certification and Stay of plaintiff James J. Cotter, Jr. ("Plaintiff"). The Court, having considered any papers filed and arguments made in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED THAT Plaintiff's Motion for Rule 54(b) Certification is GRANTED because Plaintiff will be severely prejudiced if required to wait to appeal and the remaining defendants will not be prejudiced if the Court's December 28, 2017 order dismissing defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak is certified.

The Court therefore finds and determines, under Nev. R. Civ. P. 54(b), that there is no just reason for delay and hereby directs entry of judgment as to defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak on all of Plaintiff's claims against them.

IT IS FURTHER ORDERED THAT the case is

[ ] stayed;

[X] not stayed pending Plaintiff's appeal.

DATED this ___ day of January, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

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EXHIBIT 8

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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 **NOTICE OF ENTRY OF ORDER**

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PLEASE TAKE NOTICE that an Order Granting Plaintiff's Motion for Rule 54(b) Certification and Stay was entered in this action on the 4th day of January, 2018.

A copy of the Order is attached as Exhibit 1.

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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: **NOTICE OF ENTRY OF ORDER,** 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.

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Attorneys for Defendant William Gould

DATED this 4th day of January, 2018.

By: _____

EXHIBIT 1

EXHIBIT 1

Electronically Filed
1/4/2018 10:35 AM
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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)) **ORDER GRANTING PLAINTIFF'S MOTION FOR RULE 54(b) CERTIFICATION AND STAY**)) **Date of Hearing: January 4, 2017**) **Time of Hearing: 8:30 a.m.**

Case Number: A-15-719860-B

MORRIS LAW GROUP
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THIS MATTER CAME BEFORE THE COURT on the Motion for Rule 54(b) Certification and Stay of plaintiff James J. Cotter, Jr. ("Plaintiff"). The Court, having considered any papers filed and arguments made in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED THAT Plaintiff's Motion for Rule 54(b) Certification is GRANTED because Plaintiff will be severely prejudiced if required to wait to appeal and the remaining defendants will not be prejudiced if the Court's December 28, 2017 order dismissing defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak is certified.

The Court therefore finds and determines, under Nev. R. Civ. P. 54(b), that there is no just reason for delay and hereby directs entry of judgment as to defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak on all of Plaintiff's claims against them.

IT IS FURTHER ORDERED THAT the case is

[ ] stayed;

[X] not stayed pending Plaintiff's appeal.

DATED this ___ day of January, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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EXHIBIT 9

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., *et al.*, Plaintiff, vs. MARGARET COTTER, an individual, *et al.*, Defendants.	Case No.: A-15-719860-B Dept. No.: XI Case No.: P-14-082942-E Dept. No,: XI Related and Coordinated Cases **BUSINESS COURT** **ORDER REGARDING MOTION TO DISMISS COMPLAINT**

10-13-15P01:16 RCVD

THIS MATTER HAVING COME TO BE HEARD BEFORE the Court on a Motion To Dismiss Complaint (hereinafter referred to as the "Motion") filed by Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, and Douglas McEachern (collectively referred to as the "Defendants") and joined in by Reading International, Inc. (hereinafter referred to as "Reading"), and it appearing that due and proper notice was given for the Motion, that a written opposition to the Motion was filed by Plaintiff James J. Cotter, Jr. (hereinafter referred to as "Plaintiff") and joined in by several Intervening Plaintiffs, that a written reply in support of the Motion was filed by the Defendants, that oral argument was presented to the Court by counsel for Defendants and Plaintiff at the time and place set for hearing of the Motion, and that good cause exists for granting a portion of the Motion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Motion is granted in part and denied in part.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT the Motion is granted with respect to the requirement that Plaintiff must allege damages with more particularity for ~~derivative~~ direct purposes as opposed to ~~direct~~ derivative benefits to the Plaintiff. The Motion is otherwise denied. claims by

IT IS FINALLY ORDERED, ADJUDGED, AND DECREED THAT the Complaint filed by Plaintiff in the above-captioned proceedings is hereby dismissed without prejudice and Plaintiff shall have leave to file a first amended complaint in the above-captioned proceedings.

DATED this 15th day of October, 2015.

DISTRICT COURT JUDGE
ELIZABETH GONZALEZ

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PREPARED AND SUBMITTED BY:

COHEN|JOHNSON, LLC

/s/ H. Stan Johnson

APPROVED AS TO FORM AND CONTENT:

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/s/ Marshall Searcy

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/s/ Bonita Moore

APPROVED AS TO FORM AND CONTENT:

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/s/ Don Lattin

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EXHIBIT 10

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

MARGARET COTTER, an individual, *et al.*,

Defendants.

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

BUSINESS COURT

NOTICE OF ENTRY OF ORDER

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that the ORDER REGARDING MOTION TO DISMISS COMPLAINT was entered in the above-captioned case on the 19th day of October, 2015, a copy of which is attached hereto.

DATED this 20th day of October, 2015.

COHEN-JOHNSON, LLC

By: Michael Hughes

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CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of October, 2015, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** upon each of the parties via Odyssey E-Filing System pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 to:

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., *et al.*, Plaintiff, vs. MARGARET COTTER, an individual, *et al.*, Defendants.	Case No.: A-15-719860-B Dept. No.: XI Case No.: P-14-082942-E Dept. No,: XI Related and Coordinated Cases **BUSINESS COURT** **ORDER REGARDING MOTION TO DISMISS COMPLAINT**

10-13-15P01:16 RCVD

THIS MATTER HAVING COME TO BE HEARD BEFORE the Court on a Motion To Dismiss Complaint (hereinafter referred to as the "Motion") filed by Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, and Douglas McEachern (collectively referred to as the "Defendants") and joined in by Reading International, Inc. (hereinafter referred to as "Reading"), and it appearing that due and proper notice was given for the Motion, that a written opposition to the Motion was filed by Plaintiff James J. Cotter, Jr. (hereinafter referred to as "Plaintiff") and joined in by several Intervening Plaintiffs, that a written reply in support of the Motion was filed by the Defendants, that oral argument was presented to the Court by counsel for Defendants and Plaintiff at the time and place set for hearing of the Motion, and that good cause exists for granting a portion of the Motion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Motion is granted in part and denied in part.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT the Motion is granted with respect to the requirement that Plaintiff must allege damages with more particularity for ~~derivative~~ direct purposes as opposed to ~~direct~~ derivative benefits to the Plaintiff. The Motion is otherwise denied. claims by

IT IS FINALLY ORDERED, ADJUDGED, AND DECREED THAT the Complaint filed by Plaintiff in the above-captioned proceedings is hereby dismissed without prejudice and Plaintiff shall have leave to file a first amended complaint in the above-captioned proceedings.

DATED this 15th day of October, 2015.

DISTRICT COURT JUDGE
ELIZABETH GONZALEZ

COHEN-JOHNSON, LLC
255 E. Warm Springs Rd., Suite 100
Las Vegas, Nevada 89119
(702) 823-3500 FAX: (702) 823-3400

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON, LLC

/s/ H. Stan Johnson

APPROVED AS TO FORM AND CONTENT:

LEWIS ROCA ROTHGERBER, LLP

/s/ Mark Krum

APPROVED AS TO FORM AND CONTENT:

GREENBERG TRAURIG, LLP

/s/ Lance Coburn

APPROVED AS TO FORM AND CONTENT:

ROBERTSON & ASSOCIATES, LLP

/s/ Alexander Robertson

APPROVED AS TO FORM AND CONTENT:

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Marshall Searcy

APPROVED AS TO FORM AND CONTENT:

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

/s/ Bonita Moore

APPROVED AS TO FORM AND CONTENT:

MAUPIN, COX & LEGOY

/s/ Don Lattin

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EXHIBIT 11

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12/21/2016 03:54:05 PM

CLERK OF THE COURT

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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.

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

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
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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 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

EXHIBIT 12

Electronically Filed
12/22/2016 12:10:12 PM

CLERK OF THE COURT

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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

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

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
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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.

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

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

Lewis Roca ROTHGERBER CHRISTIE
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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
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Las Vegas, NV 89169-5996

EXHIBIT 13

REGISTER OF ACTIONS

CASE NO. A-15-719860-B

James Cotter, Jr., Plaintiff(s) vs. Margaret Cotter, Defendant(s) §

Case Type:	**NRS Chapters 78-89**
Date Filed:	**06/12/2015**
Location:	**Department 11**
Cross-Reference Case Number:	**A719860**

RELATED CASE INFORMATION

Related Cases
P-14-082942-E (Coordinated - Certain Matters)
A-16-735305-B (Coordinated - Certain Matters)

PARTY INFORMATION

		Lead Attorneys
Defendant	**Adams, Guy**	**Harold Stanley Johnson**
Defendant	**Codding, Judy**	**Harold Stanley Johnson**
Defendant	**Cotter, Ellen**	**Harold Stanley Johnson**
Defendant	**Cotter, Margaret**	**Harold Stanley Johnson**
Defendant	**Gould, William**	**Donald A. Lattin**
Defendant	**Kane, Edward**	**Harold Stanley Johnson**
Defendant	**McEachern, Douglas**	**Harold Stanley Johnson**
Defendant	**Wrotniak, Michael**	**Harold Stanley Johnson**
Other	**Diamond A Investors LP**	**James E. Murphy**
Other	**Diamond A Partners LP**	

James E. Murphy
Retained

Plaintiff **Cotter, James J, Jr.** **Mark G. Krum**

EVENTS & ORDERS OF THE COURT

11/20/2017 **All Pending Motions** (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

11/20/2017 8:30 AM

- Mr. Krum participated by telephone. MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR'S ADEQUACY AS DERIVATIVE PLAINTIFF...DEFENDANT WILLIAM GOULD'S JOINDER TO MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF...READING INTERNATIONAL INC'S JOINDER TO MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER JR'S ADEQUACY AS A DERIVATIVE PLAINTIFF: Following arguments by Mr. Tayback and Mr. Krum, COURT ORDERED, motion DENIED. Court inquired whether the California settlement happened. Mr. Ferrario advised it is not dead yet. Colloquy regarding trial scheduling and counsel's hearing in Carson City. Mr. Ferrario requested that trial in the instant case start on January 8. Court directed counsel, as a group, to decide how long it would take for presentation of their cases and cross-examination of the other side. Upon Court's inquiry, Mr. Ferrario confirmed they would like to use electronic exhibits. Court stated a draft protocol will be sent to the parties. Mr. Morris requested an extension of time for exhibits until after argument on the summary judgment motions scheduled for December 11. Mr. Ferrario added that they need a special setting for those motions. Court stated it will determine that and noted it may also the cancel the December 18 calendar call. MOTION TO SEAL EXHIBITS 2, 3 AND 5 OF EXHIBITS TO PLAINTIFF JAMES COTTER'S MOTION IN LIMINE NO 1 REGARDING ADVICE OF COUNSEL AND APPLICATION FOR ORDER SHORTENING TIME: COURT ORDERED, motion to seal GRANTED as unopposed. Proposed order signed in open court and returned to Mr. Morris for filing. 12-4-17 8:30 AM PRE TRIAL CONFERENCE 12-11-17 10:30 AM DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK S SUPPLEMENT TO MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1, 2, 3, 5 AND 6... ...MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK S MOTION IN LIMINE TO EXCLUDE EVIDENCE THAT IS MORE PREJUDICIAL THAN PROBATIVE... ...RENEWED MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY OF MYRON STEELE BASE ON SUPPLEMENTAL AUTHORITY... ...PLAINTIFF JAMES J COTTER JR'S MOTION IN LIMINE NO. 1 REGARDING ADVICE OF COUNSEL... ...DEFENDANT WILLIAM GOULD'S MOTION IN LIMINE TO EXCLUDE IRRELEVANT SPECULATIVE EVIDENCE... ...PLAINTIFF JAMES COTTER JR'S MOTION IN LIMINE NO. 2 REGARDING THE SUBMISSION OF MERITS-RELATED EVIDENCE BY NOMINAL DEFENDANT READING INTERNATIONAL INC... ...PLAINTIFF JAMES COTTER JR'S MOTION IN LIMNE NO. 3 REGARDING AFTER-ACQUIRED EVIDENCE... ...STATUS CHECK: ELECTRONIC EXHIBIT MEETING 12-18-17 8:15 AM CALENDAR CALL 1-2-18 1:30 PM JURY TRIAL CLERK'S NOTE: Following these proceedings, parties were provided with the electronic exhibit protocol and a template of the electronic exhibit list via electronic mail. Parties were also notified that a special setting for the summary judgment motions as well as discussion on an electronic exhibit meeting is set for 10:30 AM on December 11, 2017.

Parties Present
Return to Register of Actions

EXHIBIT 14

Electronically Filed
3/20/2018 11:53 AM
Steven D. Grierson
CLERK OF THE COURT

ORDR
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Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

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

ORDER REGARDING INDIVIDUAL DEFENDANTS' MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: November 20, 2017
Time of Hearing: 8:30 a.m.

03-15-18P01:52 RCVD

THIS MATTER HAVING COME TO BE HEARD BEFORE the Court on November 20, 2017, Mark G. Krum and Steven L. Morris appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy III appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak (collectively, the "Individual Defendants"); Mark E. Ferrario and Kara B. Hendricks appearing for nominal defendant Reading International, Inc. ("RDI"); and Shoshana E. Bannett appearing for defendant William Gould ("Gould," together, with the Individual Defendants and RDI, "Defendants"), on Individual Defendants' Motion for Evidentiary Hearing regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT the Individual Defendants' Motion for Evidentiary Hearing regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff is DENIED.

DATED this 20 day of May, 2018.

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:
COHEN|JOHNSON|PARKER|EDWARDS

/s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
CHRISTOPHER TAYBACK, ESQ.
MARSHALL M. SEARCY, ESQ.
Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

EXHIBIT 15

Electronically Filed
3/20/2018 11:53 AM
Steven D. Grierson
CLERK OF THE COURT

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Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams, and Third Parties Judy Codding, Edward Kane, Douglas McEachern, 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, *et al*.,

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

NOTICE OF ENTRY OF ORDER

Case Number: A-15-719860-B

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that the Order Regarding Individual Defendants' Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff was entered in the above-captioned case on the 20th day of March, 2018, a copy of which is attached hereto.

Dated: March 20, 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*

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

CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

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

ORDER REGARDING INDIVIDUAL DEFENDANTS' MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: November 20, 2017
Time of Hearing: 8:30 a.m.

03-15-18P01:52 RCVD

THIS MATTER HAVING COME TO BE HEARD BEFORE the Court on November 20, 2017, Mark G. Krum and Steven L. Morris appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy III appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak (collectively, the "Individual Defendants"); Mark E. Ferrario and Kara B. Hendricks appearing for nominal defendant Reading International, Inc. ("RDI"); and Shoshana E. Bannett appearing for defendant William Gould ("Gould," together, with the Individual Defendants and RDI, "Defendants"), on Individual Defendants' Motion for Evidentiary Hearing regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT the Individual Defendants' Motion for Evidentiary Hearing regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff is DENIED.

DATED this 20 day of May, 2018.

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:
COHEN|JOHNSON|PARKER|EDWARDS

/s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75053

JAMES J. COTTER, JR., derivatively on behalf of READING INTERNATIONAL, INC., Appellant/Cross-Respondent, *vs.* EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, and MICHAEL WROTNIAK, Respondents/Cross-Appellants, and READING INTERNATIONAL, INC., a Nevada corporation, Respondent.	District Court No. A-15-719860-B, jointly administered with No. P-14-082942-E

DOCUMENTS PERTAINING TO ITEM NUMBER 27 OF RESPONDENTS'/CROSS-APPELLANTS' JOINT DOCKETING STATEMENT – PART 1 OF 3

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Docket 75053 Document 2018-10918

Documents Pertaining to Item No. 27 of Respondents'/Cross-Appellants' Docketing Statement

1. Plaintiff James J. Cotter, Jr.'s ("Plaintiff") Second Amended Verified Complaint, dated September 2, 2016

2. Plaintiff's Motion for Reconsideration or Clarification of Ruling on Motions for Summary Judgment Nos. 1, 2, and 3 and Gould Summary Judgment Motion and Application for Order Shortening Time, dated September 19, 2017

3. Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions *in Limine*, dated December 28, 2017

4. Notice of Entry of Order (re: Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions *in Limine*), dated December 29, 2017

5. Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration, dated January 4, 2018

6. Notice of Entry of Order (re: Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration), dated January 4, 2018

7. Order Granting Plaintiff's Motion for Rule 54(b) Certification and Denying Plaintiff's Request for a Stay, dated January 4, 2018

8. Notice of Entry of Order (re: Order Granting Plaintiff's Motion for Rule 54(b) Certification and Denying Plaintiff's Request for a Stay), dated January 4, 2018

9. Order Regarding Motion to Dismiss, dated October 15, 2015

10. Notice of Entry of Order (re: Order Regarding Motion to Dismiss, dated October 15, 2015), dated October 20, 2015

11. Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion *in Limine* to Exclude Expert Testimony, dated December 20, 2016

12. Notice of Entry of Order (re: Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion *in Limine* to Exclude Expert Testimony, dated December 20, 2016), dated December 22, 2016

13. Minute Order Denying Defendants' Motion for Evidentiary Hearing Regarding James J. Cotter, Jr.'s Adequacy as Derivative Plaintiff, dated November 20, 2017

14. Order Regarding Defendants' Motion for Evidentiary Hearing Regarding James J. Cotter, Jr.'s Adequacy as Derivative Plaintiff, dated March 20, 2017

15. Notice of Entry of Order (re: Order Regarding Defendants' Motion for Evidentiary Hearing Regarding James J. Cotter, Jr.'s Adequacy as Derivative Plaintiff, dated March 20, 2017), dated March 20, 2017

EXHIBIT 1

ELECTRONICALLY SERVED
09/02/2016 05:02:57 PM

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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

Plaintiffs,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG

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

Coordinated with:

CASE NO. P-14-082942-E
DEPT. NO. XI

CASE NO. A-16-735305-B
DEPT. NO. XI

Jointly administered

~~[PROPOSED]~~ SECOND AMENDED VERIFIED COMPLAINT

[Business Court Requested: [EDCR 1.61]

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

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TOMPKINS, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

For his complaint herein, plaintiff James J. Cotter, Jr. hereby alleges the following:

NATURE OF THE CASE

1. This action arises from breaches of fiduciary duty by the individual defendants, each of whom is a member of the board of directors of Reading International, Inc. ("RDI" or the "Company"), a public company. In particular and without limitation, Edward Kane ("Kane"), Guy Adams ("Adams") and Douglas McEachern ("McEachern"), together with Ellen Cotter ("EC") and Margaret Cotter ("MC") (collectively, the "Interested Director Defendants"), acted to wrongfully seize control of RDI and to perpetuate that control, to protect and further their personal financial and other interests, in purposeful derogation of their fiduciary obligations as directors of RDI. In doing so, they have squandered if not appropriated corporate opportunities, wasted corporate assets and caused monetary and nonmonetary injury to RDI and its shareholders.

2. These director defendants first threatened James J. Cotter, Jr. ("JJC" or "Plaintiff") with termination as President and Chief Executive Officer ("CEO") of RDI if he failed to resolve trust and estate litigation with EC and MC on terms acceptable to the two of them and to cede control of RDI to them. They threatened to terminate JJC on less than forty-eight (48) hours' notice after EC belatedly provided a purposefully vague agenda for a supposed special meeting. When they understood that Plaintiff had acquiesced to their demand and had reached an agreement with EC and MC acceptable to the two of them, Kane, Adams and McEachern did not act on their termination threat.

3. Next, when JJC failed to consummate a resolution of the disputes with EC and MC, these director defendants acted on their threat and terminated JJC as President and CEO of RDI.

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These director defendants acted without undertaking any semblance of a process to warrant making any decision regarding the status of JJC (or anyone) as President and CEO, and did so in the face of express admonitions by outside directors Timothy Storey ("Storey") and William Gould ("Gould") that the directors had failed to undertake any process that would warrant making any decision about the status of the President and CEO of RDI, much less the decision to remove JJC as President and CEO of RDI. Gould warned the others that, because they had undertaken no process to warrant even making such a decision, they all could be subject to liability. Storey called the lack of process a "kangaroo court," and observed as to the non-Cotter directors that, "as directors we can't just do what a shareholder [, meaning EC and MC,] asks." Not only did these director defendants precipitously terminate JJC as President and CEO of RDI without undertaking any process and on purposefully inadequate notice, they pre-empted and aborted an ongoing and incomplete process that the five non-Cotter directors had put in place in March 2015.

4. Immediately following the termination of JJC as President and CEO of RDI, EC asserted that JJC's executive employment agreement required him to resign from the RDI Board of Directors upon the termination of his employment as an executive. That assertion was erroneous. Gould, who drafted and negotiated that employment agreement, told the RDI Board and told EC and Craig Tompkins on a separate occasion that it did not require JJC to resign as a director. On or about June 15, 2016, EC on behalf of the Company sent JJC a letter reiterating the assertion that he was required to resign as a director upon the termination of his executive employment. On or about June 18, 2015, the Company issued a Form 8-K which, among other things, reiterated that assertion. EC took and caused these actions with the approval of if not active assistance of the other Interested Director Defendants.

5. Kane has a decade's long *quasi*-familial relationship with EC and MC, who call him "Uncle Ed." Adams is financially dependent on income from companies and deals that EC and MC control. What each of Kane, Adams and McEachern did was to choose sides in family disputes between EC and MC, on one hand, and JJC, on the other hand, which disputes included certain trust and estate litigation commenced by EC and MC against JJC following the September 2014 passing of their father, James J. Cotter, Sr. ("JJC, Sr."), particularly regarding voting control

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of RDI, and included disputes about whether EC and MC would report to their "little brother," who succeeded JJC, Sr. as CEO of RDI, or to anyone, as a practical matter.

6. EC and MC have at all times acted purposefully to protect and further their own personal financial and other interests to the detriment of RDI and all of its shareholders other than them. They regularly sought, and often received, money, benefits, titles, positions and/or promotions they would not have received but for their status as potential controlling shareholders, including EC being appointed and compensated as CEO in January 2016 and MC being appointed and compensated as Executive Vice President-Real Estate Management and Development-NYC ("EVP-RED-NYC") in March 2016.

7. Since wrongfully seizing control of RDI, each of the Interested Director Defendants also have engaged in a systematic misuse of the corporate machinery of RDI. They have done so to preserve and perpetuate their control of RDI. They also have acted to further their own financial and other interests. Since joining the RDI Board of Directors, defendants Judy Codding ("Codding") and Michael Wrotniak ("Wrotniak") also have acted to protect and advance the personal interests of EC and MC, and their own as well. All such complained of actions were in derogation of these defendants' fiduciary duties to RDI and its shareholders.

8. The Interested Director Defendants effectively eliminated Plaintiff, Storey and Gould as functioning members of RDI's Board of Directors by, among other things, a purported executive committee of RDI's Board of Directors. The executive committee ("EC Committee") was populated by EC, MC, Kane and Adams. The EC Committee purportedly possesses the full authority of RDI's full Board of Directors. Gould has acquiesced to if not cooperated with the ongoing self-dealing of these five defendants, who forced Storey to "retire" as a director and added to the Board unqualified persons loyal to EC and MC by virtue of pre-existing personal friendships, namely, Codding and Wrotniak.

9. EC with the approval if not assistance of other director defendants has withheld and manipulated board agendas and meetings, including by belatedly providing a vague agenda for the May 21, 2015 supposed special meeting, and has withheld and manipulated minutes of Board of

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Directors meetings, including the supposed meetings of May 21 and 29 and June 12, 2015. They did so in an effort to conceal their fiduciary breaches and avoid liability for such breaches.

10. On or about September 17, 2015, EC and MC acted to exercise a supposed option claimed held by the estate of JJC, Sr. (the "Estate"), of which they are executors, to acquire 100,000 shares of RDI Class B voting stock. On or about September 21, 2015, Kane and Adams, as directors and as members of the Compensation Committee, authorized the request of EC and MC that the Estate be allowed to exercise that supposed option. In doing so, Kane and Adams breached their fiduciary duties, including for the reasons alleged herein.

11. EC on or about October 5, 2015 proposed adding Codding, a close and long-standing friend of the mother of the Cotters, Mary Cotter, with whom EC lives, to RDI's Board of Directors. Without performing or causing competent, basic due diligence, Kane, Adams and McEachern agreed. So did Gould, though he had learned of Codding only days prior. Codding has no expertise in either of RDI's principal business segments, cinema operations and real estate development, and has no public company corporate governance expertise. Plaintiff is informed and believes that Codding was selected because she is expected to be loyal to EC and MC.

12. EC and MC determined that Storey would not be nominated to stand for reelection as a director at the 2015 ASM, which had been set for November 10, 2015. Plaintiff is informed and believes that this decision was made in part because Storey had insisted that the RDI Board of Directors act to protect and further the interests of all shareholders, not just EC and MC. Kane, Adams and McEachern, purporting to act as a one time special nominating committee, agreed to and implemented the decision of EC and MC to not nominate Storey to stand for reelection as a director at the 2015 ASM. Adams and/or McEachern pressured Storey to "retire." The supposed nominating committee, acting at the direction and request of EC and MC, then selected Wrotniak to replace Storey. Wrotniak does not have expertise in either of RDI's principal business segments, cinema operations and real estate development, and has no public company corporate governance experience. Wrotniak's wife is a long-time, close personal friend of MC. Plaintiff is informed and believes that Wrotniak was chosen because MC and EC expect him to be loyal to them.

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13. As an integral part of their scheme to seize control of RDI and to perpetuate their control of RDI to further their personal financial and other interests, EC and MC systematically failed to make timely and accurate disclosures and SEC filings they were required to make, and systematically made materially misleading if not inaccurate disclosures, including as alleged herein. EC and MC, with the active assistance or at least knowing acquiescence of Kane, Adams, McEachern and Gould, as well as Codding and Wrotniak after they became RDI directors, also caused the Company to make materially misleading if not inaccurate disclosures, including in the Proxy Statements issued by the Company in connection with the 2015 Annual Shareholders Meeting and the 2016 Annual Shareholders Meeting, and in Form 8-Ks issued regarding the matters alleged herein, including as alleged herein.

14. Promptly following the termination of JJC as President and CEO, EC was appointed interim CEO. EC selected Korn Ferry as the outside search firm the Company would use to conduct the search for a permanent CEO. A stated rationale for that selection was that Korn Ferry would employ a proprietary candidate evaluation process to evaluate the finalists. The three finalists each were to be interviewed by the full board of directors. EC appointed MC, McEachern and Gould as members of the CEO search committee. Members of the search committee and certain executives selected by EC and MC provided input to Korn Ferry, which prepared a document listing specifications which were used to identify CEO candidates. Months later, just prior to initial interviews of CEO candidates, EC allegedly announced that she was a candidate to be President and CEO and resigned from the search committee, for which she had acted as chairperson. McEachern and Gould allowed MC to remain on the committee and proceeded with candidate interviews. After interviewing EC, however, they agreed with MC to abort the search process and agreed to have Korn Ferry not perform the proprietary candidate evaluations of finalists it had been engaged to perform and not to present the three finalist candidates to the full board to be interviewed. MC, McEachern and Gould presented EC to the full Board of Directors as the choice for CEO, which the individual director defendants approved with little if any deliberation, after having not participated in nor been kept apprised of CEO search activities for months prior.

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15. On or about March 10, 2016, MC was appointed EVP-RED-NYC. In that position, MC became the senior executive at RDI responsible for the development of its valuable New York City properties often referred to as Union Square and Cinemas 1, 2 & 3 (the "NYC Properties"). However, MC has no real estate development experience. She is demonstrably unqualified to hold that senior executive position. As EVP-RED-NYC, MC was awarded a compensation package that includes a base salary of $350,000 and a short-term incentive target bonus of $105,000 (30% of her base salary), and 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. Additionally, the Compensation Committee, consisting of Adams, Kane and Codding, and the Audit and Conflicts Committee, comprised of Kane, McEachern and Wrotniak, in or about March 2016 each approved so-called "additional consulting fee compensation" of $200,000 to MC. In effect, MC was given a $200,000 gift. The Compensation Committee also recommended and the RDI Board of Directors (meaning all of the individual director defendants) also approved payment of $50,000 to Adams for what subsequently was described as "extraordinary services provided to the Company and devotion of time in providing such services." These after-the-fact payments in effect were gifts.

16. On or about May 31, 2016, third parties unrelated to the Cotters made an unsolicited all cash offer to purchase all of the outstanding stock of RDI at a purchase price of $17 per share. That was approximately thirty-three percent (33%) in excess of the prices at which RDI stock was trading at the time. None of the individual director defendants engaged independent counsel or a financial advisor to advise them with respect to the offer. Nor did they undertake any other independent actions to make an informed, good faith determination of how to respond to the unsolicited offer. Instead, they deferred to EC, who allowed the response date in the offer to pass and who subsequently reported to the full Board of Directors orally that internal management had generated a supposed valuation of the Company, which valuation pegged the value of the company at well in excess of both the price at which RDI stock traded and the above market price the third parties offered to buy all outstanding RDI stock. The individual director defendants agreed that the offer was inadequate and agreed to not pursue the offer.

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PARTIES

17. Plaintiff James J. Cotter, Jr. (JJC) is and at all times relevant hereto was a shareholder of RDI. JJC also has been a director of RDI since on or about March 21, 2002. Involved in RDI management since mid-2005, JJC was appointed Vice Chairman of the RDI board of directors in 2007 and President of RDI on or about June 1, 2013. He was appointed CEO by the RDI Board on or about August 7, 2014, immediately after JJC, Sr. resigned from that position. He is the son of the late James J. Cotter, Sr. (JJC, Sr.) and the brother of defendants MC and EC. JJC presently owns 770,186 shares of RDI Class A non-voting stock and options to acquire another 50,000 shares of RDI Class A non-voting stock, and is co-trustee and beneficiary of the James J. Cotter Living Trust, dated August 1, 2000, as amended (the "Trust"), which owns 2,115,539 shares of RDI Class A (non-voting) stock and 1,123,888 shares of RDI Class B (voting) stock. The Trust became irrevocable upon the passing of JJC, Sr. on September 13, 2014.

18. Defendant Margaret Cotter (MC) is and at all times relevant hereto was a director of RDI. MC is engaged in trust and estate litigation against JJC, by which she seeks, among other things, to invalidate a trust document as part of an overall effort by MC and EC to, among other things, procure control of RDI Class B stock sufficient to elect RDI's directors. MC became a director of RDI on or about September 27, 2002. MC is the owner and President of OBI, LLC, a company that provides theater management services to live theaters indirectly owned by RDI through Liberty Theatres, of which MC is President. Commencing in or before the Fall of 2014, MC sought to become an employee of RDI. In particular, MC sought to be the senior person at RDI responsible for development of highly valuable real estate in New York City owned directly or indirectly by RDI, *i.e.*, the NYC Properties. MC opposed the hiring of a senior executive experienced in real estate development. EC with the approval and active assistance of the other individual defendants on or about March 10, 2016, made MC EVP-RE-NYC. As such MC is the senior person at RDI directly responsible for development of the NYC Properties. MC had and has no real estate development experience.

19. Defendant Ellen Cotter (EC) is and at all times relevant hereto was a director of RDI. EC is engaged in trust and estate litigation against JJC, by which she seeks, among other

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things, to invalidate a trust document as part of an overall effort by MC and EC to, among other things, procure control of RDI Class B voting stock sufficient to elect RDI's directors. She became a director of RDI on or about March 13, 2013. EC was a senior executive at RDI responsible for the day-to-day operations of its domestic cinema operations. EC was appointed interim CEO on or about June 12, 2015 and was appointed CEO in January 2016.

20. Defendant Edward Kane (Kane) is and at all times relevant hereto was an outside director of RDI. Kane has been a director of RDI since approximately October 15, 2009. By Kane's own admission, he was made a director of RDI because he was a friend of JJC, Sr., the now deceased father of JJC, EC and MC. By Kane's own admission, he neither had nor has skills or expertise to add value as a director of RDI, except possibly with respect to certain tax matters. Kane has sided with EC and MC in their family disputes with Plaintiff, launching vicious *ad hominem* attacks against those such as Gould who have expressed unfavorable opinions relating to either or both MC and EC, and lecturing JJC about how he (Kane) is implementing Corleone ("Godfather") style family justice in dealing with JJC. Nevertheless, Kane has acknowledged that JJC is the person most qualified to be CEO of RDI. Kane sold all of the RDI options he then owned on or about May 27, 2014.

21. Defendant Guy Adams (Adams) is and at all times relevant hereto was an outside director of RDI. Adams became a director of RDI on or about January 14, 2014. Almost all of Adams' recurring income is paid to him by Cotter family businesses over which EC and MC exercise control. For that reason, among others, Adams is financially dependent on EC and MC. For those reasons and others, including that Adams has a financial interest in assets controlled directly or indirectly by EC and/or MC, Adams was and is not a disinterested director for the purposes of any decision to terminate JJC as President and CEO of RDI or any other decision of interest to EC and/or MC, including matters relating to their compensation. Adams sold all of the RDI options he then owned on or about March 26, 2015. He was paid $50,000 for reported "extraordinary services provided to the Company and devotion in time in providing such services" in or about March 2016, and had been granted options only a few months earlier. Until he resigned in or about May 2016, Adams was at all relevant times a member of the RDI Board of

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Directors Compensation Committee.

22. Defendant Douglas McEachern (McEachern) is and at all times relevant hereto was an outside director of RDI. McEachern became a director of RDI on or about May 17, 2012. McEachern acted to protect and preserve his personal interests, and chose the side of EC and MC in their family disputes with JJC, including by agreeing as an RDI director to threaten and to terminate JJC as President and CEO of RDI, and thereafter by misusing his position as a director to protect and further the personal interests of EC and MC, as well as his own, purposefully acting in ways he knew were detrimental to RDI and its public shareholders, including by pressuring Storey to resign from RDI's Board of Directors.

23. Defendant William Gould (Gould) is and at all times relevant hereto was an outside director of RDI. Gould was appointed a director on or about October 15, 2004. Gould approved minutes for the board meetings at which the subject was the termination of JJC as President and CEO, which minutes Gould knew to contain inaccuracies. Gould failed to cause the Company to correct the materially misleading if not inaccurate Form 8-K filed on or about June 18, 2015. Gould effectively abdicated his responsibilities as a director, including by acceding to the EC Committee, agreeing to the appointment of unqualified persons to the RDI board following effectively no deliberation by him and by participating in the CEO search, which was aborted if not manipulated.

24. Defendant Judy Codding (Codding) at all times relevant hereto was and is an outside director of RDI. Codding became a director of RDI on or about October 5, 2015. Codding supposedly was elected to fill a board seat that had been vacant since August 2014. Codding has never served as the director of a public company and possesses no personal experience in either of RDI's principal businesses, real estate development and cinemas. Plaintiff is informed and believes that Codding was selected by EC and added to the RDI Board of Directors because of Codding's long-standing personal relationship with Mary Cotter, with whom EC now lives. Codding as a director of RDI has acted to advance and protect the personal interests of EC and MC, to the detriment of other RDI shareholders, including by voting to make EC CEO after the CEO search process was aborted, by voting to make MC EVP-RED-NYC, by voting to

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provide MC with what amounted to a $200,000 gift, and by her acts and omissions in response to an offer by a third-party to purchase all of the stock of RDI at a cash price above which it trades in the open market.

25. Defendant Michael Wrotniak (Wrotniak) at all times relevant hereto was and is an outside director of RDI. Wrotniak became a director of RDI on or about October 12, 2015. Wrotniak was elected to fill a board seat that had been vacated by the supposed retirement of former RDI director Tim Storey on October 11, 2015, which so-called retirement in fact was precipitated by EC and MC, with the supposed special nominating committee giving Storey the choice of resigning and receiving a severance package or simply not being nominated to stand for reelection. Wrotniak has never served as a director of a public company and possesses no expertise in either of RDI's principal businesses, real estate development and cinemas. Plaintiff is informed and believes that Wrotniak was added to the RDI Board of Directors because of Wroniak's wife's long-standing close personal relationship with MC. Wrotniak as a director of RDI has acted to advance and protect the personal interests of EC and MC, to the detriment of other RDI shareholders, including by voting to make MC EVP-RED-NYC, by voting to provide MC with what amounted to a $200,000 gift, by voting to make EC CEO after the CEO search process was aborted, and by his acts and omissions in response to an offer by a third-party to purchase all of the stock of RDI at a price above which it trades in the open market.

26. Nominal defendant Reading International, Inc. (RDI) is a Nevada corporation and is, according to its public filings with the United States Securities and Exchange Commission (the "SEC"), an internationally diversified company principally focused on the development, ownership and operation of entertainment and real estate assets in the United States, Australia and New Zealand. The Company operates in two business segments, namely, cinema exhibition, through approximately 58 multiplex cinemas, and real estate, including real estate development and the rental of retail, commercial and live theater assets. The Company manages world-wide cinemas in the United States, Australia and New Zealand. RDI has two classes of stock, Class A stock held by the investing public, which stock exercises no voting rights, and Class B stock, which is the sole voting stock with respect to the election of directors. An overwhelming majority

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(approximately eighty percent (80%)) of the Class A stock is legally and/or beneficially owned by shareholders unrelated to JJC, EC and MC. Approximately seventy percent (70%) of the Class B stock is subject to disputes and pending trust and estate litigation in California between EC and MC, on the one hand, and JJC, on the other hand, and a probate action in Nevada. Of the Class B stock, approximately forty-four percent (44%) is held in the name of the Trust. RDI is named only as a nominal defendant in this derivative action.

27. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants named and identified herein as Does 1 through 100, inclusive, are currently unknown to Plaintiff. Plaintiff, therefore, sues said Defendants by such fictitious names and will amend his Complaint to show their true names and capacities upon ascertaining the same. Upon information and belief, each of the Defendants sued herein as Doe has some responsibility for the damages arising as a result of the matters herein alleged.

ALLEGATIONS COMMON TO ALL CLAIMS

General Background

28. Since approximately 2000, and until he resigned as Chairman and CEO of RDI on or about August 7, 2014, James J. Cotter, Sr. (JJC, Sr.) was the CEO and Chairman of the Board of Directors of RDI. Additionally, JJC, Sr. (according to RDI filings with the SEC, among other things) through the Trust controlled approximately seventy percent (70%) of the Class B voting stock of RDI. As such, JJC, Sr. unilaterally selected and elected the board of directors.

29. For all intents and purposes, JJC, Sr. ran the Company as he saw fit, without meaningful oversight or input from the board of directors. According to Kane, JJC, Sr. "did not seek directors that could add significant value but sought out friends to fill out the 'independent' member requirements." Kane himself acted as if his job as a director was to protect and further the interests of his life-long friend and benefactor, JJC, Sr., not to protect and further the interests of RDI and its shareholders. With the passing of JJC, Sr., Kane also acknowledged that it was "time to change this approach and appoint individuals that could offer solid advice and counsel, such as some NYC real estate people and/or NYC people with political know-how that we might need if we are to develop our valuable assets there."

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30. Recognizing JJC, Sr.'s control of the Company, the board asked that he provide them with a succession plan. He did so in or about December 2006, and the RDI board implemented it. The succession plan was to have JJC assume JJC, Sr.'s position when JJC, Sr. retired or passed, as the case may be.

31. Since 2005, JJC was involved in most RDI executive management meetings and privy to most significant internal senior management memos. JJC was appointed Vice Chairman of the RDI board in 2007. The RDI board appointed JJC President of RDI on or about June 1, 2013, which responsibilities he filled without objection by the RDI board of directors.

32. On or about September 13, 2014, JJC, Sr. passed. Soon thereafter, trust and estate litigation was commenced by his daughters, MC and EC, against JJC, which litigation involved the issue of whether MC or JJC, or both, would serve as trustees of the voting trust that controlled or would control the RDI voting stock previously controlled by JJC, Sr., among other things.

33. As President and CEO of RDI, JJC alienated his sisters because he acted to protect and further the interests of RDI and all of its shareholders, repeatedly rebuffing the efforts of MC and EC to advance their own interests, as well as efforts by Kane and others to protect and further the interests of MC and EC, as well as their own interests, all to the detriment of the Company and its other shareholders. For example, JJC questioned and/or rejected purported expenses EC and MC sought to have RDI pay. In one instance, EC attempted to charge RDI for an expensive Thanksgiving dinner with her mother, sister and sister's children, which effort Plaintiff rejected. In another instance, MC sought to charge RDI for certain expenses of her father's funeral.

34. JJC insisted that RDI employ an executive with experience in real estate development to be the senior person at RDI overseeing RDI's domestic real estate development business, including the NYC Properties. MC resisted. MC wanted to be employed by RDI and to secure lucrative compensation and/or benefits she otherwise would not receive. MC wanted to be the senior person at RDI responsible for development of the NYC Properties. However, she is unqualified to do so. MC has no real estate development experience.

35. Frustrated by Plaintiff's refusal as President and CEO to accede to their demands for titles, positions, promotions, employment contracts and money from RDI, and with MC in

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jeopardy of losing her lucrative consulting arrangement to manage live theater operations due to the Orpheum Theatre debacle described herein, MC and EC agreed to act together and acted to protect and advance their personal interests by seizing and acting to perpetuate control of RDI. To that end, EC secured the agreement of defendants Kane, Adams and McEachern to choose sides in their family dispute with JJC.

36. Kane, Adams and McEachern threatened Plaintiff with termination unless he resolved his disputes with EC and MC on terms dictated by the two of them. When they understood that Plaintiff had acquiesced, they relented. When they learned that he had not acquiesced, they fired Plaintiff as President and CEO of RDI and thereafter acted to perpetuate their control of RDI.

EC and MC Act To Further Their Own Interests; Kane Assists and Does Too

37. Soon after JJC, Sr. passed, EC sought an employment agreement and a promotion. Plaintiff is informed and believes that EC did so in part because she was fearful that JJC, acting to protect and further the interests of the Company, would fire her, notwithstanding the fact that he had never expressed any intention of doing so. Soon after JJC, Sr. passed, EC also sought a raise. The claimed impetus for the requested raise was to qualify for a loan on a Laguna Beach, California condominium.

38. Kane, who has a decade's long quasi-familial relationship with each of MC and EC, who call him "Uncle Ed," acted to ensure that EC would obtain the loan she sought, described above. To that end, Kane, purporting to act as chairman of the RDI Compensation Committee, signed a letter on RDI letterhead to EC's lender that represented that the Committee "anticipate[d] a total cash compensation increase of no less than 20%" for EC "effective no later than January 1, 2015." Despite JJC pointing out that sending such a letter to EC's bank was inappropriate, EC executed the letter on behalf of Kane.

39. Also, in October 2014, Kane prompted the RDI board to provide EC a "bonus" of $50,000, on account of a supposed error by the Company in connection with the issuance of RDI stock options EC had exercised in 2013. No other similarly situated RDI executive received such a "bonus," which was tantamount to a gift or other unearned compensation given to EC from the

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coffers of RDI. With EC as interim CEO and now CEO, the Company, EC and McEachern have taken the opposite position with JJC.

40. Separately, commencing shortly after JJC, Sr.'s death on September 13, 2014, Kane began pressing Plaintiff as President and CEO to recommend to the RDI board, and thereby effectively approve, increases in directors' fees and consideration paid to Kane and other outside board members. Kane and the other outside directors were successful in increasing their compensation, including by way of supposed one-time and/or special fee awards, including as alleged herein.

MC And EC Bring Cotter Family Disputes To RDI

41. Notwithstanding the fact that Plaintiff had been President of RDI since 2013, notwithstanding the fact that JJC, Sr. and the RDI board had implemented a succession plan pursuant to which Plaintiff would succeed JJC, Sr. as CEO of RDI after substantial preparation, and notwithstanding that JJC, Sr.'s testamentary disposition memorialized to EC and MC his intention that JJC serve as President of RDI, MC and EC resisted and sought to avoid reporting to JJC. For example, EC in October 2014 sought to have EC and MC report to an executive committee, not Plaintiff as CEO. Later, when Plaintiff as CEO of RDI sought to engage in substantive communications with MC about the live theater business for which she was responsible, MC refused to have substantive communications with Plaintiff about such matters.

42. The non-Cotter board members, faced with the personal disputes MC and EC had with JJC, including the pending trust and estate litigation, took steps to protect and enhance their personal interests. The RDI board of directors on January 15, 2015 determined to purchase a directors and officers insurance policy (which it never had before) with a limit of $10 million. At the time, they also determined that stock option grants to individual directors made previously would vest immediately and further determined that January 15, 2015 would be the date on which to establish the stock price for option purposes.

43. In a private session of the non-Cotter directors on January 15, 2015, they discussed and agreed upon a course of action put forth by EC and MC which initially was proposed to be the first two paragraphs quoted below, but after discussion became all three. They resolved and

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approved, with Plaintiff, EC and MC abstaining, as follows:

> "The CEO [,JJC,] cannot terminate the employment of Ellen Cotter unless a majority of the independent directors concur with the CEO's recommendation to terminate Ellen Cotter;
>
> The CEO [,JJC,] cannot terminate the existing Theater Management Agreement of Ms. Margaret Cotter unless a majority of the independent directors concurs with the CEO's recommendations to terminate such Theater Management Agreement; and
>
> The CEO [,JJC,] cannot be terminated without the approval of the majority of the independent directors."

JJC Succeeds As President And CEO; MC And EC Continue To Object

44. Plaintiff's work as CEO was recognized as successful by the stock market. RDI stock was trading at $8.17 per share when Plaintiff became CEO but, by approximately the end of 2014, had traded as high as $13.26 per share and, in the Spring of 2015, traded at over $14.45 per share.

45. One analyst described the successes of JJC as President and CEO as follows:

> Management Catalysts
> RDI has historically suffered from a control discount. The dual class structure created a situation where the Cotter family owned approx. 30% of outstanding shares, but 70% of class B voting stock. James Cotter Sr., the longtime CEO, made little effort to promote the company and was slow to monetize assets and unlock the value even though he did acquire assets smartly and did a good job of operating the business. Over the past two years, asset monetization has moved ahead and seems to be a sign of things to come. In early August, James Cotter, Sr., resigned from serving as the Company's Chairman and CEO and recently passed away. Cotter's son Jim has taken over the CEO position. We think that Jim has already been a positive influence in terms of value realization during the last year. We believe that Jim was instrumental in pushing not only the sales of important Australian assets, but also the share buyback. He is also seeking other ways to increase value (e.g. considering ways to further monetize the Angelika brand). We expect the stock will move much closer to fair value once definitive announcements are made around the New York City assets and other smaller asset monetization announcements in the next 12 months. The two New York assets discussed have appreciated significantly in recent years and are a part of the value here. It is also worth noting that RDI also owns other valuable, underutilized real estate (including Minetta Lane Theater, Orpheum Theater, Royal George in Chicago, etc.) that could ultimately be redeveloped and create incremental value for shareholders.

46. After meeting JJC in person in October 2014, one large stockholder commented, "I

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came away from our meeting with a firm view that you care about shareholders and that both you and us will be nicely rewarded over time...I intend to remain a long-term partner. I am confident that if you continue to buy back stock and the investment community begins to believe that you, as a leader, will act in the best interests of shareholders, the stock price will be considerably higher." The stock price did move considerably higher.

47. On June 1, 2013, when JJC was appointed President of RDI, the stock price was only $6.08 per share. By May 31, 2015, The Street Ratings upgraded their recommendation of RDI to a "buy" or "purchase." On June 4, 2015, RDI Class A stock traded in the public marketplace as high as $14.45 per share.

48. MC and EC objected to Plaintiff's on-going, successful efforts as President and CEO of RDI which, though in the best interests of all RDI shareholders, including the public non-Cotter family shareholders, were viewed by MC and EC as not in their personal interests. MC and EC have preferred that the price at which RDI Class A stock traded be artificially depressed and preferred that the conduct of the Board and senior management not be scrutinized.

49. By their actions and statements, including but not limited to their demands for additional compensation and employment agreements, MC and EC made clear that their personal interests were paramount, and that they would act to protect and further their personal interests, to the detriment of the interests of RDI and its other shareholders.

JJC Complies With Board Processes, MC And EC Prompt The Termination of Such Processes

50. In March 2015, the non-Cotter directors appointed director Storey to function as their representative or ombudsman to work with JJC as CEO, including by acting as a facilitator with EC and MC.

51. On behalf of the non-Cotter directors, one or both of Gould and Storey advised MC and EC and Plaintiff that the process the non-Cotter directors had put in place, involving director Storey as ombudsman, would continue through June 2015, at which time an assessment would be made of the situation, including in particular the extent to which each of the three of them had cooperated in the process and had undertaken to improve their working relationships and to

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sustain improved working relationships.

52. From that point forward, Plaintiff worked with director Storey in the manner Storey on behalf of the non-Cotter directors had requested. However, MC and EC did not, including as otherwise averred herein, including by refusing to do certain things requested by Plaintiff, which Storey had agreed were in the best interests of RDI. They also complained to Kane about Storey.

53. Although MC for months had refused to have substantive discussions with Plaintiff about the live theater business operations for which she was responsible, and for months had failed and refused to produce even the most rudimentary of business plans, she nevertheless pushed to be provided an employment agreement with RDI. For example, on May 4, 2015, by which time the Orpheum theater debacle had come to light, and by which time she had provided no business plan whatsoever, she emailed Plaintiff, stating "any idea when this employment agreement of mine that you have been working on for months will be presented?"

The Outside Directors Demand and Receive Money and Stock Options

54. In the same time frame, the non-Cotter directors were seeking additional compensation. In particular, Kane pushed Plaintiff to provide all non-Cotter directors other than director Storey an extra $25,000 for the first six months of 2015, with the understanding "that at year-end we will be asking for an additional payment."

55. With respect to director Storey, who resides in New Zealand and had taken no fewer than a half dozen trips to Los Angeles in furtherance of his role as the representative or ombudsman of the non-Cotter directors in interfacing with Plaintiff, on the one hand, and MC and EC, respectively, on the other hand, Kane's proposal was that Storey receive an additional $75,000 for the first six months of 2015, in recognition of the ongoing time and effort Storey was expending as the representative or ombudsman for the non-Cotter directors.

56. Plaintiff advised Kane that he had some reservations about the additional compensation Kane proposed providing to the non-Cotter directors.

MC's Orpheum Theatre Debacle Puts Her In Jeopardy

57. RDI's Proxy Statement filed with the SEC in connection with the annual meeting of RDI stockholders that occurred in 2014 described MC's role in relevant part as "the President

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of Liberty Theatres, the subsidiary through which we own our live theaters. [MC] manages the real estate which houses each of four live theaters [including the one which is the principle source of revenue, the Orpheum Theatre,] [and as such] secures leases, manages tenancies, oversees maintenance and regulatory compliance on the properties. . . ."

58. MC's diligence and candor, or lack of one or both, were called into question by her handling of the relationship with the Stomp Producers. The Stomp Producers, the tenant at the RDI owned Orpheum Theatre and the source of a majority of RDI's live theater revenues, gave notice on April 23, 2015 of termination of the lease for cause.

59. MC had been aware of the alleged issues raised by the Stomp Producers for months. In particular, by email and correspondence dated February 6, 2015, the Stomp producers wrote to MC and complained "about the maintenance and upkeep of the Orpheum Theatre." They further stated in their February 6, 2015 letter to MC as follows:

> "Nothing in this letter is new to you as we and our employees have been in almost constant contact about recurring problems at the theater, but there is now an urgent need to attend to this matter on an immediate and comprehensive, rather than piecemeal, bases . . . ."

60. Prior to receipt of the April 27, 2015 notice of termination, MC failed to disclose the February 6, 2015 letter or the substance of it or that the Stomp Producers told MC on April 9, 2015 that they were going to vacate the theater or even the situation with the Stomp Producers generally to Plaintiff, to the Company's General Counsel or to any outside member of the RDI board of directors. In doing so, she breached her fiduciary obligations as a director.

61. Upon learning of the Stomp Producer's notice to terminate, director Gould stated an assessment to the effect that MC's handling of the situation (independent of the merits or lack of merits of the claims of the Stomp Producers), including not notifying anyone about the risk that the Company could lose a material portion of its live theater business income, could be grounds for termination.

Kane Chooses Sides in a Family Dispute

62. Responding to complaints by EC and MC about Storey, Kane concluded that JJC had allowed Storey to come between him and his sisters. Kane chose the sisters' side in their

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disputes with JJC. Kane communicated privately with Adams about terminating JJC as President and CEO of RDI.

63. Kane's quasi-familial relationship and visceral support of MC and EC has been evidenced by, among other things, stunning *ad hominem* invectives directed at directors Gould and Storey, as well as by rants to JJC about "The Godfather" and the Corleone family from that series of movies, even including a suggestion that termination of JJC would be analogous to the murder of someone disrespecting a Corleone family member.

Adams Is Beholden To MC And EC

64. In or about 2007 or 2008 (according to Adams' own sworn testimony in a recent divorce proceeding), Adams' business of an activist investor, by which he invested monies he raised privately, failed after he lost approximately seventy percent (70%) of the monies invested with him. Since that time, Adams has been unsuccessful in reviving that business and, for all intents and purposes, has been unemployed. He has described it as a "sabbatical."

65. EC secured Adams' agreement to serve as interim CEO of RDI after termination of JJC. Holding that position would be of value to Adams in terms of any additional compensation he would receive.

66. On or about July 10, 2013, Adams entered into an agreement whereby Adams was to receive, among other things, cash compensation of $1,000 per week from JC Farm Management Inc. ("JC Farm"), a private company JJC, Sr. owned, as well as carried interests in certain real estate projects, including one by the name of Shadow View. Adams has been paid and continues to be paid the $1,000 per week. Together with his income from RDI, those monies are the monies Adams needs and uses to pay for his day-to-day expenses. Adams also received the carried interests. The value of Adams' carried interests in those real estate projects including Shadow View, including whether it will be monetized and the extent to which it will be monetized for the benefit of Adams, like JC Farm, is contended by MC and EC to be the controlled by the estate of JJC, Sr., of which MC and EC presently are the executors.

67. Based on information provided by Adams in sworn statements in a recent divorce proceeding, the $1000 per month together with other amounts paid to him by Cotter entities over

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which EC and MC exercise control or claim to exercise control amounted to over half (50%) of Adam's (claimed approximate $90,000) income in 2013, at a minimum, and possibly amounted to over eighty percent (80%) of that income.

68. Thus, Adams is financially dependent on MC and EC. Practically, Adams has little choice if any but to accommodate and advance the personal interests of MC and EC, including by helping them seize, consolidate and perpetuate control of RDI, including as alleged herein.

69. For such reasons, Adams was and is not independent generally, and was and is neither independent nor disinterested with respect to matters involving the Cotters, including the disputes between MC and EC, on one hand, and JJC on the other, the decision whether to fire JJC, and compensation and employment decisions regarding EC and MC.

70. In or about March 26, 2015, Adams sold all RDI options he then had, including options he had been granted only a few months earlier. He apparently failed to disclose that he owned RDI options in his divorce proceedings.

71. After Adams' financial dependence on income from Cotter-controlled companies was disclosed in this action, director defendant Gould acknowledged that Adams was not independent for purposes of decisions regarding compensation of any of the Cotters, and Adams, on or about May 14, 2016 resigned from the RDI Board of Directors Compensation Committee.

Defendants Other Than Gould Threaten Plaintiff With Termination If He Fails to Resolve Disputes With EC and MC on Terms Dictated By Them

72. On Tuesday, May 19, 2015, EC distributed a purported agenda for an RDI board of directors meeting scheduled for Thursday, May 21, 2015. The first action item on the agenda was entitled "Status of President and CEO[,]" which in fact was the agenda item to raise an issue previously never discussed at an RDI Board of Directors meeting, namely, termination of JJC as President and CEO of RDI. EC purposefully had not previously distributed the agenda earlier. EC purposefully chose the phraseology "status of President and CEO." She did both to conceal the fact that the meeting was specially called to concern the termination of JJC as President and CEO. The agenda was untimely and deficient.

73. Prior to May 19, 2015, each of Adams, Kane and McEachern communicated to EC

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and/or between or among themselves their respective agreement to vote as RDI directors to terminate JJC as President and CEO of RDI.

74. In the face of objections by directors Gould and/or Storey that the non-Cotter directors had not undertaken an appropriate process to make any decision regarding whether or not to terminate the President and CEO of RDI, and a request that the non-Cotter directors meet before the scheduled May 21 meeting, Kane provided a visceral response to the effect that the outside directors did not need to meet, acknowledging the agreement to vote and admitting that even the pretense of process would not be undertaken because "the die is cast."

75. EC and Adams previously had hired counsel ostensibly representing RDI, Akin Gump, and had that counsel attend the May 21 board meeting at which the first and only item discussed was termination of JJC as President and CEO.

76. Faced with a clear record that the non-Cotter directors had failed to undertake any process, much less an appropriate process, to make a decision regarding whether to terminate JJC as President and CEO, Adams sought to have a discussion about a later item on the agenda that arguably related to JJC's performance. Gould objected. JJC recognized that Adams, Kane and McEachern appeared to have previously determined to vote to terminate him, and that the non-Cotter directors previously had put in place a process (described above) that was to play out through the end of June, at least. Because that process had not been completed, any vote by any of the non-Cotter directors to terminate JJC as President and CEO was in derogation of, and pre-empted, their own process. No substantive discussion of the later agenda items, or of JJC's performance, occurred.

77. The supposed May 21, 2015 special meeting was concluded, with no termination vote having been taken.

78. On Wednesday, May 27, 2015, Texas attorney Harry Susman, one of the lawyers representing MC and EC in the trust and estate litigation, transmitted to Adam Streisand, an attorney representing JJC in the trust and estate litigation, a document outlining terms to which JJC was required to agree to avoid the threatened termination as President and CEO of RDI. The proposal was communicated as effectively a "take-it or leave-it" proposal and was accompanied by

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a deadline of 9:00 a.m. on Friday, May 29 to accept the proposal.

79. Also on May 27, 2015, EC emailed RDI directors claiming "that the board meeting held last Thursday was adjourned, to reconvene this Friday, May 29, 2015. The board meeting will begin at **11:00 a.m. at our Los Angeles office.**"

80. By the foregoing actions, among others, MC and EC made clear that accepting their take-it or leave-it proposal, which would have resolved matters in dispute in the trust and estate litigation and dispute about control of RDI, was what JJC had to do to avoid being fired as President and CEO of RDI.

81. Also on May 28, 2015, approximately one day after EC and MC's lawyer transmitted the "take-it or leave-it" proposal and one day before the RDI board was to meet, Kane told JJC to accept the take-it or leave-it offer to "end all of the litigation and ill feelings." Among other things, by email on May 28, 2015, Kane stated as follow to JJC:

> "I have not seen the [take it or leave it settlement] proposal. I understand that it would leave you with your title, which is very important to you and which you told me was essential to any settlement . . . if it is take-it or leave-it, then I STRONGLY ADVISE YOU TO TAKE IT, . . . if we can end all of the litigation and ill feelings, -- and their offer to keep you as CEO as a major concession -- . . ."

82. On Friday, May 29, before the supposed RDI special board of directors meeting commenced, EC and MC met with JJC and told him that the document that had been conveyed by attorney Susman on their behalf two days earlier was a take-it or leave-it offer and that, if JJC did not accept it, the RDI board would terminate him as President and CEO. JJC attempted to discuss proposed changes with them, to which EC and MC responded that they would accept no changes. They repeated that if JJC did not accept the agreement as proposed, JJC would be terminated as President and CEO of RDI.

83. Director Gould shortly thereafter came to JJC's office and said that the majority of the non-Cotter board members (meaning Adams, Kane and McEachern) were prepared to vote to terminate him and that the supposed board meeting was about to commence.

84. JJC entered the conference room where the supposed special meeting was to occur. The supposed meeting was commenced and Adams made a motion to terminate JJC as President

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and CEO. JJC observed that Adams was not independent or disinterested, pointing out that a substantial portion of his income came from Cotter entities controlled by EC and MC, as evidenced by sworn testimony Adams had given in his then-recent divorce proceeding. JJC invited Adams to prove otherwise, to which Adams responded that he did not have to do so. One or more of the non-Cotter directors inquired of Adams' financial relationship to Cotter entities, but Adams declined to provide substantive responses.

85. Director Gould opined that it was not the role of the RDI board of directors to intercede in the personal disputes between EC and MC, on the one hand, and JJC, on the other hand, nor to tip the balance of power in those disputes. He further observed that the board should not intercede in personal disputes or attempt at a minimum to maintain the status quo until the courts resolved the trust and estate litigation, and added that he thought JJC had done a good job.

86. Kane offered more personal invective directed to JJC, including comments to the effect that he thought that JJC had "****ed Margaret over with the changes . . . made to the estate" and that JJC "does not have people skills especially with his two sisters . . ."

87. The five outside directors asked JJC to leave the conference room so that they could talk with EC and MC. Next, JJC was advised that the supposed RDI board meeting would be adjourned until at or about 6:00 p.m. that evening. JJC was told that he had until the supposed meeting reconvened that evening to strike a deal with EC and MC, failing which he would be terminated as President and CEO of RDI when the supposed meeting reconvened.

88. The supposed meeting reconvened at or about 6:00 p.m. on Friday, May 29, 2015, at which time EC reported that she and MC had reached an agreement in principal with JJC. EC read to the RDI Board of Directors portions of the document attorney Susman had transmitted to attorney Streisand on May 27, 2015, including one that provided for an executive committee of the Board of Directors which, she indicated, would be comprised of EC, MC, JJC and Adams, who would be Chairman. EC concluded that, while no definitive agreement had been reached, EC and MC would have one of their lawyers provide documentation to counsel for JJC. Ed Kane offered congratulations and commented favorably about Plaintiff remaining CEO. No termination vote was taken. The supposed special meeting concluded.

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89. On Wednesday, June 3, 2015, attorney Susman on behalf of EC and MC transmitted a new document to JJC's trust and estate attorney Streisand. The document contained new terms previously not discussed, much less agreed, by the parties.

90. On Friday, June 5, 2015, attorney Susman left a message for attorney Streisand, the sum and substance of which was that he (Susman) was awaiting word that JJC had agreed to all of the terms in the document. By that message, attorney Susman implied that the document was a "take-it or leave-it" proposal.

91. On June 8, 2015, JJC advised EC and MC that he could not accept their take-it or leave-it document. MC responded that she would advise the RDI board of directors, referencing the threat to have JJC terminated as President and CEO of RDI if he failed to reach a global agreement (including of all trust and estate litigation matters) satisfactory to EC and MC.

92. On June 9, 2015, in furtherance of important ongoing RDI business, JJC asked for a response from MC with respect to a senior executive candidate to oversee RDI's United States real estate, including development of the NYC Properties, which candidate had been endorsed by senior executives at RDI. MC consistently resisted employing such a person because hiring such a person would preclude her from being the senior person at RDI responsible for overseeing development of the NYC Properties. In response to JJC's email, she called him and said, among other things, "you were supposed to be terminated but for a global settlement . . . bye . . . bye."

93. On Wednesday afternoon, June 10, 2015, EC transmitted an email to all RDI board members (and RDI's general counsel) stating, among other things, that "we would like to reconvene the Meeting that was adjourned on Friday, May 29th, at approximately 6:15 p.m. (Los Angeles time.) We would like to reconvene this Meeting telephonically *Friday, June 12 at 11:00 a.m. (Los Angeles time)* . . ." The email purported to further "confirm [] our meeting of the Board of Directors on Thursday, June 18th . . . We will be distributing Agenda and Board package for this Meeting at the end of this week . . ."

94. On Friday, June 12, 2015, a supposed RDI special board of directors meeting was convened. Following through on their prior threat to terminate JJC if he did not resolve all disputes with EC and MC on terms satisfactory to the two of them, Adams, Kane and McEachern

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each voted to terminate JJC, after McEachern made one last effort to pressure JJC, inviting him to resign rather than be terminated. Storey and Gould voted against terminating JJC as President and CEO. EC was elected interim CEO with the expressed intention of immediately initiating a search for a new President and CEO.

95. Additionally, and notwithstanding the fact that both directors and senior executive officers at RDI had agreed that the Company needed to hire an executive with actual real estate development experience to advise the Company with respect to the NYC Properties, and notwithstanding the fact that at least one candidate acceptable to all but MC had been identified, neither that candidate nor any other person was offered the position to oversee RDI's United States real estate. That is because EC, in one of her first acts as interim CEO, suspended the search for such a person until a new CEO was hired, she stated. EC did so to ensure that MC could retain control of activities related to the NYC Properties.

EC and Others Pressure Plaintiff In An Effort to Force Him to Abandon This Action

96. EC, with the active assistance or knowing acquiescence of MC, Kane, Adams, McEachern and Gould, has taken actions to pressure Plaintiff to abandon this action and cede control of RDI to them. The actions taken to pressure Plaintiff include immediately terminating his access to his RDI email account and to RDI's offices and concocting new "policies" and/or "practices" designed to bring financial pressure to bear on Plaintiff. One such activity is impairing his ability to exercise RDI options and to sell RDI stock in a manner consistent with RDI's historical practices.

97. After the purported termination of Plaintiff on or about June 12, 2015, on EC's recommendation, the RDI Board had approved a new so-called insider trading policy. Plaintiff is informed and believes that this supposed policy was created to impair his ability to generate liquidity through the sale of RDI stock, the principal source of Plaintiff's net worth. Given the extremely limited holdings in RDI stock by any director, officer or employee of RDI other than Plaintiff, this supposed policy enables EC to control the disposition of such shares through the imposition of supposed blackout periods, which she has effectively done, with the assistance of Craig Tompkins. Kane and McEachern, who purportedly oversee compensation related and

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related party matters, each have agreed to and cooperated in efforts to prevent Plaintiff from exercising RDI options and selling RDI shares.

98. In an effort to pressure Plaintiff to abandon this action, and to secure his resignation from the RDI Board of Directors, EC on June 15, 2015 transmitted a letter to Plaintiff in which she claimed that the employment agreement entered into by him as an executive (over a decade after he became a director) required him to resign as a director upon his termination as an officer. That letter claimed that his failure to do so constituted a breach of the referenced employment agreement and threatened to terminate payments and benefits to Plaintiff if he did not resign within 30 days of his termination. Shortly thereafter, the Company terminated the health and medical benefits the Company provides to him, his wife and his three children and also terminated severance payments and other benefits.

EC, MC, Kane and Adams Act to Entrench Themselves and Mislead RDI Shareholders

99. Subsequent to terminating Plaintiff, EC, MC, Kane, Adams and McEachern acted to limit if not eliminate the participation in governance of RDI of JJC and directors Storey and Gould. To that end, a previously inactive executive committee of the RDI Board of Directors has been activated (i.e., the "EC Committee"). It has been repopulated so that EC, MC, Kane and Adams are its only members, with only McEachern able to attend any of its meetings as he wishes. The full authority of the RDI Board of Directors purportedly now is held by the EC Committee. By such actions, EC, MC, Kane and Adams purposely impaired if not eviscerated the functioning of RDI's full Board of Directors, selectively replacing it with the EC Committee as EC saw fit. Separately, McEachern as chairman of the Audit and Conflicts Committee barred directors who were not committee members or at least Plaintiff, from attending committee meetings, ending a longstanding practice of allowing all directors to attend.

100. Other fundamental corporate governance practices and protections at RDI have been altered, circumscribed or eliminated. EC, with the active assistance and/or knowing cooperation of MC, Kane and Adams, manipulated and reduced the flow of information to JJC, Gould and Storey as RDI directors, including by failing to timely distribute drafts of prior RDI board of directors meeting minutes and by failing to provide board packages sufficiently in

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advance of board meetings such that board matters were, to the knowledge of JJC, Storey and Gould, impromptu actions (which had been addressed previously by one or more of EC, MC, Kane and Adams).

101. EC, with the active assistance and/or knowing cooperation of MC, Kane, Adams, McEachern and Gould, has caused RDI to disseminate materially misleading if not inaccurate information to its public shareholders. They have done so in an effort to delay if not avoid discovery of the actions of EC, MC, Kane, Adams and McEachern, and to avoid being held accountable for those actions, whether by way of derivative action or otherwise. Among other things, these defendants caused RDI to disseminate the following press release(s) and/or SEC filings, each of which was misleading if not inaccurate by omission, commission or both:

a. RDI on June 15, 2015 issued a press release stating that its board of directors "has appointed [EC] as interim President and [CEO], succeeding [JJC] . . . ." This press release was misleading because, among other things, it failed to address the circumstances of the purported termination of JJC as President and CEO, much less disclose that he purportedly had been terminated, much less that the purported termination was without cause, or even that JJC had filed this action;

b. On or about June 18, 2015, RDI filed with the SEC a Form 8-K which was materially misleading if not inaccurate in several respects, including that it stated that JJC was "required to tender his resignation as a director of [RDI] immediately upon termination of his employment [, that he had not done so and that RDI] considers such refusal as a material breach of [the] employment agreement [] and has given [JJC] thirty (30) days in which to resign . . ." The employment agreement in question, which is an exhibit to the Form 10-Q for period ending June 30, 2013 filed by RDI with the SEC, on its face not only does not require JJC to resign as a director in the event that he is terminated as an executive officer, but on its face contemplates that he may continue to serve as a director, which position he in fact held for many years prior to becoming an officer and entering into the subject employment agreement. Separately, the employment agreement contains a thirty (30) day cure provision with respect to breaches of the agreement which may constitute a basis for termination of JJC for cause, which defendants do not claim occurred here. Therefore, the characterization in the Form 8-K of what the Company has done for thirty (30) days is misleading both as to what the employment agreement provides and what the Company has done, which in fact is to assert that JJC is breach of an agreement which the Company purports to have terminated previously. Additionally, the Form 8-K is materially misleading in describing this action;

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c. RDI has failed to file a Form 8-K with respect to the EC Committee, which is a development that materially deviates from the prior practices of RDI and RDI's SEC disclosures with respect to those practices.

d. On or about October 13, 2015, RDI filed with the SEC a Form 8-K which was materially misleading if not inaccurate. In particular, the description in that Form 8-K of defendant Storey "retir[ing]" from the RDI Board of Directors is misleading if not inaccurate. As alleged herein, Mr. Storey had been told that he would not be nominated to stand for reelection and he effectively was forced to resign as a director. The Form 8-K also is misleading if not inaccurate insofar as its descriptions of new board members Judy Codding and Michael Wrotniak suggest that their respective experiences described in the Form 8-K, such as Codding having experience in the field of education and/or Wrotniak having "considerable experience in international business, including foreign exchange risk mitigation," were the reasons those two persons were made Directors of RDI. The Form 8-K also is misleading if not inaccurate with respect to those two persons being made directors of RDI because it fails to disclose their respective personal relationships with Cotter family members. As alleged herein, Codding is a personal friend of Mary Cotter and Wrotniak and/or his wife are personal friends of MC.

e. On or about November 13, 2015, RDI filed with the SEC a Form 8-K which was materially misleading if not accurate. It purported to describe the voting results of the 2015 ASM and, in doing so, reflected the (likely purposefully) erroneous results the new inspector of elections, First Coast, have been engaged to provide.

f. On or about January 11, 2016, the Company issued a Form 8-K attaching a press release of that date. The press release included a statement by defendant Gould that said: "After conducting a thorough search process, it is clear that Ellen is best suited to lead Reading moving forward." That statement is materially misleading if not inaccurate, including because it implies erroneously that the selection of EC was the result of a (supposedly) "thorough search process."

g. On or about March 15, 2016, RDI filed with the SEC a Form 8-K which stated, among other things, that the RDI Board of Directors Compensation Committee and its Audit and Conflicts Committee each had approved payment of so-called "additional consulting fee compensation" of $200,000 to MC "for services rendered by her to the Company in recent years outside the scope" of a Theater Management Agreement dated January 1, 2002, between the Company's subsidiary, Liberty Theaters, Inc. and OBI, LLC, an entity wholly-owned by MC. The Form 8-K also stated that the RDI Board of Directors approved "additional special compensation" of $50,000 to be paid to Adams "for extraordinary services provided the Company and devotion of time in providing such services." The Form 8-K was materially misleading if not inaccurate because, among other things, those payments were awarded for reasons other and/or additional to those set in the Form 8-K.

h. On or about July 20, 2016, RDI filed with the SEC a Form 8-K which was materially misleading if not accurate. It purported to describe the voting results

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of the 2016 ASM and, in doing so, reflected the (likely purposefully) erroneous results the inspector of elections, First Coast, have been engaged to provide.

i. On or about July 18, 2016, after failing to file a Form 8-K regarding the offer, the Company issued a press release regarding the offer. It stated that the "Board of Directors, after receiving input from management and its outside advisors, carefully evaluated the [offer]. Following this review, the Board of Directors determined that our stockholders would be better served by pursuing our independent, stand-alone strategic business plan..." The press release was materially misleading if not false because, among other things, no "independent, standalone strategic business plan" has been delivered by management to the Individual Director Defendants, either in connection with the offer or otherwise.

EC, MC, Kane, Adams and McEachern Manipulate the Corporate Machinery of RDI in An Effort to Control the Election of Directors at the 2015 Annual Shareholders Meeting

102. At least approximately forty four percent (44%) of the Class B voting stock of RDI is held in the name of the James J. Cotter Living Trust, which became irrevocable upon JJC, Sr.'s death on September 13, 2014 (the "Trust"). Who has authority to vote the RDI Class B voting stock held in the name of the Trust is a subject of dispute in the California trust and estate litigation between EC and MC, on one hand, and JJC, on the other hand. Plaintiff is informed and believes that, unless EC, MC and JJC as co-trustees of the Trust all agree and provide a unanimous direction to the Company as required under Section 15620 of the California Probate Code, none of them can vote any of those shares in connection with an RDI Annual Shareholders Meeting ("ASM").

103. Plaintiff is informed and believes that EC and MC are aware of the foregoing regarding whether the RDI Class B voting stock held in the name of the Trust properly can be voted at or in connection with RDI's ASM.

104. Plaintiff is informed and believes that EC and MC agreed to act and took actions to increase the number of RDI Class B shares they could vote at RDI's ASM in order to attempt to control that vote without including the Class B voting stock held in the name of the Trust.

a. On or about April 17, 2015, EC and MC exercised options to acquire 50,000 and 35,100 shares of RDI Class B shares, respectively.

b. On or about September 17, 2015, EC and MC, acting as executors of the estate of JJC, Sr., exercised an option to acquire 100,000 shares of RDI Class B voting stock. Despite claiming a need to preserve assets of the

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Estate, EC and MC utilized liquid RDI Class A shares to pay for the exercise of the Estate's option to acquire these illiquid RDI Class B shares.

105. In or about June 12, 2015, Plaintiff was told by RDI that the prior practice of allowing the Compensation Committee of RDI's full Board of Directors to approve the exercise of options had been changed to require that each member of the Board of Directors approve any exercise of options by any director. When Plaintiff on or about June 5 and July 2 sought to exercise two separate tranches of RDI options, processing of his requests was delayed for weeks from the times he gave notice of his election to exercise such options.

106. However, that purported new practice later was reversed or abandoned. Plaintiff is informed and believes that that was because EC and MC, purporting to act as executors of the Estate of JJC, Sr., intended to seek to exercise a supposed option to have the Estate acquire 100,000 shares of Class B voting stock (which they did, as alleged herein). EC and MC feared that JJC as an RDI director would refuse to consent to the exercise of this option controlled by EC and MC as executors of the Estate of JJC, Sr.

107. Two of three members of the Compensation Committee are Adams and Kane. On or about September 21, 2015, Kane and Adams, purporting to act as directors and as members of the Compensation Committee, authorized the request of EC and MC that the Estate be allowed to (use liquid Class A stock to) exercise the supposed option to acquire the 100,000 shares using shares of RDI Class A stock. Kane and Adams did so in derogation of the interests of RDI, which received no benefit from receiving Class A stock (rather than cash), which merely reduced the float of such stock. Plaintiff is informed and believes that Kane and Adams also did so without requiring EC and MC as executors of the Estate to produce documentation establishing the Estate's entitlement to exercise such option, which documentation may not exist. Kane and Adams claimed that they decided to allow EC and MC to exercise the supposed 100,000 share option based on the advice of counsel, including Craig Tompkins. The third director who was a member of the Compensation Committee, Timothy Storey, was unable to attend the supposed meeting of the Compensation Committee because it was called with too little notice.

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108. Plaintiff is informed and believes that EC and MC took such actions because of a concern that, absent the exercise of the supposed option for the Estate to acquire 100,000 shares of RDI Class B voting stock which EC and MC will purport to vote as executors of the Estate, EC and MC might have lacked sufficient votes to control the 2015 ASM and, in effect, unilaterally elect as RDI directors whomever they choose, in view of the requirement of unanimity under California Probate Code Section 15620.

EC And MC Systematically Mislead RDI Shareholders, Including By Failing To Make Disclosures Required By The Federal Securities Laws And By Making Misleading Disclosures.

109. On or about September 24, 2014, MC and EC filed a Schedule 13D with the United States Securities and Exchange Commission (the "SEC"). In that 13D, each of MC and EC indicated that they were not a member of a 13D group and each excluded any and all RDI shares not owned by them, including shares owned by the Trust and shares held by the Estate, from the shares each reported as beneficially owned and/or shares subject to shared voting power.

110. On or about December 22, 2014, EC and MC were appointed in the accompanying Nevada probate action to act as co-executors of the Estate. Plaintiff is informed and believes that they commenced the Nevada probate action at least in part to exercise control as executors of certain Company Class B voting stock.

111. On or about January 9, 2015, MC and EC filed an amendment to the schedule 13D they filed on or about September 24, 2014 (the "13D1"). The 13D1 for the first time identified the two of them as a 13D group. The 13D1 also was filed for the Estate, but it expressly indicates that the RDI Class B voting stock held by the Estate was not stock with respect to which either MC or EC had shared voting power.

112. On or about April 16, 2015, EC exercised one or more options to acquire 50,000 shares of RDI Class B voting stock. She was allowed to do so by using RDI Class A non-voting stock rather than cash. That provided no benefit to RDI. EC did not file the required Form 4 disclosure with the SEC regarding that acquisition of Class B voting stock until on or about October 9, 2015, three days after the record date of October 6, 2015 set for the 2015 ASM.

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113. On or about April 17, 2015, MC exercised options to acquire a total of 35,100 shares of RDI Class B voting stock. She was allowed to do so by using RDI Class A non-voting stock rather than cash. That provided no benefit to RDI. MC did not file the required Form 4 disclosure with the SEC regarding that acquisition of Class B voting stock until on or about October 9, 2015, three days after the record date of October 6, 2015.

114. Plaintiff is informed and believes that in or before April 2015, MC and EC agreed that they would exercise shared voting power of the RDI Class B voting stock held in the name of the Estate together with RDI Class B voting stock held individually by each of them, such that EC and MC together with the Estate were members of a group for the purposes of Schedule 13D.

115. On or about October 9, 2015, EC and MC filed an amended 13D (the "13D2"). The 13D2 disclosed for the first time that EC and MC together with the Estate were members of a group for the purposes of Schedule 13D. Plaintiff is informed and believes that EC and MC purposefully failed to disclose the prior existence of this 13D group until such time as they had exercised an option held by the Estate to acquire an additional 100,000 shares of RDI Class B voting stock and until after the October 6 record date had passed, as part of their scheme to attempt to control over fifty percent (50%) of the Class B voting stock (not including such stock held in the name of the Trust) before the record date for the 2015 ASM. They acquired the 100,000 shares on or about September 21, 2015.

116. The 13D2 filed on or about October 9, 2015 also states that the Trust "is also a member of the group with the Estate, Margaret Cotter and Ellen Cotter" and says that the "Trust has separately filed a report on Schedule 13D on the date hereof." The 13D2 also states that MC and EC have shared voting power with both the Estate and the Trust.

117. On or about October 9, 2015, EC and MC caused the Trust to file a Schedule 13D. That Schedule 13D, like the 13D2, states that the Trust is a member of a group for the purposes of Schedule 13D with the Estate, MC and EC. In response to these late filings as well as others made by the Company, one RDI shareholder representative asked the Board, "Why does this board and management choose to continue to be serial abusers of the securities laws?"

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118. Contrary to what the Schedule 13D filed for the Trust on or about October 9 and the 13D2 imply, EC and MC do not control the shares held in the name of the Trust for voting purposes, shared or otherwise. Plaintiff is informed and believes that such statements made in these two schedule 13Ds (and in the Company's Proxy Statement for the 2015 ASM) were intended by EC and MC (and by Kane, Adams and McEachern) to mislead other holders of RDI Class B voting stock in anticipation of and in connection with the 2015 ASM and the 2016 ASM.

119. Thus, EC and MC systematically have manipulated their disclosure of actual and claimed ownership and control of RDI Class B voting stock for the purposes of misleading RDI shareholders and facilitating their scheme to seize control of RDI and perpetuate their control of RDI. All such actions were purposefully taken by them in derogation of their fiduciary obligations, including the duty of disclosure.

120. Plaintiff is informed and believes that Kane was and Adams and McEachern may have been party to this scheme. Kane and Adams acted to facilitate this scheme, acting as directors and members of the Compensation Committee to effectuate the acquisition by the Estate of 100,000 shares of Class B voting stock, including as alleged herein.

EC, MC, Kane, Adams and McEachern Act to Stack the Board With Others Loyal to EC and MC

121. EC, MC, Kane and Adams have added to the RDI Board of Directors individuals who have had long-standing friendships with EC, MC and/or their mother.

122. On or about August 1, 2015, a couple days before a RDI board meeting, EC as Chairman of the Board included on a Board of Directors agenda an item not previously discussed, proposing to add to RDI's Board an individual purported to have needed and sought after real estate development experience. EC has known this individual over twelve years and has a close, personal relationship with him, his wife and child. However, that individual previously had done business with RDI in a manner that caused harm to RDI. After Plaintiff objected based on these factors, EC reported to the Board that her nominee had withdrawn from consideration.

123. On or about October 3, just days before a board meeting, EC proposed Codding as a director candidate. This prevented directors who had not been informed of this candidate,

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including Plaintiff, Storey and Gould, from genuinely vetting and deliberating about the candidate. Codding has no expertise in either of RDI's two principal business segments, cinema operations and real estate development. Codding also has no experience as a director of a public company.

124. However, Codding maintains a long standing, close personal friendship with Mary Cotter, the mother of EC, MC and Plaintiff. Mary Cotter has chosen the side of EC and MC in the family disputes between EC and MC, on one hand, and JJC, on the other hand. EC currently resides with Mary Cotter.

125. EC, together with Adams, McEachern and Kane, pushed to have Codding added to RDI's Board in advance of the 2015 ASM. On October 5, Codding was made a director on an impromptu basis, after only minutes of supposed deliberation by the Board. Each of defendants other than Storey (and Plaintiff) acquiesced to EC's request and voted to add her to the Board. While Gould said that more time was needed to allow for vetting of Codding, he approved the appointment, effectively acknowledging that he was abdicating his fiduciary responsibilities in order to accommodate EC and/or MC.

126. After Codding's appointment to RDI's Board of Directors was disclosed, one of RDI's shareholder representatives communicated his disbelief over the appointment of someone with no relevant experience and whose activity relating to her employer's alleged violations of the public bidding laws to secure a contract with L.A. Unified School District (LAUSD) to provide iPads to schools allegedly was under scrutiny in a federal criminal investigation, discovered through a simple Google search. None of Kane, Adams, McEachern or Gould had either performed or caused a basic, competent public records search or other such diligence that would have discovered this publicly available information regarding Codding before approving Codding to be a director of RDI. None of Adams, McEachern or Kane therefore were aware of, or at least disclosed to the Board any prior knowledge of, Codding's involvement in such alleged activity prior to voting to add her to the RDI Board. EC knew previously, but did not disclose what she knew.

127. On October 5, 2015, EC announced to the full RDI Board of Directors that a so-called nominating committee comprised of Kane, Adams and McEachern supposedly would

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propose a board slate of nominees for the RDI's 2015 ASM, which has been set for November 10, 2015. RDI's counsel indicated that EC and MC's personal lawyer recommended that EC and MC not be involved in the nominating process and that the Board form a nominating committee for optical reasons, given EC and MC's role as executors of the Estate and trustees of the Trust.

128. EC and MC previously had determined that director Storey would not be nominated to stand for reelection. Each member of the so-called nominating committee agreed to execute the decision of EC and MC to not nominate director Storey to be reelected.

129. Plaintiff is informed and believes that the insistence of director Storey that RDI directors act in the interest of all shareholders, not just EC and MC, and his efforts to do so, account in part for the decision and agreement of EC, MC, Kane, Adams and McEachern to not nominate director Storey to stand for reelection at the 2015 ASM.

130. McEachern and Adams, purporting to act as members of the so-called special nominating committee, pressured Storey to "retire" as a director. Storey acquiesced.

131. The supposed nominating committee, acting at the direction and requests of EC and MC, then selected Wrotniak, who was a candidate about whom EC provided information to the full Board only a couple days before the Board meeting, to replace Storey.

132. Wrotniak does not have expertise in either of RDI's business segments, cinema operations and real estate development. Nor does he possess experience in public company corporate governance. However, Wrotniak is the husband of MC's long-standing best friend. He was chosen because of that friendship. MC and EC expect loyalty from him.

133. The supposed nominating committee selected Wrotniak, notwithstanding the fact that a senior executive with chief financial officer experience at a public, multi-billion dollar real estate services and investment company, experience with Wall Street and years of experience in the real estate industry, expressed a willingness to serve on RDI's Board of Directors. That candidate had been suggested by Plaintiff and had no ties to any of the Cotters.

134. By the foregoing actions, EC, MC, Kane, Adams and McEachern each have continued to misuse the corporate machinery of RDI, including in particular to attempt to rig the

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vote at the 2015 and 2016 ASMs, to entrench and perpetuate themselves in exclusive control of RDI. Gould has acquiesced, at a minimum.

135. On or about October 20, 2015, the Company issued its Proxy Statement for the 2015 ASM scheduled for November 10, 2015. The Proxy Statement is materially misleading if not inaccurate in a number of respects, including the following:

a. It states (at page 10) that, under Nevada law, EC and MC, as two of three trustees of the Trust, have the power to vote all of the RDI Class B voting stock held in the name of the Trust on the books and records of the Company;

b. It states (at page 10) that EC and MC together have the power to vote 71.9% of a Class B voting stock entitled to vote for directors at the 2015 ASM;

c. It states (at pages 10 and 11) that the Company is a controlled company under NASDAQ listing rules;

d. It states (at page 11) that EC has been appointed as interim President and CEO and that the Board has established an Executive Search Committee comprised of EC, MC, Adams, Gould and McEachern which, it says, "will consider both internal and external candidates." Plaintiff is informed and believes that the undisclosed plan is to make EC President and CEO after conducting a search the purpose of which is to create the misimpression of a bona fide process;

e. It states (on page 12) that the "Special Nominating Committee and the Board accordingly considered the views of (EC and MC) with respect to the 2015 Director nominees," when in fact the Special Nominating Committee and every member of the Board other than Plaintiff acted as each understood EC and MC desired;

f. It states (on page 12) that Plaintiff "vot[ed] against each of the recommended nominees (including himself)," which is inaccurate;

g. It describes (on page 15) historical business experience of defendant Adams, as if that experience is the reason he is a director and is nominated for reelection, but fails to disclose his close personal ties to the late JJC, Sr. and to EC

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and MC, fails to disclose Adams' financial dependence on companies and deals controlled by EC and MC and misstates his recent professional activities;

h. It describes (at page 15) professional experience of Judy Codding in the field of education as if that were the reason she was made a director and is nominated for reelection, but fails to disclose her personal relationship with Mary Cotter, the mother of EC and MC, and misstates her recent professional activities;

i. It describes (at pages 15-16) the role of MC with respect to the Company's live theatre operations, and says that she "heads up the re-development process with respect to these properties and our Cinemas 1, 2 & 3," but fails to disclose that MC successfully has ended the search by the Company for an experienced real estate executive to lead its real estate development efforts, in the United States, including for the NYC Properties. Among the reasons MC did so was to create a purported basis for seeking and securing employment with the Company;

j. It describes (at page 16) certain professional experience of Kane, including experience from 1987 and 1988, but fails to disclose his historical and ongoing quasi-familial relationship with EC and MC;

k. It describes (at page 16) certain professional experience of Wrotniak, as if that were the reason he was made a director and is nominated for reelection, but fails to disclose the close personal relationship he and his wife have with MC.

136. On or about May 18, 2016, the Company issued its Proxy Statement for the 2016 ASM scheduled for June 2, 2016. The Proxy Statement was materially misleading if not inaccurate in a number of respects, including the following:

a. It implies (at page 7) that the Company is entitled to determine the identity of the trustees under the so-called Cotter Trust, the right of those trustees to vote under California law and/or that the books and records of the Company identify each of EC, MC and Plaintiff as trustees of the so-called Cotter Trust (the "Trust");

b. It describes (at page 8) the supposed CEO search in a manner that implies that EC timely resigned from the CEO search committee, that that committee relied

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on Korn Ferry and that Korn Ferry evaluated EC as a candidate for the CEO position;

c. It states (at page 9 and elsewhere) that the Company is a controlled company under NASDAQ listing rules;

d. It states (on pages 9-10) that Adams served on the compensation committee through May 14, 2016, but fails to disclose how it came to pass that he resigned;

e. It describes (on page 15) historical business experience of defendant Adams, as if that experience is the reason he is a director and is nominated for reelection, but fails to disclose his close personal ties to the late JJC, Sr. and to EC and MC, and fails to disclose Adams' financial dependence on companies and deals controlled by EC and MC and misstates his recent professional activities;

f. It describes (at page 15) professional experience of Codding in the field of education as if that were the reason she was made a director and is nominated for reelection, but fails to disclose her personal relationship with Mary Cotter, the mother of EC, and MC and her relationship with her employer would be coming to an end and the reasons for such termination;

g. It describes (at page 16) the role of MC with respect to the Company's live theatre operations, and says that she "heads up the re-development process with respect to these properties and our Cinemas 1, 2 & 3," but fails to disclose that MC successfully has ended the search by the Company for an experienced real estate executive to lead its real estate development efforts in the United States, including for the NYC Properties. Among the reasons MC did so was to create a purported basis for seeking and securing employment in such position with the Company;

h. It describes (at page 16) certain professional experience of Kane, including experience from 1987 and 1988, but fails to disclose his historical and ongoing quasi-familial relationship with EC and MC;

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i. It describes (at page 16) certain professional experience of Wrotniak, as if that were the reason he was made a director and is nominated for reelection, but fails to disclose the close personal relationship he and his wife have with MC.

The CEO Search is Aborted, Manipulated or Both, and EC is Selected

137. At a Board meeting on or about June 30, 2015, EC was empowered to select an outside search firm to search for a new, permanent President and CEO for RDI. EC selected EC, MC, McEachern and Gould as members of a CEO search committee. EC functioned as the chairperson of the committee until she resigned, as described below.

138. On or about August 4, 2015, EC reported to the Board that she had selected Korn Ferry to be the outside search firm. A stated and accepted rationale for selecting Korn Ferry was that Korn Ferrry would perform a proprietary detailed assessment of the finalists for the position of President and CEO of RDI. The full Board had been told that each of the three finalists would be presented to the full Board to be interviewed.

139. Korn Ferry interviewed each of the four members of the CEO search committee and Craig Tompkins, as well as other persons EC and/or MC had Korn Ferry interview and, based on those interviews and further communications with some of those people, Korn Ferry created a "position specification" document. The stated purpose of the document was to list qualifications and characteristics that had been agreed to as those that would be used to select candidates and, ultimately, a new President and CEO.

140. Finally, on or about November 13, 2015, an initial set of interviews of CEO candidates was set to occur. Shortly before those interviews were to commence, EC allegedly announced to the other members of the CEO search committee that she was a candidate for the positions of President and CEO. At that point, she purportedly resigned from the committee. Plaintiff is informed and believes that EC had considered being a candidate well before the initial set of interviews, but chose to not disclose that.

141. At that point, McEachern, Gould and MC had no discussions about whether MC should or could continue to serve on the committee, in view of the fact that her sister was a candidate. Nor did the committee or any of them seek the advice of outside counsel with respect

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to that subject or any other issue related to EC declaring her candidacy after having directed Korn Ferry for months.

142. After on or about August 4, 2015, neither EC nor the CEO search committee provided any reports regarding the (supposed) CEO search to the full Board until mid-December 2015. That was so in spite of requests by Storey and Plaintiff for reports or updates.

143. McEachren, Gould and MC in November and December interviewed several CEO candidates. They identified at least one and possibly two of them as finalists. They also interviewed EC. After interviewing EC, the three of them preliminarily agreed that she was their choice to be CEO. They also agreed that Korn Ferry would be instructed to cease further work.

144. McEachern, Gould and MC then conducted a conference call during year-end holidays, confirmed their choice of EC and charged Tompkins with summarizing their reasons. Tompkins did so. The stated reasons for selecting EC did not match or even approximate the qualifications and characteristics that were summarized in the "position specification" document prepared by Korn Ferry.

145. Korn Ferry did not perform its proprietary special assessment of EC or of any other candidate.

146. On or about January 8, 2016, McEachern, Gould and MC presented EC to the full Board of Directors as their selection to be the President and CEO of RDI. With little if any deliberation, and with little if any information regarding the search and/or other candidates other than a summary provided to them just days prior to meeting, each of the director defendants agreed and voted to make EC President and CEO.

147. On or about January 11, 2016, the Company issued a Form 8-K attaching a press release of that date. The press release included a statement by defendant Gould that said: "After conducting a thorough search process, it is clear that Ellen is best suited to lead Reading moving forward." That statement is materially misleading if not inaccurate, including because it implies erroneously that the selection of EC was the result of a (supposedly) "thorough search process."

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The Director Defendants Commence Looting The Company

148. Following the 2015 ASM in November 2015, by which the individual defendants secured effectively unfettered control of the Company, and following the appointment of EC as President and CEO in January 2016, the individual defendants turned their attention to the subjects of employment, titles and compensation.

149. On or about March 10, 2016, MC was appointed EVP--RED – NYC on EC's recommendation as President and CEO. In that position, MC became the senior executive at RDI responsible for the development of its valuable NYC Properties. However, MC has no real estate development experience. She is unqualified to hold that senior executive position.

150. As EVP--RED – NYC, MC was awarded a compensation package that includes a base salary of $350,000 and a short-term incentive target bonus of $105,000 (30% of her base salary), and 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.

151. Additionally, the Compensation Committee, comprised of Adams, Kane and Codding, and the Audit and Conflicts Committee, comprised of Kane, McEachern and Wrotniak, in or about March 2016 each unanimously approved so-called "additional consulting fee compensation" of $200,000 to MC. Each of the Individual Director Defendants (with EC and MC abstaining) approved this $200,000 payment to MC. In effect, MC was given a $200,000 gift.

152. At the request of EC, the EC Committee requested the Compensation Committee to review executive compensation. The result was that EC as President and CEO received a new compensation package. If all bonuses available are paid to her, she will be paid over three times what Plaintiff was paid as President and CEO.

153. The Compensation Committee also recommended and the RDI Board of Directors (meaning all of the individual director defendants) also approved so-called "additional special compensation" of $50,000 to Adams. This after-the-fact payment in effect was a gift.

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The Non-Cotter Director Defendants Effectively Ignore a Third Party Cash Offer to Buy All of the Outstanding Stock of RDI at a Price in Excess of the Market Price

154. On or about May 31, 2016, EC as Chairman, President and CEO of RDI and each director received an unsolicited offer from a third party to purchase, for all cash, all of the outstanding shares of RDI stock, meaning all Class A nonvoting shares and all Class B voting shares (the "Offer"). This Offer was sent to EC and the other board members shortly after an RDI employee reporting to EC reported to the third party that the Company was not for sale after such third party indicated an interest in buying the Company. The proposed cash purchase price was $17 per share. That price represented an approximate thirty-three percent (33%) premium over the prices at which RDI stock was then trading in the open market.

155. The Offer to purchase all of the outstanding shares of RDI stock expressly allowed for the possibility that, following due diligence, the Offer price might be increased from $17 per share. The Offer indicated that a response to it was needed no later than June 14, 2016. The Offer also indicated that those making it did not intend to make it public at the time.

156. EC distributed the Offer to members of the RDI Board of Directors on or about May 31, 2016. The Board of Directors met with respect to the Offer on Thursday, June 2, 2016. The Board agreed to meet the following week to determine whether and how to respond to the Offer, after management distributed to Board members a business plan and materials relating to the value of the Company.

157. The RDI Board of Directors did not reconvene with respect to the Offer until June 23, 2016. No business plan and no materials relating to the value of the Company were provided to Board members in advance of or at the June 23, 2016 meeting. Nor were any other materials relevant to assessing the Offer provided. EC made an oral presentation concluding that RDI was worth a price dramatically in excess of the Offer price and recommended that RDI pursue its (supposed) long-term business plan. All of the individual director defendants agreed that an Offer of $17 per share was inadequate. Plaintiff abstained in view of management's failure to provide information promised to be delivered before the meeting.

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158. Neither EC nor anyone acting at her direction or request has ever provided a strategic or long-term business plan for the Company to the RDI Board of Directors.

159. In connection with determining whether and, if so, how to respond to the Offer, none of the non-Cotter director defendants indicated that they had and, on information and belief, Plaintiff alleges that they had not, consulted with outside independent counsel, outside independent financial advisers such as investment bankers, or anyone else on whom directors are entitled to rely in determining in good faith whether and, if so, how, to respond to such an offer.

160. Plaintiff is informed and believes and thereon alleges that each of the non-Cotter directors, in determining whether and, if so, how to respond to the Offer, made their respective decisions largely if not entirely on their understanding of what they understood EC and MC (as supposedly controlling shareholders) wanted to do or not do in response to the Offer.

161. Plaintiff is informed and believes and thereon alleges that neither EC nor MC consulted with outside independent counsel, outside independent financial advisers such as an investment bank, or anyone else on whom directors are entitled to rely in determining in good faith whether and, if so, how, to respond to such an Offer. Plaintiff is further informed and believes and thereon alleges that neither EC nor MC in good faith even considered accepting the Offer, pursuing discussions with the offerors or taking any other steps that would amount to anything other than rejection of the Offer.

162. None of the individual director defendants made an informed, good-faith determination of what was in the best interests of RDI and its stockholders in responding to the Offer. None of the individual director defendants made a good faith determination of whether, much less that, RDI with its present senior management, including EC as CEO and MC as EVP-RED-NYC, could, much less would, deliver value or achieve results that approximated, much less resulted in, RDI trading at the price or value EC told the Board of Directors on June 23, 2016 that management had ascribed to the Company. Plaintiff is informed and believes and thereon alleges that none of the individual director defendants took any actions to test or to verify any of the oral presentation by EC regarding the supposed value of the Company.

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RDI and RDI Shareholders are Injured

163. When the individual defendants' complained of conduct became publicly known and disseminated, the price at which RDI stock traded dropped, evidencing injury to RDI and resulting in monetary damages to RDI and to RDI stockholders. One or more directors or officers of RDI observed at or about the time that this had occurred. Those damages are estimated to be in the millions of dollars. When subsequent complained of actions of the individual defendants, including to stack the RDI Board, became publicly known, RDI stock prices dropped again. When the Offer described above was (belatedly) disclosed by the Company on or about July 18, 2016, the price at which RDI stock traded increased, evidencing injury and damages resulting from the individual director defendants' complained of conduct.

164. The individual defendants' complained of conduct has resulted in injury to and impairment of RDI's reputation and goodwill. The consequences of such damage include diminished ability to attract and retain qualified senior executives, increased costs if able to do so, an impaired ability to effectuate transactions that may involve use of Company stock as consideration, diminished willingness of institutional investors to buy and to hold RDI stock and other impairment of and increased costs to conduct RDI's business. Increased costs include payment of unnecessary and/or excessive consulting fees, payment of duplicative or redundant compensation and payment of increased professional costs, including audit and legal fees.

165. The individual defendants' complained of conduct effectively has eliminated important rights of shareholders, including the right to be timely informed of material developments, the right to not be misled, the right to rely on timely and accurate SEC filings and the right to have elections for directors that are not manipulated and not rigged.

166. The individual defendants' complained of conduct constitutes waste and has caused monetary damages to RDI, including what amounted to a gift of $50,000 to EC, a $200,000 gift to MC and a $50,000 gift to Adams. Likewise, the engagement and payment of Korn Ferry, which was used to create a misimpression of a *bona fide* CEO search, but which was not used to identify or evaluate EC, who was selected by MC, McEachern and Gould without input from Korn Ferry, which they instructed to cease work, also amounts to waste of at least the monies paid to Korn

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Ferry.

167. In taking the actions complained of herein, the individual defendants have wasted if not appropriated corporate opportunities and wasted corporate assets. In particular and without limitation, they have failed to act in good faith and on an informed basis to determine how to monetize the Company's valuable real estate assets, including the NYC Properties. Instead, they have chosen to not take such steps but rather to hire MC to "keep the ball in the air," so that there is a pretext to employ her in the position in which is now employed, which she is wholly unqualified to fulfill. In doing so, they have caused the Company to spend and continue to spend substantial sums of money, believed to be at least in the millions of dollars, to pay outside consultants because the Interested Director Defendants effectively acquiesced to MC's insistence that RDI not hire an executive experienced in real estate development, and because all of the individual defendants instead approved hiring MC as EVP-RED-NYC. The extra monies paid to outside consultant is believed to be in the millions of dollars.

168. The failure of the individual defendants to undertake to make an informed, good faith determination of what was in the best interests of RDI and its stockholders in responding to the Offer described above has resulted in injury to RDI and each of the stockholders. That injury includes lost opportunity of each and every RDI stockholder to decide for himself, herself or itself whether to sell his, her or its RDI stock at a price in excess of the price at which it trades in the open market.

Demand Is Excused

169. Insofar as any or all of the claims made herein are derivative in nature, demand upon the RDI board is excused because, among other things, as to each matter complained of herein, a majority if not all members of RDI's Board of Directors except Plaintiff (and in certain instances former director Storey) took and/or approved the complained of conduct. They therefore are unable to exercise independent and disinterested business judgment in responding to a demand, including because the actions giving rise to this action alleged herein were not undertaken honestly and in good faith in the best interests of RDI, much less the product of a valid exercise of business judgment.

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170. Each and all of the RDI board members named as defendants herein would be materially affected, either to their benefit or detriment, by a decision of the RDI board with respect to any demand, and would be so affected in a manner not shared by the Company or its stockholders, including for the reasons alleged herein.

171. Additionally, as to each and all matters complained of herein, a majority if not all of the director defendants is and would be unable to exercise independent and disinterested business judgment responding to a demand because, among other things, doing so would entail assessing their own liability, including possibly to the Company. The same is true particularly with respect to the non-Cotter directors, who lack independence and lack disinterestedness, including for the reasons alleged herein, including but not limited to Adams' financial dependence on companies controlled by EC and MC, Kane's quasi-familial relationship with EC and MC, McEachern's and Gould's fiduciary breaches and Codding and Wrotniak's personal relationships with Cotter family members.

172. Additionally, notwithstanding the foregoing allegations, each of Adams, Kane and McEachern lack disinterestedness and independence because each has affirmatively chosen, without any obligation to do so and in derogation of their fiduciary obligations as directors of RDI, to pick sides in a family dispute involving trust and estate litigation between Plaintiff, on one hand, and EC and MC, on the other hand, and to misuse their positions as directors in doing so. Like MC and EC, in so acting, they did not act honestly and in good faith in the best interests of RDI. Additionally, in voting to give EC and MC positions for which they are unqualified, and corresponding compensation packages, and in failing to take steps to make an informed, good faith decision regarding the Offer to purchase all RDI stock at a premium, and instead effectively deferring to EC and/or MC, each of the director defendants, including Codding and Wrotniak, acted in derogation of the fiduciary duties they owe to RDI and its other shareholders.

FIRST CAUSE OF ACTION

(For Breach of Fiduciary Duty – Against All Defendants)

173. Plaintiff repeats and realleges paragraphs 1 through 172, inclusive, of this complaint and incorporates them herein by this reference as though set forth in full.

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174. Each of the individual defendants at times relevant hereto was a director of RDI. As such, each owed fiduciary duties to RDI and to Plaintiff and other RDI shareholders, including fiduciary duties of care, candor, disclosure, good faith and loyalty to RDI.

175. The duty of care owed by each of these defendants entails, among other things, an obligation to exercise the requisite degree of care in the process of decision making as a director and to act on an informed basis.

176. The duty of care further requires, among other things, that these directors do not act with undue haste, a lack of board preparation or a failure of deliberation with respect to the merits of any and every supposed business decision.

177. By the conduct described herein, each of the individual defendants (insofar as he or she was a director at the time) breached their respective duties of care and good faith. Each did so as alleged herein, including by, among other things, the following:

a. They failed to engage in any process to assess the skills and performance of Plaintiff as President or as CEO in connection with the decision to threaten to terminate and to terminate him, and instead pre-empted an ongoing process;

b. They abdicated, or caused other directors to abdicate, their fiduciary responsibilities as directors by creating and acting through the EC Committee;

c. They failed to take steps to cause, much less assure, that persons added to the RDI Board possessed any qualifications other than personal relationships with one or more members of the Cotter family;

d. They failed to take actions to cause, much less assure, a *bona fide*, fair and un-manipulated search for a new President and CEO to occur;

e. They failed to take and/or delayed taking action, after having been informed of the financial dependence of Adams on Cotter family businesses for income, to eliminate or even circumscribe Adam's authority as a director or as a member of the Compensation Committee responsible for determining compensation to EC and MC;

f. They failed to take actions to enable themselves to make an informed, good faith decision regarding whether to respond to the Offer, and if so, how, and instead did what they thought EC, MC or both wished.

178. As a direct and proximate result of the acts and omissions of said defendants as

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described herein, Plaintiff and the Company and its other shareholders have suffered injury and continue to suffer injury as alleged herein.

179. Plaintiff cannot ascertain at this time the full nature, extent or amount of damages, which are in excess of $50,000, suffered by virtue of the complained of conduct of said defendants. Plaintiff will amend this complaint and set forth said damages when they are ascertained, according to proof at trial.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)

180. Plaintiff repeats and realleges paragraphs 1 through 172, inclusive, of this complaint and incorporates them herein by this reference as though set forth in full.

181. Each of the individual defendants at times relevant hereto were directors of RDI. As such, each owed fiduciary duties, including fiduciary duties of care, candor, disclosure, good faith and loyalty, to the Company, to Plaintiff and to other RDI shareholders.

182. The duty of loyalty includes the obligation to not use their positions of control of the Company, including in particular as directors, to further their own personal or financial interests or the personal or financial interests of another of them to the detriment of the interests of the Company and its shareholders.

183. By the conduct described herein, each of these defendants have undertaken to further their own interests or the interests of another of them, to the direct, immediate and ongoing detriment of the Company, Plaintiff and each of its other shareholders. That conduct includes, but is not limited to, the following:

a. Threatening to terminate Plaintiff as President and CEO if he did not strike a resolution of trust and estate disputes with EC and MC on terms satisfactory to the two of them;

b. Terminating Plaintiff as President and CEO of RDI after he did not strike a resolution of trust and estate disputes with EC and MC on terms satisfactory to the two of them;

c. Repopulating and activating an executive committee where none was needed and where the effect, if not the purpose and effect, was to prevent

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Plaintiff, Storey and Gould from fully participating as members of the RDI Board of Directors;

d. Allowing EC to direct the (supposed) search for a permanent President and CEO, allowing MC to participate, including in particular following the disclosure by EC that she was a candidate, and by effectively firing Korn Ferry in order to assure the selection of EC and selecting EC;

e. Awarding EC and MC positions they were not qualified to hold, and by gifting monies to EC, MC and Adams; and

f. As to all individual defendants other than EC and MC, choosing not to take any actions such as employing independent counsel or financial advisors to advise them regarding whether and, if so, how to respond to the Offer, but instead relying on untimely, incomplete and/or inadequate information provided by a conflicted EC and by effectively deferring to EC, MC or both of them;

g. As to all individual defendants other than EC and MC, abdicating their fiduciary responsibilities to the Company and shareholders other than EC and MC; and

h. As to EC and MC, misusing their position as purportedly controlling shareholders to usurp or attempt to usurp the authority of the RDI Board of Directors.

184. By reason of the foregoing, each of the individual defendants has breached their fiduciary obligations, and in particular their fiduciary duties of good faith and loyalty, to the Company and to Plaintiff and all other shareholders of the Company.

185. As a direct and proximate result of the acts and omissions of said defendants as described herein, Plaintiff and the Company and its other shareholders have suffered injury and continue to suffer injury as alleged herein.

186. Plaintiff cannot ascertain at this time the full nature, extent or amount of damages, which are in excess of $50,000, suffered by virtue of the complained of conduct of said defendants. Plaintiff will amend this complaint and set forth said damages when they are ascertained, according to proof at trial.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty—Against All Defendants)

187. Plaintiff repeats realleges paragraph 1 through 172, inclusive, of this complaint and

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incorporates them here in by this reference as though set forth in full.

188. Each of the defendants at times relevant hereto was a director of RDI. As such, each owed fiduciary duties to RDI and to its shareholders, including Plaintiff, including the duties of care, candor, disclosure, good faith and loyalty.

189. The duties of candor and disclosure require that the Individual Director Defendants each cause the Company to make timely, accurate and complete disclosures of information to its shareholders.

190. By the conduct described herein, including in particular but not limited to causing or allowing RDI to disseminate untimely and materially misleading if not inaccurate information, in SEC filings and/or by press releases, each of the individual defendants has breached his or her duties of candor and disclosure.

191. As a direct and proximate result thereof, the Company and its shareholders have suffered injury and continue to suffer injury is alleged herein.

192. Plaintiff cannot ascertain at this time the full nature, extent amount of damages suffered by virtue of the complained of conduct of said defendants.

FOURTH CAUSE OF ACTION

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

193. Plaintiff repeats and realleges paragraphs 1 through 192, inclusive, of this complaint and incorporates them herein by this reference as though set forth in full.

194. Insofar as any or all of Defendants contend that the decision to terminate Plaintiff as CEO and President was made based upon a vote of the non-Cotter directors, and independent of the fact that such vote was legally ineffectual, the fiduciary breaches alleged above were solicited and aided and abetted by MC and EC.

195. As alleged more fully herein, EC and MC had solicited and assisted the actionable conduct of defendants Kane, Adams and McEachern, including in particular but not limited to the threat by the three of them to terminate JJC as President and CEO of RDI if, in the few hours between the adjournment of the supposed RDI board meeting on Friday, May 29, 2015 the resumption of that supposed meeting at or about 6:00 p.m. that evening, JJC did not reach a global

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settlement agreement with EC and MC, meaning agree to their take-it or leave-it agreement or any other such agreement they would demand he accept.

196. EC and MC further solicited and aided and abetted the decisions and actions of defendants Adams, Kane and McEachern to terminate JJC as President and CEO of RDI.

197. EC and MC further prompted and aided and abetted the fiduciary breaches of other directors as alleged herein, including but not limited to matters as to which EC, MC or both abstained or otherwise did not vote, including votes regarding their employment at RDI.

198. Each of EC and MC have acted with knowledge of the fiduciary obligations of the five outside directors. Each of EC and MC have acted with knowledge of the manner in which those fiduciary obligations were breached, and aided and abetted and continue to aide and abet said breaches. Accordingly, each of EC and MC are liable for aiding and abetting those fiduciary breaches.

199. As a direct and proximate result of the acts and omissions of said defendants as described herein, Plaintiff and the Company and its other shareholders have suffered injury and continue to suffer injury as alleged herein.

200. Plaintiff cannot ascertain at this time the full nature, extent or amount of damages, which are in excess of $50,000, suffered by virtue of the complaint of conduct of said defendants. Plaintiff will amend this complaint and set forth said damages when they are ascertained, according to proof at trial.

Irreparable Harm

201. As a result of the ongoing acts of Defendants, the Company, Plaintiff and other RDI shareholders have suffered and will continue to suffer immediate and ongoing irreparable injury for which no adequate remedy at law exists, including as alleged herein. Accordingly, Plaintiff is entitled to relief restraining Defendants, and each of them, from continuing their course of conduct and undertaking further actions in derogation of their fiduciary obligations, and to an order and judgment finding that the actions undertaken to date, including to threaten JJC with termination and thereafter terminate JJC as President and CEO of RDI, as well as their actions undertaken in furtherance of the self-dealing and entrenchment scheme alleged herein, are legally ineffectual and

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of no force and effect, will be enjoined, or both.

202. In particular, unless such injunctive relief is granted, Plaintiff, the Company and other shareholders will suffer irreparable harm for which no adequate remedy at law exists.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them, jointly and severally, as follows:

1. For relief restraining and enjoining Defendants from taking further action to effectuate or implement the (legally ineffectual) termination of Plaintiff as President and CEO of RDI;

2. For a determination that the purported termination of Plaintiff as President and CEO of RDI was legally ineffectual and is of no force and effect;

3. For entry of an order that:

a. Finds that that EC, MC, and one or more of Kane, Adams and/or McEachern lacked the requisite disinterestedness and/or lacked independence and/or failed to act with the requisite disinterestedness and/or independence in voting (and purporting to act as) directors of RDI to remove Plaintiff as President and CEO of RDI, finds that actions to remove Plaintiff as President and CEO were void or voidable and declares such action voided and legally ineffectual, such that Plaintiff is restored to and EC is removed from the positions of President and CEO of RDI (unless and until such time as he resigns or is removed by way of proper and legally enforceable procedure);

b. Enjoins the individual defendants and each of them, and their agents, from any and all actions to circumvent, impair the function of or render ineffective RDI's full Board of Directors, including in particular but not limited to any and all actions to (i) delay the delivery of draft minutes of RDI Board of Directors meetings and/or cause minutes to be edited or revised to suit the litigation purposes of any or all of EC, MC, Kane, Adams and McEachern, (ii) cause the failure or untimely delivery of agendas and materials to be used at RDI Board of Directors meetings, (iii) cause

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minutes of RDI Board of Directors meeting to be inaccurate, misleading or incomplete, (iv) cause the EC Committee or any other committee of the Board of Directors (other than its audit and compensation committees in the ordinary course of business) to take any actions, to make any decisions or to otherwise act or fail to act in place or in lieu of the full Board of Directors with respect to any and all decisions of the type or nature that can be made by RDI's Board of Directors (rather than by its senior executives), and (v) put any member of RDI's Board of Directors in a position of making any decision on an informed basis, in good faith and with the best interests of all RDI shareholders in mind;

c. Directs RDI and the individual defendants to make such corrective disclosures as are determined by the Court to be appropriate, with such disclosures required to be made in advance of RDI's 2017 ASM or, alternatively, orders that the 2017 ASM to be postponed pending such corrective disclosures;

d. Enjoins the individual defendants and each of them, and their agents, from manipulating the 2017 ASM, including by entering an order sterilizing or voiding any vote they cast at or in connection with the 2017 ASM of the 100,000 shares of Class B voting stock that were the subject of an option purportedly exercised in or about September 2015 and any shares of Class B voting stock held in the name of the Trust on the Company's stock register; and

e. Requires that nominees for RDI's Board of Directors have *bona fide* qualifications to serve on the board of a public company engaged in RDI's two principal business segments, cinemas and real estate development.

4. For judgment against each of the Defendants for breach of their respective fiduciary obligations;

5. For actual and compensatory damages incurred by RDI and/or by Plaintiff and against each of Defendants in an amount according to proof at trial;

6. For costs of suit herein; and

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7. For such other and further relief as the Court may deem just and proper.

DATED this 2nd day of September, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

/s/ Mark G. Krum
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VERIFICATION OF JAMES J. COTTER, JR. OF SECOND AMENDED VERIFIED COMPLAINT

I, James J. Cotter Jr., declare as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein. Pursuant to all applicable laws, I swear as follows:

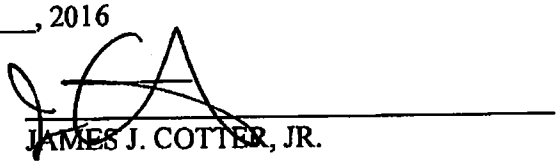
2. As a shareholder of Reading International, Inc. ("RDI"), I am plaintiff in the above-captioned action.

3. As stated in the Second Amended Verified Complaint (the "First Amended Complaint"), I am and at all times relevant to this action have been a shareholder of nominal defendant RDI.

4. I have read the Second Amended Complaint and am familiar with the contents thereof. The factual allegations therein are true based upon my personal knowledge, except for those matters set forth upon information and belief, which I believe to be true, as well.

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

DATED this 31 day of August, 2016



JAMES J. COTTER, JR.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2016, I caused a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** 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/ Judy Estrada
An employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca ROTHGERBER CHRISTIE
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75053

JAMES J. COTTER, JR., derivatively on behalf of READING INTERNATIONAL, INC.,	)	
Appellant/Cross-Respondent,	)	
vs.	)	
EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, and MICHAEL WROTNIAK,	)	District Court No. A-15-719860-B, jointly administered with No. P-14-082942-E
Respondents/Cross-Appellants,	)	
and	)	
READING INTERNATIONAL, INC., a Nevada corporation,	)	
Respondent.	)	

DOCUMENTS PERTAINING TO ITEM NUMBER 27 OF RESPONDENTS'/CROSS-APPELLANTS' JOINT DOCKETING STATEMENT – PART 2 OF 3

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EXHIBIT 2

Electronically Filed
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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) **MOTION FOR RECONSIDERATION OR CLARIFICATION OF RULING ON MOTIONS FOR SUMMARY JUDGMENT NOS 1, 2, AND 3 AND GOULD'S SUMMARY JUDGMENT MOTION** **AND** **APPLICATION FOR ORDER SHORTENING TIME**

Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court under EDCR 2.24(b) to reconsider and/or clarify the Court's ruling on the individual defendants' motions for partial summary judgments Nos. 1 and 2 ("Partial MSJ Nos. 1 and 2") and William Gould's motion for summary judgment ("Gould MSJ"). Plaintiff further moves the Court under EDCR 2.26 for an Order shortening time to notice and hear this Motion.

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By: _____

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DECLARATION OF AKKE LEVIN IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

I, Akke Levin, declare:

1. I am an attorney with Morris Law Group, counsel for Plaintiff James J. Cotter, Jr. I have personal knowledge of the facts stated in this declaration except as to those stated on information and belief, which facts I have investigated and believe to be true. I would be competent to testify to them if called upon to do so.

2. On December 11, 2017, the Court heard oral argument on the defendants' motions for summary judgment and some of the parties' motions *in limine*. The Court granted Partial MSJ No. 1 regarding Plaintiff's termination and reinstatement; Partial MSJ No. 2 regarding director independence; and Partial MSJ No. 3 regarding the unsolicited Patton Vision offer as to five of the eight defendants. The Court also granted defendant William Gould's MSJ on all claims. The Court further ruled in favor of Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak on all four of Plaintiff's breach of fiduciary duty claims asserted against them.

3. During the December 11 hearing, the Court set January 8, 2018 as the trial start date.

4. Good cause exists under EDCR 2.26 to shorten the time for notice and hearing of this Motion for Reconsideration and Clarification because trial is less than fourteen business days away, and the issues raised by this Motion have substantial impact on trial preparation and the scope of issues and claims remaining for trial. Plaintiff's counsel is available any day of the week of December 18, 2017.

5. This Motion is being served by the court's E-Service System to all counsel of record.

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

Akke Levin, Bar No. 9102

ORDER SHORTENING TIME

On application of Akke Levin, counsel for plaintiff James J. Cotter, Jr., and good cause appearing,

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration and Clarification shall be, and it hereby is, shortened and shall be heard on shortened time on the 22 day of December, 2017, at the hour of 9:00 a.m. in Dept 10A.

Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11 CR

DATED: _____

I. INTRODUCTION

The defendants, except Gould, moved for partial summary judgment only on specific *issues*. The Court, however, without giving plaintiff proper notice and adequate time to respond, elected to treat the motions as directed to the *claims* made against the defendants and granted three of the five pending motions as to defendants Kane, McEachern, Codding, and Wrotniak on all claims and dismissed them from the case. The Court also dismissed defendant Gould although his separately-filed motion for summary judgment had not been fully briefed and was scheduled for hearing next month, on January 8, 2018. Granting summary

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judgment on all claims against these defendants under these circumstances was error and should be reconsidered by the Court.[1]

The Court also erred in granting summary judgment for these defendants under the business judgment rule because the Court did not adequately consider that intentional misconduct by directors rebuts the presumption that they acted in good faith and are entitled to immunity for their misconduct by the rule. Moreover, in assessing the dismissed directors' conduct for summary judgment purposes, the Court apparently overlooked the law that says the acts and omissions of individual directors must be viewed *collectively*, not separately, to determine, for example, whether their conduct and motives show independence of actions in the *interest* of their corporation, as distinct from their own interests or that of control shareholders.

As these observations suggest and the following law and evidence support, the Court erred in dismissing the five subject directors without allowing the jury to hear the evidence on disputed material facts and render a verdict on whether the dismissed directors were acting in RDI's interest or to protect and further the interests of the controlling shareholders, as alleged in detail in the Second Amended Complaint ("SAC") and set out again in the Joint Pretrial Memo.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Plaintiff's Complaint and Claims/Causes of Action

The SAC pleads four claims: (1) breach(es) of the duty of care; (2) breach(es) of the duty of loyalty; (3) breach(es) of the duty of candor; and (4) aiding and abetting breaches of fiduciary duty. SAC at 47–54. The Claims

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[1] The Court denied summary judgment for defendants Ellen Cotter ("EC" hereafter), Margaret Cotter ("MC" hereafter), and Guy Adams ("Adams" hereafter).

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1–3 are against each of the individual director defendants; the fourth claim is against EC and MC. *See id.*

Plaintiff's duty of care claim(s) are based on acts and omissions set out in the SAC, some of which were *not* the subject of a motion for partial summary judgment. Examples of such acts and omissions include: (i) the one time "special nominating committee" of McEachern, Kane and Adams forcing director Storey to "retire" and adding unqualified persons loyal to EC and/or MC to the RDI Board; and (ii) knowingly disseminating erroneous and materially misleading statements in RDI public disclosures (SEC filings and press releases). The acts and omissions on which fiduciary duty claims of care and loyalty are based also include one as to which MSJ No. 4 was denied in relevant part—misuse of the executive committee. *See* December 21, 2016 Order Regarding Defendants' Motions For Partial Summary Judgment Nos. 1-6..." (the "MSJ Order"), Ex. 1 at 3:15–19 (granting MSJ No. 4 "[a]s to formation and revitalization (activation) of the Executive Committee," but denying it "as to utilization of the committee").

Plaintiff's duty of loyalty claims also were based in part on matters which were *not* the subject of the motions for partial summary judgment, including breaches of the duty of loyalty arising from the misuse by EC and MC of their position as controlling shareholders *and* breaches of the duty of loyalty by the other director defendants in acquiescing to the wishes of EC and MC and actively assisting them in protecting and pursuing their personal interests rather than acting solely in the interests of the Company. These breaches are evidenced by other matters pleaded in the SAC and summarized in section II. B. below, some of which were *not* the subject of a partial summary judgment motion, such as the threat to terminate Plaintiff if he did not settle trust disputes unrelated to his sisters on terms satisfactory to them *and* the threat to terminate Plaintiff's family's

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health insurance if he did not resign as a director, among others. The breach of the duty of loyalty claims also are based on the misuse of the executive committee, as to which a prior motion for summary judgment (Partial MSJ No. 4) was denied in relevant part.

B. The Partial Summary Judgment Motions

On September 23, 2016, the individual director defendants other than Gould filed six separate motions for *partial* summary judgment numbered 1 through 6 ("Partial MSJ Nos. 1–6"), each of which was directed only at specific matter raised in the respective motions. None sought summary judgment on any of the four claims pleaded in the SAC.

The Court on October 27, 2016 denied Partial MSJ No. 1, finding that "there are genuine issues of material fact and issues related to interested directors participating in the process." *See* Oct. 27, 2016 Hearing Tr., Ex. 2 at 117:9–12. The Court granted in part and denied in part Partial MSJ No. 4 regarding the executive committee of the RDI Board. The Court ruled:

> The motion related to the executive committee is granted in part. As the formation and revitalization of the committee the Motion is granted. *As to the utilization of the committee it's denied.*

Id. at 93:10–13 (emphasis added).

Other Partial MSJs regarding particular matters—director independence (No. 2), the offer (No. 3), the CEO search (No. 5) and other matters including the exercise of the 100,000 share option and the employment and compensation of MC (No. 6), were denied on rule 56 (f) grounds. *See* December 21, 2016 Order, Ex. 1.

All of those motions were reset for hearing and heard on December 11, 2017. As Plaintiff understands the Court's oral rulings, the Court granted Partial MSJ No. 1 regarding termination as to defendants Kane, McEachern, Gould, Wrotniak, and Codding on the grounds that Plaintiff had failed to raise a disputed issue of material fact regarding their

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disinterestedness or independence. December 11, 2017 Hearing Tr., Ex. 3, at 41:4-20. The Court granted Partial MSJ No. 2 regarding director independence on the same grounds as to the same five defendants. *Id.* at 44:20-45:4. The Court granted Partial MSJ No. 3 regarding the unsolicited offer on separate grounds. *Id.* at 48:17-22. The Court denied Partial MSJ No. 5 regarding the CEO search and denied Partial MSJ No. 6 regarding the option exercise, compensation package and related conduct. *Id.* at 49:11-52:15.

Although the director defendants who filed Partial MSJ Nos. 1-6 did not seek summary judgment with respect to any of the *claims* for breach of fiduciary duty against them in the SAC, the Court indicated that only EC, MC and Adams remain defendants in the case. *Id.* at 73:9-14. As to director defendant Gould, his separate summary judgment motion had been noticed for hearing on January 8, 2018. *See* Request for Hearing on Gould MSJ, on file at 3. Nevertheless, on December 11, 2017 the Court ruled that Gould was entitled to summary judgment on the same grounds as the director defendants other than EC, MC and Adams. December 11, 2017 Hearing Tr. at 41:4-20; 44:20-45:4; 73:9-14.

III. ARGUMENT

A. Reconsideration and clarification of the Court's rulings are warranted.

The Court has authority under EDCR 2.24(b) to reconsider prior rulings, and inherent authority to "reconsider, rescind, or modify an interlocutory order for [sufficient] cause . . . . " *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). Courts may grant reconsideration based on new evidence or if the decision is clearly erroneous. *Masonry & Tile Contractors Ass 'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). As discussed below, the Court should reconsider and clarify its rulings on Partial MSJ Nos. 1, 2, and

3 and the Gould MSJ, because in ruling in favor of defendants Codding, Kane, Gould, Wrotniak, and McEachern on all four claims for breaches of fiduciary duty, the Court overlooked that: (1) Partial MSJ Nos. 1, 2, and 3 did not seek complete relief on all four claims for breaches of fiduciary duty and briefing on Gould's MSJ was incomplete; and (2) Plaintiff's fiduciary duty claims are supported by other conduct not addressed by these Partial MSJs that is sufficient to rebut application of the business judgment rule.

B. The Court erred in granting summary judgment on all claims against five defendants.

When reviewing a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Although a district court has the inherent power under Nev. R. Civ. P. 56 to *sua sponte* grant summary judgment on claims that are not a part of a motion for summary judgment, before doing so the Court must give the non-moving party 10 days notice and the opportunity to defend himself. *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*, 130 Nev. ___, ___, 335 P.3d 199, 202 (2014) ("*Renown*"); *Soebbing v. Carpet Barn*, 109 Nev. 78, 83-84, 847 P.2d 731, 735 (1993)(holding that the defending party must be given the full 10 days notice under Nev. R. Civ. P. 56(c) and an opportunity to defend itself before a court may grant summary judgment *sua sponte*).

Renown is instructive, because its procedural history is similar to this case. There, the defendant hospital moved for summary judgment on three specific issues: policy coverage, third-party beneficiary status of the plaintiff, and Renown's compliance with certain statutes. *Renown*, 335 P.2d at 201. "The full merits of Wiley's claims for breach of the provider agreement and intentional interference with his Cigna policy were not at issue in the summary judgment proceedings." *Id.* The district court initially

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denied the motion, holding there were issues of fact. *Id.* Thereafter, Renown renewed its motion for summary judgment on the same three issues and Wiley filed summary judgment motion but only on the statute violation issue. *Id.* After a hearing on the summary judgment motions, the district court denied Renown's motion and granted Wiley's motion. But in granting that motion, the court decided not only the three issues raised by Renown; it also found "in favor of Wiley on his breach of contract and intentional interference with contract claims, ***even though the full merits of these claims were not specifically argued in the cross-motions for summary judgment or at the hearing***." *Id.* (emphasis added). "The district court stayed the remainder of the case so that Renown could seek writ relief in this court," which it did. *Id.* The Nevada Supreme Court granted the writ petition with respect to that portion of the order because the "claims for breach of contract and intentional interference with contract . . . were nowhere mentioned in the six summary judgment briefs." *Id.* at 202.

1. Partial MSJ Nos. 1, 2, and 3 did not argue the full merits of Plaintiff's fiduciary duty claims.

Here, the individual defendants (other than Gould) moved for partial summary judgment on distinct **issues** only—*i.e.*, Plaintiff's termination and reinstatement (Partial MSJ No. 1); director independence (No. 2); the unsolicited Patton Vision offer (No. 3); the executive committee (No. 4); the appointment of EC as CEO (No.5); and option exercise and other issues (No. 6). *See, e.g.*, Partial MSJ No. 1 at 2 (Defendants seek summary judgment "as to the First, Second, Third, and Fourth Causes of Action in Plaintiffs Second Amended Complaint, *to the extent that they assert claims based on Plaintiffs [sic] June 12, 2015 termination* . . . .") (emphasis added).

Unlike defendant Gould, the individual defendants did not move for summary judgment on all four **claims** for breach of fiduciary duty, which involve additional issues not addressed in the MSJs—*e.g.*, materially

misleading and erroneous board materials published in public disclosures *and* process failures. *See* Pretrial Memo at 5–9. Moreover, the Court *denied* Partial MSJ Nos. 5 and 6, which involve conduct by dismissed defendants. For example, Partial MSJ No. 5 relates to the appointment of Ellen Cotter as CEO, which is a decision in which defendants Gould and McEachern participated.

2. The Court's ruling deprived Plaintiff of Notice and an Opportunity to be heard.

A party's right to notice and an opportunity to be heard on matter not addressed in a motion for summary judgment "has nothing to do with the merits of the case." *Soebbing*, 109 Nev. at 83, 847 P.2d at 735 (citing *U.S. Dev't Corp. v. Peoples Fed. Savings and Loan Ass'n*, 873 F.2d 731, 734 (4th Cir.1989)). " '[R]egardless of a claim's merit, a district court may not *sua sponte* enter summary judgment against it until the claim's proponent has been given notice and a reasonable opportunity to be heard.' " *Soebbing*, 109 Nev. at 83, 847 P.2d at 735 (quoting *U.S. Dev't Corp.*, 873 F.2d at 734).

Here, because the individual defendants other than Gould did not seek summary judgment across the board on all claims against all five defendants, and the Court's ruling went beyond the issues raised in Partial MSJ Nos. 1, 2, and 3 and dismissed all claims against five defendants, Plaintiff should have received ten days' notice and been given an opportunity to be heard. Nev. R. Civ. P. 56(c); *Renown*, 335 P.3d at 202. Plaintiff was entitled to the same notice on the Gould MSJ, because briefing was still open on that MSJ on December 11. *See* Request for Hearing on Gould MSJ at 3 (setting hearing on the MSJ for January 8).

C. The Court overlooked the conduct, acts and omissions stated in the SAC and Pretrial Memorandum.

During the October 27, 2016 hearing, the Court asked counsel to apprise the Court of the topics that would be the subject of special

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interrogatories, which Plaintiff's counsel understood to mean matters Plaintiff would claim also gave rise to or constitute breaches of fiduciary duty *alone*, not just a breach of duty when considered together with other complained of conduct. Oct. 27, 2016 Hearing Tr., Ex. 2 at 60:23–61:8. That is what Plaintiff did on pages 5 to 6 of his supplemental opposition that was discussed with the Court at the December 11, 2017 hearing.

But those matters were not the entirety of the bases for the claims of breaches of fiduciary duty, as the SAC reflects on its face, (which the Court observed during the October 27, 2016 hearing (*id.* at 58:19–25)), as Plaintiff explained in the Joint Pretrial Memorandum, and as the list below, included for the convenience of the Court, reflects. Likewise, the evidence proffered with Plaintiff's oppositions to Partial MSJ Nos. 1–6 (and Gould's MSJ) was of course focused on, *but not confined to*, the matters listed on pages 5 to 6 of the supplemental opposition that was discussed with Court at the December 11, 2017 hearing.

The matters which evidence fiduciary breaches by the individual director defendants include the following:

1. The threat by Adams, Kane and McEachern to terminate Plaintiff as President and CEO of RDI if he did not resolve trust disputes with his sisters on terms acceptable to them (which included giving them control of RDI);

2. The vote by Adams, Kane and McEachern to terminate Plaintiff because he failed to acquiesce to the threat;

3. EC's threat to terminate health insurance for JJC and his family if JJC did not resign as a director, which Gould acknowledged was an erroneous position, but to which he acquiesced, resulting in erroneous SEC filings by RDI, among other things;

4. Use of the executive committee of Kane, Adams, EC and MC to limit the participation of Plaintiff and Storey as directors, to which Gould acquiesced;

5. Manipulating board materials, including creating inaccurate minutes, to which Gould acquiesced;

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6. Kane and Adams as compensation committee members authorizing exercise of the 100,000 share option to assist EC and MC in their efforts to retain control of RDI, over the stated reservations of Storey;

7. The involuntary "retirement" of director Storey by the one-time "special nominating committee" of McEachern, Adams and Kane, at the direction of EC and MC, because Storey failed to exhibit the required subservience to EC and MC as controlling shareholders;

8. Board stacking/adding Codding and Wrotniak by the one-time "special nominating committee" of McEachern, Adams and Kane, to which Gould acquiesced while acknowledging that he had insufficient time to fulfill his fiduciary responsibilities;

9. The CEO search committee of MC, McEachern and Gould aborting the CEO search and selecting EC even though she did not possess the required experience and qualifications for the position, which the Board acknowledged;

10. Hiring MC as EVP RED NY and paying a $200,000 pre-employment bonus "recommended" by EC, even though all directors had acknowledged that she had no real estate development experience and was not qualified for the position;

11. Paying $50,000 to Adams because EC "recommended" it;

12. Erroneous and/or materially misleading statements in board materials, such as agendas and minutes; and

13. Materially misleading and inaccurate statements and omissions in public disclosures, including SEC filings and press releases

SAC ¶¶ 9, 13, 72, 101(a)–(i), 109–119, 135(a)–(k), 136(a)–(i), 147 (all).

D. Plaintiff Proffered Evidence of Fiduciary Breaches and Intentional Misconduct More Than Sufficient to Raise Disputed Issues of Material Fact.

The business judgment rule presumes that directors in making business decisions acted in good faith, on an informed basis and with a view to the interests of the corporation. NRS 78.138(3). Courts therefore give deference to directors' decisions reached by proper *process*, and do not evaluate the reasonableness of the subject decision itself, as distinct from the process by which it was made. *Brazen v. Bell Atl. Corp.*, 695 A.2d 43, 49 (Del.

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1997). Thus, the business judgment rule presumption "is a rule of evidence that places the initial burden of proof on the plaintiff challenging the board's decision." *Cinerama v. Technicolor, Inc.*, 663 A.2d 1156, 1162 (Del. 1995). To rebut this presumption, the plaintiff bears "the burden of providing evidence that the Board of Directors, in reaching its challenged decision, breached any one of its... fiduciary duties [of] good faith, loyalty or due care." *Id.* at 1164.

In particular, NRS 78.138(7) requires the plaintiff to: (a) rebut the presumption under NRS 78.138(3) that directors are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation; (b) show that the director's act or failure to act constituted a breach of fiduciary duty; and (c) show that such breach involved intentional misconduct, fraud or a knowing violation of law.

"Intentional misconduct" is one of three ways in which a fiduciary can fail to act in good faith. *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006). The first occurs "where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation." *Id.* The second occurs "where the fiduciary acts with the intent to violate applicable positive law." *Id.* The third occurs "where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *Id.*

Additionally, as a matter of law and, in cases such as this, logic as well, the acts and omissions of the individual director defendants must be viewed collectively, not in isolation. *See, e.g., In re Ebix, Inc. Stockholder Litig.*, 2016 Del. Ch. LEXIS 5 at *66-67 n.137, 2016 WL 208402 (Del. Ch. Jan. 15, 2016) (rejecting director defendants' contention that bylaw amendments should be viewed individually rather than collectively); *Carmody v. Toll Brothers., Inc.*, 723 A.2d 1180, 1189 (Del. Ch. 1998) (finding that particularized

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allegations that directors acted for entrenchment purposes sufficient to excuse demand); *Chrysogelos v. London*, 1992 WL 58516, at *8 (Del. Ch. 1992) ("None of these circumstances, if considered individually and in isolation from the rest, would be sufficient to create a reasonable doubt as to the propriety of the director's motives. However, when viewed as a whole, they do create such a reasonable doubt . . ."); *Cal. Pub. Employees' Ret. Sys. v. Coulter*, 2002 Del. Ch. LEXIS 144 at *29-30, 2002 WL 31888343 (Del. Ch. Dec. 18, 2002) (concluding that allegations which individually would be insufficient to show a lack of disinterestedness or independence when taken together, were sufficient to do so).[2]

Plaintiff respectfully submits that the evidence proffered with his various oppositions to the various motions, including the evidence highlighted below, is more than sufficient to raise disputed issues of material fact and rebut the presumptions that the RDI directors in taking the actions raised in this case and described above acted in good faith, on an informed basis and with a view to the interest of the corporation.

1. Examples of Evidence Sufficient to Rebut the Business Judgment Rule Presumptions.

a) The (a) Attempted Extortion (by threatening termination) and (b) the Termination Because Plaintiff Refused to Be Extorted.

As Plaintiff demonstrated in his own summary judgment motion and in his oppositions to Partial MSJ No. 1, and as summarized again below, Kane, McEachern, and Adams attempted to extort plaintiff by telling him that they would vote to terminate him as President and CEO of RDI if he did not resolve personal disputes with his sisters concerning trust and estate

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[2] Plaintiff understood the Court to recognize and agree that, even if individual matters or activities did not in and of themselves constitute breaches of fiduciary duty, that "taken with other activities [they may] evidence... a breach of fiduciary duty." *See* Oct. 27, 2016 Hearing Tr., Ex. 2 at 57:9-11.

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matters (including control of RDI), unrelated to his performance as an officer and director of the corporation. Once Kane, McEachern and Adams had threatened JJC with termination, Kane used his position as a RDI director to pressure Plaintiff to acquiesce to that extortion.

When Kane, McEachern (who personally solicited plaintiff to resign rather than be terminated, Oct. 13, 2016 Decl. of JJC, ¶ 14) and Adams failed to extort him, they acted on their threat and terminated plaintiff. They did so because, as Adams memorialized contemporaneously, they had picked the sisters' side in their *family dispute* with plaintiff, as opposed to acting in the interest of RDI. Remarkably, Kane admitted to plaintiff just before he terminated Plaintiff, "**there is no one more qualified to be the CEO of this company than you.**" Appendix ("App.") Ex. 2 (JCOTTER009286) (emphasis added). In making this statement, Kane not only admitted that he, Adams, and McEachern were not acting in the interests of RDI, but also admitted that they were acting *in derogation of* RDI's interests. (The details of these events are summarized below from Plaintiff's motion for summary judgment and opposition to Partial MSJ No. 1, and the citations are to the Appendices of evidence Plaintiff submitted previously therewith).

On May 19, 2015, EC distributed an agenda for a RDI board of directors meeting two days later, May 21, 2015. App. Ex. 6 (EC Dep. Ex. 339). The first agenda item was "Status of President and CEO." *Id.* This subject had not been previously addressed at an RDI Board of Directors meeting. Indeed, a draft agenda a few days earlier made no mention of the subject. App. Ex. 7 (EC Dep. Ex. 338). Storey wrote in a May 20, 2015 email to Director Gould that "I am only assuming the matter before us is a resolution to immediately remove the CEO—that isn't clear from the agenda, or any direct comment made to me by any party." App. Ex. 8

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(TS0000073). But before May 19, 2015, each of Adams, Kane and McEachern communicated to EC their agreement to vote as RDI directors to terminate plaintiff as President and CEO of RDI. App. Ex. 1 (EC 6/16/16 Dep. Tr. 175:17-176:8); App. Ex. 5 (Storey 2/12/16 Dep. Tr. at 96:5-91:4, 98:21-100:8, 100:14-101:11); App. Ex. 9 (Adams 4/28/16 Dep. Tr. at 98:7-17; 98:18-99:22); App. Ex. 9 (Adams 4/29/16 Dep. Tr. at 378:15-370:5); *see also* App. Ex. 6 (TS 8/31/16 Dep. Tr. at 66:22-67:20) and App. Ex. 26 (Dep. Ex 131).

During their planning that predated the supposed May 21 meeting, Kane sent an email to Adams on May 18, 2016, in which he (Kane) agreed to second the motion for plaintiff's termination:

> See if you can get someone else to second the motion [to terminate Plaintiff as President and CEO]. If the vote is 5-3 I might want to abstain and make it 4-3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

App. Ex. 19 (Dep. Ex. 81 at GA00005500).

Also prior to May 21, 2015, Kane and Adams discussed other motions related to plaintiff's termination, such as the appointment of an interim CEO. App. Ex. 9 (Adams 4/29/16 Dep. Tr. at 366:5–367:6); *see also* App. Ex. 20 (Adams Dep. Ex. 82 at GA00005502–03). In a May 19, 2015 email to Kane, Adams confirmed they had chosen sides in a family dispute:

> Ed,
>
> I am sorry, as I know your relationship with the family started long before they were born. I also know—and now see for myself—why SR placed such a high value on you and your counsel. More than anyone else on the board, you worked behind the scenes attempting to bridge every problem with the kids. Lastly, I know that more than anyone else, you have been at SR's side at every turn as he built his empire. I think you and I share a [sic] *obligation to the family* . . . . based upon our commitment to our friend.... Unfortunately, it seems that we have no choice but to choose a side.

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App. Ex. 21 (Adams Dep. Ex. 85 at GA00005544–45 (emphasis added); *see also* App. Ex. 6 (TS 8/3/16 Dep. Tr. at 65:12–66:20). Where is the "interest" of RDI in this admission? NRS 78.138(1).

In the face of a pre-arranged agreement among Adams, Kane and McEachern to vote to terminate plaintiff, Gould warned that they all could "face possible claims for breach of fiduciary duty if the Board takes action without following a *process* . . . ." App. Ex. 318 (Gould Dep. Ex. 318). (Emphasis added). Storey used the term "kangaroo court," and observed as to the non-Cotter directors that, "as directors *we can't just do what a shareholder* [meaning EC and MC] *asks*." App. Ex. 22 (Kane Dep. Ex. 116) (emphasis added). Kane rejected their request to meet separately from the Cotters, stating that "the die is cast." App. Ex. 23 (EK Dep. Ex. 117 at TS000069).

The supposed May 21, 2015 special meeting was convened and concluded with no termination vote having been taken. Sept. 23, 2016 JJC Declaration In Support of Plaintiff's Motion ("JJC Decl.") ¶ 11.

On or about Wednesday, May 27, 2015, a lawyer representing MC and EC in the California Trust Action sent an attorney representing Plaintiff in that action a document outlining terms on which EC and MC would resolve their disputes with him. *Id.* ¶ 12; App. Ex. 4 (MC 6/15/16 Dep. Tr. at 154:19–156:19); App. Ex. 32 (Dep. Ex. 322). Not coincidentally, EC on May 27, 2015 emailed RDI directors stating "that the board meeting held last Thursday [May 21] was adjourned, to reconvene this Friday, May 29, 2015. The board meeting will begin at 11:00 a.m. at our Los Angeles office." JJC Decl. ¶ 13; App. Ex. 1 (MC 6/16/16 Dep. Tr. at 185:13-186:9); App. Ex. 35 (Dep. Ex. 340).

Once the termination threat had been made, Kane continued misusing his position of trust and power as a director at RDI to pressure

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Plaintiff to give in to the threat of his sisters and resolve his disputes with them by acceding to their demands. For example, on May 28 Kane wrote Plaintiff: "Ellen is going to present you with a global plan to end the litigation and move the Company forward. If you agree to it, you, Ellen and Margaret will work in a collaborative manner and you will retain your title." App. Ex. 4 (Dep. Ex. 118 at EK 00000396 (emphasis added). Kane further warned, "If it is a take-it-or-leave-it, then I STRONGLY ADVISE YOU TO TAKE IT, even though I have not seen or heard the particulars." *Id.* (emphasis added).

The supposed special board meeting on May 29 commenced and Adams made a motion to terminate Plaintiff as President and CEO. In response, Plaintiff questioned Adams' independence and/or disinterestedness. JJC Decl. ¶ 15. Adams refused to speak to the subject, and neither Gould nor any other RDI director received or required an explanation from Adams. *Id.* The supposed special meeting was adjourned until 6:00 p.m. that evening. Plaintiff was then told by Kane, McEachern and Adams that he needed to resolve his disputes with his sisters by then or they would to terminate him. *Id.* That threat was memorialized by director Storey, whose contemporaneous handwritten notes state:

> **long board discussion**
>
> **ended with basically a command from "majority" – Jim go settle something with sisters in next hour or you will be terminated.**

App. Ex. 5 (Storey 2/12/16 Dep. Tr. at 110:6–12); App. Ex. 15 (Storey Dep. Ex. 17) (emphasis added).

The Board reconvened telephonically around 6:00 p.m. and Ellen Cotter reported that she and Margaret Cotter had reached an agreement in principle with plaintiff to resolve their disputes. Ellen Cotter concluded that, while no definitive agreement had been reached, she would have one

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of their lawyers provide documentation to counsel for plaintiff. No termination vote was taken. JJC Decl. ¶ 16; Motion App. Ex. 3 (MC 5/13/16 Dep. Tr. at 368:13–369:22); *see also* App. Ex. 15 (Dep. Ex. 17) and Ex. 1 (Kane 5/2/16 Dep. Tr. at 191:6–24). On Wednesday, June 3, 2015, counsel for EC and MC transmitted a new document to counsel for JJC. JJC Decl. ¶ 17; App. Ex. 3 (MC 5/13/16 Dep. Tr. at 377:7-24); App. Ex. 28 (Dep. Ex. 167).

A few days later, on June 7 and 8, 2015, Kane *admitted* that the termination threat was in furtherance of the *interests of EC and MC, not RDI.* In a June 8 email to Plaintiff, Kane stated that "there is no one more qualified to be the CEO of this company than you." App. Ex. 2 (JCOTTER009286) (emphasis added). A day earlier, Kane said "I want you to be CEO and run the company for the next 30 years or more." *Id.* Kane thus confirmed that when he, Adams, and McEachern threatened to terminate Plaintiff and thereafter did so, they not only were not acting in the interests of RDI, but that they were acting against of RDI's interests, *in breach of their fiduciary duties.*

On June 8, 2015, Plaintiff advised EC and MC that he could not accept their so-called settlement document. MC responded that she would advise the RDI board of directors. JJC Decl. ¶ 18; App. Ex. 3 (MC 5/13/16 Dep. Tr. at 368:13–369:22); *see also* App. Ex. 3 (MC 5/12/16 Dep. Tr. at 271:22-279:7); App. Ex. 27 (Dep. Ex. 156). On Wednesday afternoon, June 10, 2015, EC transmitted an email to all RDI board members stating, among other things, that "we would like to reconvene the Meeting that was adjourned on Friday, May 29th, at approximately 6:15 p.m. (Los Angeles time.) We would like to reconvene this Meeting telephonically Friday, June 12 at 11:00 a.m. (Los Angeles time) . . ." JJC Decl. ¶ 19.

When the termination vote was rescheduled for the next day, Kane resumed pressuring Plaintiff stating on June 11, 2015: "I do believe

that if you give up what you consider 'control' for now to work cooperatively with your sisters," Kane admonished, "you will find that you will have a lot more commonality than you think." App. Ex. 5 (Kane Dep. Ex. 306 at EK 00001613). "**Otherwise**," Kane threatened, "**you will be sorry for the rest of your life, they and your mother will be hurt and your children will lose a golden opportunity**." *Id.* Tellingly, Kane also wrote:

> "[F]or now I think you have to concede that Margaret will vote the B stock. As I said, your dad told me that giving Margaret the vote was his way of 'forcing' the three of you to work together. Asking to change that is a *nonstarter*."

App. Ex. 5 (Kane Dep. Ex. 306) (emphasis in original).

On Friday, June 12, 2015, a supposed RDI board of directors special meeting was convened. Adams, Kane and McEachern voted to terminate JJC (as did MC and EC). App. Ex. 10 (Kane 5/2/16 Dep. Tr. at 191:25–192:12, 193:–194:10); App. Ex. 5 (Storey 2/12/16 Dep. Tr. at 139:22–140:11); *see also* App. Ex. 6 (TS 8/3/16 Dep. Tr. at 75:4–76:16 and 81:22–82:6). Kane in deposition admitted that JJC was fired because he did not acquiesce to the termination threat made by Kane, Adams and McEachern:

> Kane:I—I said to him at one point, "Take it. You have nothing to lose. You're going to get terminated if you don't. If you can work it out with your sisters, it will go on and I will support you. I'll even make a motion to see if the company will reimburse the legal fees." I did not want him to go. And you, I'm sure, see emails in there to that effect. Even though I voted—was voting against him, I wanted him to stay as C.E.O.
>
> * * *
>
> Q.: But that resolution did not come to pass because Jim Cotter, Jr., rejected it, correct?
>
> Kane: He rejected it, yes.
>
> Q.: And he got himself terminated, right?
>
> Kane: Yes.

App. Ex. 1 (Kane 5/2/16 Dep. Tr. at 194–195 (objection omitted).

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b) The Aborted CEO Search

Rather than recite the record evidence regarding the CEO search again, Plaintiff respectfully refers the Court to his prior briefs and the evidence described therein and proffered therewith. *See* October 13, 2016 Oppositions to Partial MSJ No. 5 and Gould's MSJ and December 1, 2017 Supplemental Opposition to Partial MSJ Nos. 2 and 5. By way of summary, that evidence shows that the CEO search committee, comprised of MC, McEachern and Gould (after EC declared her candidacy and withdrew), effectively terminated the search on the same day EC declared her candidacy. That was the last day the committee had a substantive communication with Korn Ferry, the outside professional search firm employed and paid by RDI to lead the CEO search. Shortly thereafter, Korn Ferry was told to stand down, to not provide the agreed and paid for proprietary assessment of final qualified candidates and, in effect, to not interfere with the decision of MC, McEachern and Gould to ignore the fact that EC did not possess the experience and qualifications that they had agreed were the sine qua non to be selected as RDI's new CEO. The CEO search committee then presented (surprise!) EC as their choice, and did not present the full Board with the final three candidates as the previously set *process* prescribed. The Board dutifully agreed, and EC was made CEO. For Judy Codding, a close family friend who had been a Board member for only two months, that was the result she previously had determined to bring about, because it was her view that RDI was a "family business" of which only a Cotter should be CEO. JJC Decl. ¶ 24.

c) The Matters Which Were the Subject of MSJ No. 6

Because the Court is familiar with the matters raised in Partial MSJ No. 6 and denied that motion, Plaintiff will not recite the record evidence bearing upon those matters. However, Plaintiff respectfully reminds the Court that it was director defendant Kane who, together with

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Adams, authorized the exercise of the 100,000 share option, and did so notwithstanding the fact that (1) questions he deemed needed to be answered before doing so were not answered, and (2) the responses provided were identified as insufficient by director Storey. Together with the context of that conduct—to enable EC and MC to retain control of RDI—Plaintiff respectfully submits that these facts alone preclude dismissal of this action as against Kane.

d) Gould's Recurring Intentional Misconduct.

Rather than attempt to recite the record evidence contained in Plaintiff's oppositions to the various motions addressing matters to which Gould was a party, Plaintiff respectfully refers to Court to the motions. However, for ease of reference and the convenience of the Court, Plaintiff provides the following inventory of facts that he contends show that director-defendant Gould engaged in intentional misconduct, meaning that he intentionally failed of to act in the face of a known duty to act, demonstrating a conscious disregard of his duties to RDI, and/or that he intentionally acted with a purpose other than advancing the best interests of RDI. The inventory of misconduct includes the following:

- Gould failed to take steps to prevent or to terminate the efforts by Kane, Adams and McEachern to extort plaintiff.
- Gould failed to follow through and require Adams to produce, and the Board assess, information regarding his financial dependence on EC and MC, as a result of which Gould allowed Adams to cast the decisive vote to terminate Plaintiff.
- Gould failed to require the Board to decide whether the position taken by EC, that Plaintiff was required to resign as a director upon termination as an executive, notwithstanding the fact that Gould new the position was erroneous, thereby acquiescing to conduct that was erroneous if not improper.
- Gould acquiesced to the use of an executive committee he knew at the time it was put in place would be used to limit the participation of Plaintiff and Storey as directors.

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- Gould acquiesced to stacking the RDI board with unqualified loyalists to the Cotter sisters, even acknowledging at the time that he did not have sufficient opportunity to make an informed decision about whether to disagree or acquiesce.

- Gould as one of three members of the executive committee allowed EC to manipulate the process and then took affirmative steps to abort the CEO selection process, in order to bend to the wishes of EC to be CEO.

- Gould admitted at the time and subsequently that MC lacked real estate development experience, making her unqualified to be the senior executive vice president of RDI responsible for development of its valuable New York City real estate, but he nevertheless acquiesced to her being given that position and paid as if she were qualified.

- Gould acquiesced to EC's recommendation that Adams be given $50,000, without having any RDI basis for doing so.

- Gould took his cue from EC and Craig Tompkins and directed the discussion at the 1 hour and 25 minutes telephonic board meeting regarding the Patton Vision offer to the subject of whether the controlling shareholders would approve, thereby pre-empting and preventing any genuine consideration of how RDI should assess and respond to that offer.

- Gould repeatedly acquiesced to RDI issuing and not correcting erroneous SEC filings, including a June 15, 2015 Form 8-K that asserted the erroneous statement that Plaintiff was required to resign as a director upon termination as a senior executive, as well as a materially misleading if not erroneous Form 8-K in January 2016 regarding the selection of CEO, which included a statement from Gould implying that the selection of EC was the result of a "thorough search process," when in fact the process had been aborted and selection was not the result of the proper process.

The motion papers are devoid of any explanation, much less justification, for the conduct of Kane, McEachern and Adams in threatening Plaintiff with termination in order to force him to settle trust disputes with his sisters on terms that suited them, as distinguished from terms suitable to RDI. The evidence regarding the aborted CEO search, for which MC, Gould and McEachern are responsible, likewise raises disputed issues of material fact that preclude dismissal of this action against any of them. Finally by

way of example, when viewed collectively and in context, as it must be, Gould's recurring abdication of his fiduciary responsibilities evidences disputed issues of material fact that require denial of Gould's separate motion.

IV. CONCLUSION

For the reasons stated above, the Court should clarify, reconsider, and vacate its rulings on Partial MSJ Nos. 1 and 2, and on Gould's MSJ.

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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: **MOTION FOR RECONSIDERATION OR CLARIFICATION OF RULING ON MOTIONS FOR SUMMARY JUDGMENT NOS 1, 2, AND 3 AND GOULD'S SUMMARY JUDGMENT MOTION AND APPLICATION FOR ORDER SHORTENING TIME** 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 _____ day of December, 2017.

By:_____

Exhibit 1

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CLERK OF THE COURT

ORDR
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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.

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

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;

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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

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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:

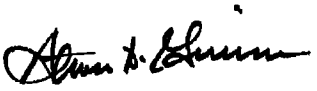
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
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Exhibit 2

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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 MOTIONS

THURSDAY, OCTOBER 27, 2016

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

of a breach whether they are in and of themselves a breach. See, there's a different concept that I'm trying to deal with as a trial judge than I think you're dealing with in your motions, which it's your job.

MR. TAYBACK: There's two issues. One is could it be a breach as a matter of law. And my answer to that question is no. The second question is is there evidence that it's a breach. And the answer to that is no, as well.

THE COURT: That's not what I said, Counsel. Is this activity taken with other activities evidence of a breach of fiduciary duty?

MR. TAYBACK: I understand his argument, plaintiff's argument.

THE COURT: That's not his argument. That's what trial judges think about.

MR. TAYBACK: The question -- it begs the question, though, is what is the breach. There has to be a specific thing that occurred that is a breach --

THE COURT: Uh-huh.

MR. TAYBACK: -- as opposed to saying, this is a course of conduct. And that's the way plaintiff has characterized it. And the course of conduct can be relevant to a breach --

THE COURT: Yes.

MR. TAYBACK: -- but it begs the question what is

the breach, what is the breach. This is not the breach. This is not a breach. It's not a valid basis for a breach claim. And to say it might be relevant evidence of something else, some other breach, that's a decision you could make.

THE COURT: You're not asking me to exclude evidence of this, only to not instruct it or include it on a special interrogatory that it could be found an independent breach --

MR. TAYBACK: That's correct.

THE COURT: -- as opposed to evidence of breaches that have occurred.

MR. TAYBACK: That's absolutely correct.

THE COURT: I just needed you to say that, because that's not what your motion says.

MR. TAYBACK: I believe it's not -- I believe ultimately it wouldn't be relevant perhaps. But that's a different question. That's a different question. And that's not our motion. Our motion is to summarily adjudicate the basis of this unsolicited offer as being a breach.

THE COURT: There is no -- there is no allegation of the unsolicited offer as the breach of fiduciary duty claim. It is one of many things that are alleged as evidence of breach of fiduciary duty.

MR. TAYBACK: If I'm --

THE COURT: I pulled the complaint to read it again, because --

MR. TAYBACK: I did, too.

THE COURT: Okay.

MR. TAYBACK: And if in fact we misunderstood what his basis of the alleged breach is, then you're right, then it's not an issue, then it's not an alleged breach how we dealt with the -- how the company dealt with this unsolicited offer. It's merely evidence. But it's only relevant evidence if it relates to a breach. And certainly I think somewhere in our motions we address the thing that he says was actually the breach. But begs the question is what he's saying is the breach. What occurred that breached a fiduciary duty by individual directors, individual directors. For instance, Mr. Wrotniak, who's never even been deposed, who's seemingly collateral to every theory that's being proffered by the plaintiff, was in the room to discuss this particular unsolicited offer. What, if anything, did he do to breach any duty, and what is the relevance, I suppose, to address Your Honor's question, of how he did it to some other breach that is alleged but unspecified at least in our conversation right now as to what it is that plaintiff is saying breached a fiduciary duty to the company.

THE COURT: Okay. Anything else?

MR. TAYBACK: Only if you have questions, Your Honor.

THE COURT: I don't have any more. I asked you

them.

MR. KRUM: Your Honor, as I see this motion, the partial issue is the one you identified. And it's not just this motion, it's arguably all of them. But it's certainly this one. It's certainly the executive committee motion. And I've said this. I said it when we moved for leave to amend. We pleaded the complaint this way, as you saw it. We haven't alleged 10 or however many isolated acts as individual unrelated fiduciary duty breaches. That's not the nature of the case. And in point of fact the offer issues in some respects sort of close the loop that begun with the seizure of control of the company. So I can go through that whole argument that you've obviously read and you understand better than I do, because you try cases all the time. It's an argument that is a practical, realistic, and legal issue from the perspective of trying a case, it's an argument that has a basis in the law of corporate fiduciaries.

THE COURT: So let me ask you a question. So you've got your couple of breach of fiduciary duty claims and your aiding and abetting claim, and it is your intention, I assume, to submit special interrogatories to the jury.

MR. KRUM: Yes.

THE COURT: What are you going to ask them?

MR. KRUM: Well, I need to finish the discovery. I'm not trying to be nonresponsive, Your Honor, but, for example,

we're talking about the offer. I haven't deposed a single witness, so I can't tell you today whether I'm going to take the position that what transpired with respect to the offer is evidence only or is evidence and independent breach. Your question is a perfectly correct question. I acknowledge that.

THE COURT: Okay. So when after you finish the discovery are you going to be able to answer that question for me? Because that impacts like six of these motions.

MR. KRUM: That, Your Honor, is on our whole list of trial-related activities to perform. So obviously we'll turn to that as quickly as we can after we complete the discovery. Perhaps I can answer it when we speak on December 1st. I'll do my best.

And, by the way, I have all sorts of arguments here on this particular motion, a 56(f) argument about the facts and the law.

THE COURT: I know.

MR. KRUM: But I assume you don't need to hear those from me.

THE COURT: No. The reason I did this one next is because it's the most closely related to the 56(f) issues. And it makes it hard for you to finish when you don't have the last little bit of information, haven't finished the depos. But I was hoping you could tell me what questions you thought you were going to ask the jury.

will have to, as discussed, decide what exactly the special interrogatories are going to be. But it is absolutely, positively compelling evidence of what transpired here. It was a whole exercise to seize and perpetuate control. So it's not -- it's not -- you know, it's legal and therefore everything is copacetic is just wrong as a matter of law.

I don't have anything unless you have questions for me.

THE COURT: Thank you.

The motion related to the executive committee is granted in part. As to the formation and revitalization of the committee the motion is granted.

As to the utilization of the committee it's denied.

MR. KRUM: Point of clarification, Your Honor. By revitalization are you referring -- is that something different than -- that's activation? Is that what that is?

THE COURT: Activation. I think you called it repopulation, putting people on it. I'm not including utilization, which is the activities of the executive committee afterwards.

MR. KRUM: And utilization includes the purposes for which these other activities were done?

THE COURT: No. Formation and revitalization include a decision by the company, whether it's a decision by the company to make use of their previously dormant executive

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,

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

DATE

Exhibit 3

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR. Plaintiff vs. MARGARET COTTER, et al. Defendants	CASE NO. A-15-719860-B A-16-735305-B P-14-082942-E DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS IN LIMINE AND PRETRIAL CONFERENCE

MONDAY, DECEMBER 11, 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. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	H. STANLEY JOHNSON, ESQ. MARSHALL M. SEARCY, ESQ. CHRISTOPHER TAYBACK, ESQ. JAMES L. EDWARDS, ESQ. MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ. EKWAN RHOW, ESQ.

LAS VEGAS, NEVADA, MONDAY, DECEMBER 11, 2017, 10:24 A.M.

(Court was called to order)

MR. FERRARIO: Ms. Hendricks has something to take up with you.

MS. HENDRICKS: I just have a question.

THE COURT: On what?

MS. HENDRICKS: On how many drives we each need.

THE COURT: Wait. That's not me. Wait. Don't go there yet.

MS. HENDRICKS: Okay.

THE COURT: Who are you looking for?

MR. MORRIS: I'm so unaccustomed to being on the plaintiff's side.

(Pause in the proceedings)

THE COURT: All right. So moving on. Good morning. We were talking about the pro bono awards at the 8:00 o'clock session this morning, and Mr. Ferrario didn't get one this year, so I was giving him a hard time because nobody from his firm did a lot of work. But apparently they did. It just didn't get reported because it was done with a different agency.

Right, Ms. Hendricks?

MS. HENDRICKS: Yes. We're getting that fixed right now.

THE COURT: Okay. So before we start on your

motions I need to hit some practical problems. As those lawyers who practice here in the Eighth all the time know, as the chief judge I do not have a courtroom. That occurred because when the Complex Litigation Center was investigated for purposes of conducting the CityCenter trial we determined that it had a structural issue and some electrical issues. As a result, we did not renew the lease --

When was that, Mr. Ferrario?

MR. FERRARIO: It was 2013.

THE COURT: In 2013 we did not renew the lease, and since that time we have been down one courtroom. The person who gets screwed is the chief judge. So since 2013 we have had the chief judge be a floater. Unfortunately for you guys, I'm the first judge who kept my docket, because Business Court cases have a lot of history and it's not one of those things you can get rid of and assume somebody else is going to be able to be familiar with it fairly quickly.

So the down side for all of you is that I don't have a courtroom. Which is why sometimes we borrow Judge Togliatti's courtroom when you guys see me, sometimes in this courtroom. And you've been in the two Family Court courtrooms a couple of times here. I also have judges who lend me their courtrooms on a regular basis on the third floor, and sometimes I have courtrooms in other places in the building I borrow.

Recently I learned that I am going to be able on behalf of the court to acquire the seventeenth floor that used to be occupied by the Supreme Court and to build a new Complex Litigation Center, because since 2013 every time we have a complex trial we build out a courtroom, it costs a quarter of a million dollars, and then when we're done with it we take it back down to put it back in regular shape. And so finally the County has realized that's probably not an effective use of the funds, and so we're going to build out the seventeenth floor as a complex litigation, jury, and criminal caseload accommodated. Unfortunately, that's a construction project, and it is in process. And when I say in process it means they're still in the bid evaluation process and it has to now go to something called long-term planning at County management, which means that some day there'll be a courtroom there. In the meantime --

MR. MORRIS: So our trial will start when the construction is complete on 17?

THE COURT: No, no. You're going to start. I just don't know where we're going to be, Mr. Morris. This is the reason for the speech, because Mr. Ferrario says nobody believes me that I don't have a courtroom. I don't have a courtroom. So I will have a courtroom when I end being chief judge. I'll go back to being a regular judge and I'll have a courtroom, and then the new chief won't have a courtroom

unless we finish building out the seventeenth floor by then.

So right now the reason I'm telling you that is it impacts your trial. The trial I am currently in is a bench trial, so it's not a jury trial and we have moved from courtroom to courtroom during our 10 days we've been in proceedings so far. So we've not been in the same courtroom every day. But that's sort of the life of being in this department at the moment. That's the history.

Now let's go to the electronic exhibit part of our problem. Brandi is the head of the Clerk's Office, Mike is the head of IT, so they are the two people who are here to make sure that they are able to interact with you -- and then I'll let them leave while I hear your motions -- about the electronic exhibit protocol. Because when we use the electronic exhibit protocol there's two ways that we have to deal with it, from an IT standpoint and from the Clerk's Office standpoint. So instead of us hauling all the paper volumes from courtroom to courtroom, depending on where we're going to be, the clerk won't have to do that. They will have the drives, as Ms. Hendricks mentioned earlier, for that purpose so that Dulce will then -- after IT has cleared the drives Dulce will then work with the drives, and then we usually keep one that is called golden that we don't mess with, and we have one that's a working drive. But I'll let Mike explain that and Brandi explain it, because not all of

you have been through the electronic exhibit protocol in the past.

Mike, you're up.

MR. DOAN: So this is a jury trial, so a high level. We expect three drives, a working copy, a golden copy, and then a blank for the jury that everything that gets accepted or submitted in a group will be over on that drive.

Depending on the number is drives is just based on the space. So if your teams, whoever's putting these drives together -- we have problems if you get a million exhibits on one drive or even 600,000 on one drive. Not so much even the space, it's just navigating through those files. And so as long as your team can navigate and view the files, that's okay for us. We don't have like a set number. We just ask that the drives be twice as big as the amount of the exhibits, because in theory everything could get accepted, and therefore everything would be stamped and there'd be duplicate on the drive.

THE COURT: And when it's stamped there's a program that goes through and it puts a stamp on each page of the electronic exhibit that says it's admitted so that we have your original proposed copy and then your admitted copy. The one drawback for lawyers is if you decide you want to admit a partial version if an exhibit, we cannot do that with electronic exhibits. We need you to submit a replacement

electronic exhibit that includes only the pages that you are offering. That will then have an exhibit marker placed upon it. But I can't with the electronic exhibits admit pages 6 through 10 of the 25-page document.

So, Mike, what did I miss?

MR. DOAN: That's it.

THE COURT: Okay, Brandi. You're up.

MS. WENDELL: Have you already given them the ranges? Do we have --

THE COURT: No, we have not done ranges yet.

MS. WENDELL: Okay. The protocol is pretty basic. Your paralegals or your IT people that are going to be working on those might have questions. Usually -- a lot of times on all the other trials Litigation Services was used. They're very familiar with this program. I'm not advocating for them or anything, but if anybody's contracted with them, they're pretty familiar with how to do it. It's really important that you pay attention to the naming convention. Make sure there are no letters in it. It has to be strictly numbers and then .pdf. The last time there was a question about whether .tifs worked, and Mike was able to verify that .tifs are -- we're able to use those. But color photos can be done as long as there's a little border up at the top for the stamping program to mark all of the information.

Another thing that we have found useful, it's not in

the protocol, but at least a couple weeks before the trial starts we do like a dry run, because your exhibit list, the templates that Dulce went ahead and emailed to you, you cannot change that, the formatting. It's critical because Mike's team will do a validation, and it validates the exhibit numbers to what is on the drive, each exhibit. And it'll identify if there's something that's missed or skipped that's on the list but it's not actually on the drive. And a lot of times there's been some formatting problems when people try to get creative. So, you know, just a little advice that we found from trial and error that that is an important piece.

What else?

MR. DOAN: That's the biggest thing, is if you can get with us -- and we'll make ourselves available as soon as you're available to do like an initial run before you start all printing and doing all these other things just so everything can be tested for format so there's not a lot of time wasted.

MS. WENDELL: The clerk must have -- the exhibit list must be printed out.

THE COURT: Not in 2 font, Ms. Hendricks.

MS. HENDRICKS: [Inaudible] that was not our office's fault, Your Honor.

MS. WENDELL: That should be in a binder so that the clerk as you're actually offering and admitting the evidence

during the trial, she'll be working on that. Later that day she'll be doing the electronic stuff or we'll have a second clerk that'll be helping her. Antoinette is court clerk supervisor, and so she's here to make sure that, you know, if we have any questions that have to be answered.

A lot of times -- oh. Last trial somebody asked if because the exhibit list itself was going to be like 14 of those big binders, they asked if they could print on the front and the back. That was in Judge Kishner's big trial. We let them do it, and -- but the trial settled, so it wasn't an issue.

THE COURT: It's not a good idea.

MS. WENDELL: It's not ideal, so --

THE COURT: Please don't do a front and back.

MS. WENDELL: Anybody have any idea how many exhibits you're looking at?

THE COURT: We're going to start with them and do our ranges first. But we're not quite there yet.

So if anybody has questions or your staffs have questions, would you like contact information to reach out to either Antoinette, Brandi, or Mike?

MR. TAYBACK: Yes.

MS. HENDRICKS: That would be great, Your Honor.

THE COURT: So tell them or give them business cards.

MS. WENDELL: Okay.

MR. FERRARIO: If you all have cards, then that'd be easiest.

THE COURT: They're County employees. Does that mean they get cards?

MR. DOAN: Yeah.

THE COURT: Oh. Look at that.

MR. DOAN: You know, and it's best to have one point of contact so then we don't get confused.

MS. WENDELL: I'm putting my cards away now.

THE COURT: Who do you guys want to be the person that calls? Do they want to call Antoinette, they want to call you, want call Mike?

MS. WENDELL: Well, Antoinette is -- she's not Dulce's direct supervisor, but I can be the point of contact, and then I can go ahead and let you guys know. My email address and my phone number are both on here. If you could pass some of these out, that'd be great. And then I'll probably hand you off depending on the questions that come up. Most of them are going to be technical questions, but I'll try to help if I can.

THE COURT: All right. So do you have any more questions for the Clerk's Office, the IT folks, in the electronic exhibit protocol? You will notice because of what happened in CityCenter in paragraph 6 it now says the exhibit

list will be font size 12, Times New Roman. So we're very specific on what size, because the clerk's actually have to work with the paper copy. And so although you can blow up the Xcel spreadsheet and see it when it's 2 font, they can't. So we have to have it in a larger font.

Any more questions?

Okay. Mr. Krum, how many exhibits do you think you're going to have so I can set the exhibit ranges?

MR. KRUM: The answer is it's in the hundreds, not in the thousands. So if --

THE COURT: So if I give you 1 to 9999, you will be okay?

MR. KRUM: Yes.

THE COURT: All right. Who wants to have 10000 as their start? Mr. Searcy, how many have you got?

MR. SEARCY: I think our approximation is basically the same. It's in the hundreds, not the thousands. So if we had 10000 to --

THE COURT: 1999 [sic]?

MR. SEARCY: Yeah, that would be perfect.

THE COURT: I have to give you lots of extras, because if you're going to do partial exhibits, we need that space to be able to add those. So if you've got subparts of one exhibit, I need an exhibit number for each one of those. So I'm giving you more than you need.

Mr. Ferrario, how many do you need?

MR. FERRARIO: Your Honor, Your Honor, I would suspect our -- any exhibits we would introduce independent of what Mr. Krum and the other defendants would be nominal. So you can give us a very short range.

THE COURT: 20000 to 2499 [sic].

THE COURT: Who else wants exhibit lists that's not one of those three? Anybody else need --

MR. TAYBACK: Counsel for Mr. Gould is sitting behind me.

THE COURT: So Mr. Gould's counsel, you want about the same range Mr. Ferrario has, 25000 to 30000?

MR. RHOW: That's fine, Your Honor. Just for protocol --

THE COURT: Hold on. They've got to get your name, because otherwise I'm going to get really -- I'm going to screw up.

MR. FERRARIO: Can you let Ekwan speak today? He's been here all -- he hasn't even got to argue one time, Your Honor.

THE COURT: All right, Mr. --

MR. RHOW: I'm actually in this case. Ekwan Rhow, Your Honor. Thank you.

THE COURT: Okay.

MR. RHOW: We can have a separate range for sure,

but is there any problem with incorporating Mr. Gould's exhibits into the exhibits for Mr. Searcy that he presents?

THE COURT: There is absolutely no problem with your exhibits being within their exhibit range, but I need to give you a separate range for your own in case you all don't reach an agreement.

MR. RHOW: I see.

THE COURT: So my exhibit ranges based on what I've heard today is 1 to 9999 for the plaintiffs, 10000 to 1999 [sic] for the Quinn Emanuel folks and their associated, which includes Mr. Edwards; right? Okay. And 20000 to 2499 [sic] for Mr. Ferrario and his team. And, Mr. Krum, we gave you 25000 to 2999 [sic] for Mr. Gould.

Do we anticipate there is anyone else who's going to need more numbers? Anybody else who's going to show up randomly in the case?

All right. Any other stuff I need to do on your part?

MS. WENDELL: No. Based on that, that's very good news. The goal will be for all counsel to prepare your exhibits and then everybody put them one drive. The only reason why we do different drives is because if there's like 10,000 exhibits on one, like Mike said, so if there's any way possible -- and you all have to use the same exhibit list template. Now, if that's a problem to do that, then if your

exhibits are on your own hard drive, then your exhibit list must be what is on that drive. So if two of you get together or three of you get together, everything that's on that drive must be one exhibit list, because it cross-checks and makes sure it validates.

THE COURT: So it's okay for the plaintiffs to have one drive and an exhibit list of 1 through 9999 -- or up to that number, and the defendants to decide jointly they're just going to use the 10000 to 1999 [sic], have one drive, and one exhibit list?

MS. WENDELL: That is okay. But based on the size, you know, we're -- I think that, you know, it's better to always have one --

THE COURT: Yeah. But you're asking for cooperation?

MS. WENDELL: Yes.

THE COURT: Just because you worked for Commissioner Biggar for however many years and you could make them cooperate doesn't make I can as a trial judge.

All right. So anybody else have more stuff?

Yeah. Your history will never die.

MS. WENDELL: I know. It's going to follow me out of here in February.

THE COURT: All right. Anybody else have any more questions for my IT team or my Clerk's Office team so that

they can leave and not have to sit here through your motion practice?

Dulce wants you to set the dry run date today. We have a holiday coming up, and you have asked me to let you go the second week. I'm going to be able to accommodate that request. I found some victim to go the first week.

MR. FERRARIO: So we start on the 8th now?

THE COURT: Plan is for you to start on the 8th. So when do you want your dry run to be with your staff to bring over the lists and the drives? It doesn't have to be you guys. It can be your paralegals.

MR. FERRARIO: But you said you want enough time in case there's glitches. So --

MS. WENDELL: If there's a glitch, then you'll need time to fix it.

MR. FERRARIO: So at least the week before -- we need it two weeks before; right?

THE COURT: Two weeks before is the week of Christmas, so we'll be here the 26th through the 29th working that week.

MR. FERRARIO: And then you guys will be here to do that?

MR. DOAN: We'll make it work.

THE COURT: Some of them will be here.

MR. FERRARIO: I think it has to be that week in

case there's a problem. Because then the following week is short, and then we're right up on trial and won't be able to correct any of the stuff.

MR. KRUM: So why don't we say the 29th?

THE COURT: You guys all okay with the 29th? What time do you want to meet?

MR. KRUM: I think we need to talk to the people who are going to do it.

THE COURT: Okay. I would recommend the morning. And the reason I recommend the morning is typically on the weekend of New Year's Eve they try and get everybody out of downtown by about 2:00 o'clock because of all the things that happen in the streets here on that weekend.

MR. KRUM: Understood.

THE COURT: So -- and we will tell you what courtroom we are able to find. I'm pretty sure on that day I could get a courtroom on this floor. And if you guys want a morning, if you can accommodate that, we'll do that. Otherwise --

MR. FERRARIO: I'm going to tell you, Judge, [inaudible] people are going to be in this trial, I think if you could convince Judge Sturman to let you have this for the length of the trial, that would [inaudible].

THE COURT: She has a trial that I had to vacate when her mom became ill that I think she's going to try and

restart in January. I will know better when she actually gets back to town. But we will talk to her. Her courtroom and Judge Johnson's courtrooms are equipped differently than the other courtrooms, so they are a little bit bigger.

MR. FERRARIO: Yes. This would accommodate [inaudible].

THE COURT: I was thinking of putting you in Potter's courtroom and having a special corner for you.

MR. KRUM: Your Honor, I've just been reminded that it was presumptuous of me to speak for others.

THE COURT: You want to talk to the staff members to see who's taking the week off?

MR. KRUM: Here's the question. And I'm now taking Mr. Ferrario's line. Would it be possible for us to start the following week so we could make --

THE COURT: No. We won't get done. If we do that, we won't get done in time for me to do my February stuff. It's a five-week stack. It starts on the 2nd of January. So if you need to talk to your teams and see if being here on January 2nd at 8:00 o'clock in the morning is a preference for them instead of the 29th, which gives you -- you lose the weekend, but you're here the rest of the time. It gives you almost two weeks to straighten it out.

MR. KRUM: Okay.

THE COURT: And that's okay with me. Even though

Mike would say he needs two weeks before, January 2nd is okay with me.

MR. KRUM: Okay. We will check with our people.

THE COURT: Okay. So any other electronic exhibit lists?

So, Dulce, just mark them down that they are planning to visit with you on January 2nd. I'm fairly certain I can find a courtroom on January 2nd, but there's no guarantees on that day.

All right. 'Bye, guys. Thank you for being here. Antoinette, thank you for being here. I know it's going to be exciting again.

All right. That takes me to the motions. Do you have a preferred order you'd like to argue them in? I usually try and do the summary judgments and then go to the motions in limine.

MR. KRUM: That would be our suggestion, as well.

MR. TAYBACK: That makes sense, Your Honor. You can go numerical order is fine.

THE COURT: Whatever you want to do.

Can I have my calendar. I don't need -- well, I have notes all over the motions, so --

MR. FERRARIO: Are we on the clock?

THE COURT: You have until five till 12:00. So we've got an hour.

(Pause in the proceedings)

MR. TAYBACK: Mr. Krum was just suggesting that I raise the parties' -- both filed joint motions -- or filed motions to seal. We'd ask you to grant them.

THE COURT: Is there any objection to any of the motions to seal? They weren't all motions to seal. Some of them were motions to redact, and that was appropriate. The motions to seal I do have a question for Mr. Morris's office, and so I'll ask you -- hold on, if I can find the one I wrote the page on. Got a question. It was a process question, not a substance question, so let me hit it before we go to the next step.

When you sent me a courtesy copy and the courtesy copy had a sealed envelope in that did you also file the sealed version of the document that has like this sealed envelope that's with the Clerk's Office?

MS. LEVIN: I don't believe, Your Honor.

THE COURT: And we have to do it that way --

MS. LEVIN: Okay.

THE COURT: Because otherwise I can't even grant your motion now, because then it's going to get screwed up.

MS. LEVIN: I understand, Your Honor. And I think that this was based on our conversations with the clerk, who said you cannot submit it until you have the order. And we were saying, but that --

THE COURT: No. You submit it when you file the motion. When you file the motion with it, which is why you have to file them at the counter. You can't efile when you're filing under seal.

MS. LEVIN: Right.

THE COURT: And that's why it gets screwed up.

So I have some process concerns about the plaintiff's filings related to that, and I'm going to let you and Dulce talk about those after we finish the hearing to see, if we can.

I'm going to grant the motion, but it may be that you have to do something different to have a motion that actually goes with it to the Clerk's Office instead of an order. Because having the order will not accomplish what you want.

All right. So to the extent that you asked previously for a motion to seal and/or redact, it appears to be commercially sensitive information related to financial issues, and there's some other sensitive information that relates to individuals' personal information, so I'm going to grant the requests for sealing and redacting that have been submitted.

Okay. You're up. What motion do you want to start with?

MR. TAYBACK: It'll be Summary Judgment Motion

Number 1. And it also -- there's -- relates to Summary Judgment Motion Number 2. So I will argue them jointly. They were at least opposed jointly, and we replied jointly with respect to those two motions.

THE COURT: Okay.

MR. TAYBACK: I'm here on behalf of the director defendants Michael Wrotniak, Judy Codding, Douglas McEachern, Edward Kane, Guy Adams, Margaret Cotter, and Ellen Cotter. As Your Honor will recall and as addressed in the briefing, Your Honor said, and this is a truism, really, for any case, you've got to analyze claims defendant by defendant, in this case director by director, and transaction by transaction. And that's, you know, just basic, basic legal analysis.

On top of that, sort of as an overlay, another thing that I know Your Honor is well aware of is the recent law that clarifies -- I see you chuckling --

THE COURT: I don't know anything about the Wynn-Okada case. You don't know anything about it, because your firm wasn't involved at all, and Mr. Ferrario doesn't know anything, and Mr. Morris I'm sure was involved, too, because he's been involved in some of the appellate process in that case, too.

Right, Mr. Morris?

MR. MORRIS: Yes.

THE COURT: See, so we all know.

MR. TAYBACK: But all I need to know, all I need to know and all I really care about here and all that matters here is the language of the Supreme Court's opinion, because that's really what animates the business judgment rule in Nevada as we stand here now. And I think that combined with the recent clarifications by the legislature regarding the latitude afforded directors work together to set the bar very, very high. I'm sure Your Honor has read the opinion multiple times, applied it in that case, a case I'm not privy to, but it's --

THE COURT: I did. I granted partial summary judgment, which is on a writ.

MR. TAYBACK: And, as you well know --

THE COURT: Are we supposed to be calling somebody?

MR. FERRARIO: No.

THE COURT: I have a call-in number. I'm not in charge of doing this.

(Pause in the proceedings)

THE COURT: Hold on. Apparently someone thinks they're calling in.

MR. RHOW: It's okay, Your Honor. No need. I'm here.

THE COURT: Oh. It was you?

MR. RHOW: Not necessary.

THE COURT: Okay. Good. I'm glad we don't have to

call you.

Okay. Keep going. So I granted partial summary judgment, but I found some directors were not disinterested, so not all of the directors were covered by the summary judgment. I also in that case made a determination the business judgment rule only applies to officers and directors, it does not apply to the corporation itself. Just so you know.

MR. TAYBACK: And I'm aware of that only through having read the pleadings and having read now the court's opinion here. But the question is as it applies to this case. And as it applies to this case collectively that recent guidance and the guidance from the legislature make it clear that it's not really the province of a plaintiff or a court or jury to come in and say the business judgment rule should be overridden in order to second guess a particular decision made by a corporation's directors or its officers. And if you start at that premise, the idea that the applicable Nevada statutes here elevate -- give that sort of latitude to directors in the first instance and then you take it to sort of the next level of analysis, that is to say, even if one could rebut the presumption, even it's rebutted the standard then for imposing liability is even higher, because there remains still a two-prong test for which plaintiffs have to show a material disputed issue of fact to proceed to trial.

Both an individual director on a particular transaction breached their fiduciary duty and, secondly, that that individual director did so with fraud, knowing -- as a knowing violation of the law or engaged in intentional misconduct.

THE COURT: Well, you understand that finding is only needed to make a determination as to whether the individual officer or director is insulated from -- for personal liability purposes, as opposed to derivative liability, which would be funded through the corporation.

MR. TAYBACK: Correct.

THE COURT: Okay.

MR. TAYBACK: Though they are seeking personal liability. Their complaint makes that clear.

THE COURT: I understand they are. But your motion seemed to take the position that unless I found fraud they need to be dismissed. And that's not how it works.

MR. TAYBACK: Well, but they do need to rebut the presumption with respect to the business judgment rule.

THE COURT: That's a different issue, Counsel.

MR. TAYBACK: It is a different issue. And it's a multiple-hurdle test.

THE COURT: Yes.

MR. TAYBACK: And with respect to that second hurdle even the issue comes down to Your Honor's adjudicating their claim for personal liability, then that's also part of the

motion.

But you don't need to get there, because they have not established the evidence necessary to rebut the initial presumption. And that's clear because when you look at what governs the decision here by these individual directors on termination, which I'm going to take that transaction because that's the subject of our first motion for summary judgment, if you look at that, what governs that decision are the bylaws. And the bylaws which we've submitted are amply clear that the board was given complete discretion, that officers, including the CEO, serve at the pleasure of the board and can be terminated with or without cause at any time.

With the bylaws being the operative rules of the road, so to speak, and the law being what it is with respect to the deference afforded boards and individual board members, plaintiff's efforts to try to get around the idea that that presumption should be applied here are based on generalized allegations of disinterestedness. But you don't see specific evidence in the record anywhere that any of the three directors who voted to terminate Mr. Cotter, Jr. --

THE COURT: And you're including Mr. Adams in that, are you?

MR. TAYBACK: I am including Mr. Adams in that.

THE COURT: Just checking. So what happens if I make a determination that Mr. Adams is not disinterested? You

then do not have a majority of disinterested directors; correct?

MR. TAYBACK: If you made that finding that would be true. But it wouldn't change the liability, the claim against Mr. McEachern or Mr. Kane.

THE COURT: You mean for personal liability?

MR. TAYBACK: I mean whether -- not whether or not you can say we need to revisit that action, but whether or not they were disinterested, whether they breached their fiduciary duty. That would be adjudicated in their favor even if you found against Mr. Adams on a particular transaction -- but I would say you should not find against Mr. Adams on this transaction. The evidence isn't that his -- that the decision to terminate had any connection to his -- the level of his income, the amount of his -- the amount of his income, the amount of his expenditures, his continuity on the board. There's no connectivity, which is required in order to find disinterestedness even if disinterestedness was the standard. Because I will say the standard in Nevada is not independence for -- unless it's a transaction in which the director is on both sides of the transaction or it's a change of control circumstance. The termination of a CEO is an operational matter where you don't get to the independence question unless and until you have established a basis, a legitimate basis in the law to show that the presumption should not apply.

In light of the law, in light of the bylaws, in light of the undisputed evidence with respect to Mr. Adams, Mr. Kane, Mr. Wrotniak, the Cotter sisters, and Ms. Codding -- and, of course, Mr. Wrotniak and Ms. Codding weren't even on the board at the time of this transaction -- the fact is that there's no basis upon which to allow plaintiff's claim to proceed.

The last point that I want to make with respect to Summary Judgment Motion Number 1 and 2 as it relates to that point is the plaintiff has tried to really muddy the law. And I think whatever you ultimately decide on this motion for summary judgment -- and I absolutely believe that these defendants are entitled to summary judgment on this record, but whatever you decide the parties will be well served by understanding Your Honor's view of the law. Because we do not see eye to eye with the plaintiffs on the law. They strive to import this Delaware entire fairness test.

THE COURT: I rejected that in Wynn, because that was the part that the Okada parties argued once the writ came back on [inaudible].

MR. TAYBACK: And notwithstanding that, I believe the plaintiffs are still advocating for it. It shows up in their papers.

THE COURT: I understand it's in their briefing.

MR. TAYBACK: And the law at least in Nevada with

respect to that is that it doesn't apply here. Independence for the same reasons is not required for the benefit of the business judgment rule where, as here --

THE COURT: You don't think the Shoen case says that independence is required for application of business judgment rule?

MR. TAYBACK: In Shoen to the extent it says that at all it says it in the context of demand futility. It's not the presumption that we're talking about here. And in fact that's -- I believe that's exactly what certainly the Wynn Supreme Court --

THE COURT: There's two Shoen cases; right?

MR. TAYBACK: Yes.

THE COURT: There's the first Shoen case and the second one that they gave a different name to.

MR. TAYBACK: Independence is not required unless you have a director who's on both sides of a transaction.

THE COURT: Okay.

MR. TAYBACK: I believe the law is amply clear on that.

THE COURT: Okay. I think their analysis is slightly broader than that, but okay.

MR. TAYBACK: Given the bylaws, given the fact that entire fairness does not apply, you cannot simply get past or rebut the presumption of the applicability of the business

judgment rule by saying a director is biased, a director has some family connection, a director has income that's attributable to the company. And that's really what this case comes down to. Where the facts here are frankly undisputed summary judgment is warranted.

That's it for Summary Judgment 1 and 2, Your Honor, unless you have any questions.

THE COURT: No. It's okay.

Mr. Krum, Mr. Morris?

MR. KRUM: Good morning, Your Honor. Thank you.

So I have some argument to make about what are pervasive misstatements of the law that were made with respect to Number 1, as well as the other ones. That said, if I'm listening, you're prepared to deny Number 1, just as you did previously, nothing has changed, including the law; and if that's the case, I'll just defer those comments till we get to something else.

THE COURT: Well, then let me ask you a question. Because when I read all these I have notes all over them, because some of them are interrelated and the disinterestedness issue is an issue that is involved in some of the motions in limine, as well as this.

Can you tell me what evidence, other than what is listed on page -- you had -- in your brief you had a list of all of the company activities that you believe show decisions

that were made by certain of the directors that showed they were interested. Can you tell me, other than that list -- and I can't, of course, find it right now, but I'm looking for it -- is there any other information other than from Mr. Adams that you have that would provide a basis for the Court to determine that they are not disinterested?

MR. KRUM: I'm sorry. That who is not disinterested with respect --

THE COURT: Anyone except Mr. Adams and the two Ms. Cotters. The two Ms. Cotters I think is fairly easy. They didn't even move, from what I can tell. But, for instance, for Mr. Kane.

MR. KRUM: Certainly, Your Honor. In our -- first let me say I think the list to which you're referring is a list that I had understood the Court to request when we last argued summary judgment motions and was intended, Your Honor, to identify the particular matters which we contend give rise to or constitute breaches of fiduciary duty in and of themselves as well as together with other matters. And so --

THE COURT: I don't know that that's the reason you did it. I found it. It is on pages 5 and 6. I'm on the Supplemental Opposition to Motion for Summary Judgment Number 1 and 2 and Gould Motion for Summary Judgment, and there is a list that includes threats of termination if you don't get along with your sisters and resolve the probate case --

MR. KRUM: Yes.

THE COURT: -- exercise of the options, the termination, the method of the CEO search. All of those are company transactions. What I'm trying to find out is, other than for Mr. Adams, is there other evidence of a lack of disinterestedness that you have other than what is included in the list of activities that relate to their work as directors which are on pages 5 and 6 of that brief in the bullet points.

MR. KRUM: Let me answer it this way, Your Honor. 5 and 6 was our effort to do what I just said. And what that is, to try to be clear, is to identify particular activities that we thought would be the subject of, as is appropriate, either instructions or interrogatories to the jury with respect to these particular matters.

So let's take Number 1 bullet point, the first bullet point, 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. That, Your Honor, from our perspective is separate from the termination which is the subject of Number 1. And on this --

THE COURT: I see that. But let me have you fall back, because I certainly understand those may be issues that you may want to submit interrogatories or just to include in jury instructions related to breaches of fiduciary duty by someone who survives this motion, who I don't grant it on

behalf of.

But my question is different. Other than these which you've argued in your brief are evidence of a lack of disinterestedness separate and apart from Mr. Adams, who you have other evidence that is presented related to a lack of disinterestedness, is there any evidence that has been attached to your various supplements and other motions related to a lack of disinterestedness for the other directors known as Mr. Kane, Mr. McEachern, Mr. Gould, Ms. Codding, and Mr. Wrotniak?

MR. KRUM: The answer is yes, Your Honor. So I'm going to try to do it a couple ways.

THE COURT: Tell me where to go. Because I looked through this whole pile of about 2 foot of paper last night trying to find it, and the only one I could find specific allegations of a lack of disinterestedness, besides the two Cotter sisters, was Mr. Adams.

MR. KRUM: Okay. Well, so, for example, with respect to Mr. Kane in the response to MSJ Number 1 and 2 we introduced evidence that showed that Kane was of the view that he knew best what James Cotter, Sr., wanted in his trust documentation.

THE COURT: I see he understood what Mr. Cotter, Sr.'s plan was. How does that make him have a lack of disinterestedness?

MR. KRUM: Well, the answer, Your Honor, is he acted on that. That was the basis on which he decided to vote to terminate the plaintiff. He -- and, for example, the evidence includes an email from Mr. Adams to Mr. Kane in April or early May 2015 in which Mr. Adams says, "This was difficult. We had to pick sides in this family dispute. But we can take comfort that Sr. would have approved our decision." And so the point from our perspective, Your Honor, is Kane, in acting as a director, in fact acted to carry out what in his judgment were the personal interests of Sr. with respect to his trust planning. And on that basis he voted to terminate Mr. Cotter. There are emails from Mr. Kane to Mr. Cotter telling him, I don't know what the sisters' settlement is but I urge you to take it. Well, we think the evidence also shows that he knew what it was, that it entailed Mr. Cotter giving up control of the issues they've been litigating.

THE COURT: Under the Shoen analysis do you believe that that contact and that information is sufficient to show that Mr. Kane is not disinterested?

MR. KRUM: Well, the answer is, yes, we do, Your Honor. And I hasten to add that the way Shoen puts it is that disinterestedness and independence are a prerequisite to having standing to invoke the business judgment rule.

THE COURT: I'm aware of that. Which is why we're having this discussion. So -- but usually we have either a

direct financial relationship, even if it's not on both sides of the transaction, or we have a very close personal or familial relationship with the people who are subject to the transaction. And simply believing you understand Sr.'s plan -- estate plan does not, I don't think, rise to that same level to show a lack of disinterestedness; but I'm waiting for you to give me a spin on that argument I may not have thought of.

MR. KRUM: Sure, Your Honor. The answer is -- and I say this because I appreciate what the finder of fact -- what the Court has to do now and what the finder of fact has to do. The evidence has to be assessed collectively, not individually. And you understand that. We've cited cases for that. The other side disputes that. There's "The complaint of acts and omissions upon which plaintiff's claims are based must be viewed and assessed collectively, not separately in isolation." That's the Ebix case that we've cited. And there are other cases for that proposition. The point, Your Honor, is "assessing whether a director was independent and in a particular instance acted independently or whether the director was disinterested as required or whether -- and made the decision based entirely on the corporate merits, not influence by personal or extraneous considerations," that was CVV Technicolor, that's the test. And so, Your Honor, in Shoen, just to go back to that, "Independence can be

challenged by showing that the directors' execution of their duties is unduly influenced." If Kane made a decision based in any respect on his view that Sr. intended for one or both of the sisters to have something and Jr. was in the way of that, that, Your Honor, at a minimum survives summary judgment so the finder of fact can make a determination after considering all the evidence whether the director acted and decided in that particular instance entirely on the corporate merits. So what is --

THE COURT: Let's skip ahead, then. Mr. McEachern. What evidence of disinterestedness do you have for Mr. McEachern? And if you could tell me where in the briefing it is, I will look at it again. But, as I've said, other than Mr. Adams I did not see evidence of disinterestedness as opposed to allegations of breach of fiduciary duty.

MR. KRUM: Mr. McEachern attempted to extort Mr. Cotter. Along with Mr. Kane and Mr. Adams he told Mr. Cotter, you need to go resolve your disputes with your sisters and we're going to reconvene at 6:00 o'clock and if you don't you'll be terminated. Now, there's no dispute about that. We have in evidence the testimony --

THE COURT: I understand that that's one of your claims of breach of fiduciary duty. But I'm trying to determine if there was any additional evidence, other than those items that are those bullet points you put in the brief,

which are on pages 5 and 6 of your supplemental opposition, that goes to Mr. McEachern. And then I'm going to ask you the same question for Mr. Gould and Ms. Codding and Mr. Wrotniak.

MR. KRUM: Your Honor, as a threshold matter, the presumption can be rebutted by showing conduct in derogation of the presumption. It's not simply a interest or disinterested phenomenon, cite Shoen. Let me be clear. I don't want to talk past you. The other side argues there are only two circumstances in which interestedness matters. Well, that's belied by Shoen. It says, "Business judgment rule pertains only to directors whose conduct falls within its protections. Thus, it applies only in the context of a valid interested director transaction --" that's 138 -- 78.140, excuse me "-- or the valid exercise of business judgment by disinterested director in light of their fiduciary duties." And to be a valid exercise, Your Honor, it has to be made in the interest of the corporation.

So Mr. McEachern -- let me go through the list mentally. He attempted to extort Mr. Cotter to resolve the trust disputes in favor of the sisters, he voted to terminate -- he decided not to terminate after he understood an agreement had been reached to resolve those disputes. And when that didn't come to pass he voted to terminate. He, along with Mr. Gould, chose the wishes of the controlling shareholders. Rather than to complete the process he had set

up, they aborted the CEO search. So, Your Honor, that's squarely within the Shoen language of manifesting a direction of corporate conduct in such a way as to comport with the wishes or interests of the person doing the controlling.

Now, I heard you. You view that as a fiduciary breach.

THE COURT: An allegation of a fiduciary duty breach.

MR. KRUM: Allegation of fiduciary duty breach, right. But that's -- if proven, that rebuts the presumption, and off we go.

I skipped over Mr. McEachern's role in involuntarily retiring Mr. Storey. Mr. McEachern, together with Mr. Adams and Mr. Kane, in October and November -- September or October I guess it was of 2015 comprised the ad hoc first time one time special nominating committee. That committee had two roles. One was to tell noncompliant director Timothy Storey that he wasn't going to be renominated, and they explained to him that the sisters, who controlled the vote, had told him they weren't going to vote to elect him so he could either resign and get a year's benefits of some sort or just be left off.

What else did that committee do? They approved Judy Codding and Michael Wrotniak. Did they undertake to search for candidates? No. Did they do anything that one would do

as a director of a nominating committee to identify and recruit directorial candidates? No. What did they do? They did what they were asked and told. Ellen Cotter gave them Judy Codding, good friend of Mary Ellen Cotter, the mother, with whom Ellen Cotter lives, and Michael Wrotniak, husband of Patricia Wrotniak, one of Margaret Cotter's few good friends. And they obviously did virtually nothing, because promptly after the company announced Ms. Codding had been added to board a shareholder brought to their attention there were lots of Google articles that raised questions about Ms. Codding's relationship with her prior employer and the prior employer's conduct.

So on the nominating issue, Your Honor, on the board stacking our view is that all evidences loyalty to the controlling shareholders. And that, Your Honor, would be somewhere in the range of lack of independence or disinterestedness.

THE COURT: So, Mr. Krum, if we're going to get through all the motions this morning I need you to wrap up. Because I think I have all the information I need on Motion for Summary Judgment Number 1.

MR. KRUM: Okay. Certainly, Your Honor.

So just to finish the bullet points which you brought to my attention, these directors, Kane, Adams, McEachern, they're all on record dating back to the fall of

2014 that, yes, we should find a position for Margaret Cotter at the company so she can have health insurance, but, no, she can't be running our real estate. Well -- that's in the emails we have in the evidence actually, Your Honor, the first time around. And there's some more from Mr. Gould or McEachern. We had some additional testimony that we added this time. And so what happens? Ellen Cotter is made CEO after the aborted CEO search, she says, I want Margaret to the have the senior executive position, for which she has no prior experience and no qualifications. And what do these people do as committee members and board members? They say, where do we sign.

So, Your Honor, it's an ongoing, recurring, pervasive lack of independence or disinterestedness. And the conclusion of that, Your Honor, of course, was by what they did in response to the offer -- and I've sort of wrapped up the whole thing without talking about the law I intended to discuss -- and that is they ascertained what the controlling shareholders wanted to do and they did it in an hour-and-twenty-five-minute telephonic board meeting.

I didn't discuss what I intended to discuss, but I tried to answer your questions.

THE COURT: I understand, Mr. Krum. But the briefing was very thorough, which is why I tried to hit the questions --

MR. KRUM: Understood.

THE COURT: -- because I had some questions after reading it.

So Motion for Partial Summary Judgment Number 1 is granted in part. It is granted with respect to Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak.

It is denied as to Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness of each of those individuals. As a result, they cannot at this point rely upon the business judgment rule.

MR. TAYBACK: Your Honor, is there a ruling on the aspect of the motion that goes to inability to hold the individuals personally liable for this claim?

THE COURT: For the three that I didn't grant the business judgment?

MR. TAYBACK: Correct.

THE COURT: No, you do not get a ruling to that effect.

Did you want to go to your next motion for summary judgment?

MR. TAYBACK: Yes, Your Honor.

THE COURT: And I'm trying to be consistent with the decision I made in the Wynn based upon the facts that seem to

be slightly different on the conduct of directors. I've got this thing in my head that nobody understands but me, so I'm trying to draw that line by asking questions so I can figure out where that is. Mr. Ferrario knows nobody understands but me. And I can't say it in a way the Supreme Court will understand, because they don't understand it, except for Chris Pickering, and she won't be deciding your appeal.

MR. TAYBACK: Your Honor, we have a second motion. It's Motion Number 2. It's also woven through some of the other motions. For the sake of just clarity I'll address Motion Number 2 separately, and I'll only --

THE COURT: Briefly.

MR. TAYBACK: -- briefly. I'll only say this. Even if you go to the -- well, I've certainly said my piece already, and I think you can just incorporate what I've said previously on this point, that independence I do not believe is a legal prerequisite to the invocation of the business judgment rule. Even if you look at the Shoen case, which Your Honor has discussed, where it talks about interestedness and the word it uses "interestedness," the quote there is, "To show interestedness a shareholder must allege that --" it's talking about allegations in that case "-- allege that a majority of the board members would be, quote, 'materially affected' either to benefit or detriment by a decision of the board in a manner not shared by the corporation and the

stockholders." To the extent there is a question of independence, it's not the generalized allegations that I think pollute the claims here, the transaction-by-transaction claims that the plaintiff seems to be asserting. You can't just say independence is lacking because there's -- one of the directors favored one of the board members versus one of the others, favored the sisters versus the brother. You have to show that there's a material impact in the transaction itself that was being voted upon, and that's the contention that we're making with respect to independence and how plaintiff's claims, all of them against all of the individual defendants transaction by transaction should fail under a summary judgment standard.

With that I'll stop, and then I'll allow him to address it, and then I've got on Motion Number 3.

THE COURT: Okay. Mr. Krum, anything else on Motion Number 2?

MR. KRUM: Just briefly, Your Honor, because I think we have a fundamental -- I'm going to repeat myself in one respect -- misapprehension of law. This is not a check-the-box exercise.

THE COURT: No, it is not.

MR. KRUM: So in Shoen the court says, "Thus, as with the Aronson test, under the Brehm test, director independence can be implicated by particularly alleging that

the directors' execution of their duties is unduly influenced, manifesting a direction of corporate conduct in such a way as to comport with the wishes or interests of the person doing the controlling."

Now, we know that's a demand case, but that doesn't change the law, it just changes the application of the law. And so the point isn't any more complicated than what it said elsewhere in Shoen, and that is "Directors' discretion must be free from the influence of other interested persons."

So Motion Number 2 is -- it's nonsensical, because that has to be assessed based on facts and based on the particular application. You just did it with respect to Number 1. And so it doesn't work that way. And the -- in Rails the court said, of which Shoen is cited with approval, "Directorial interest exists whenever divided loyalties are present." And we have this ongoing set of transactions that entail furthering and protecting the interests of the Cotter sisters. That, Your Honor, is a perfect example of circumstances that show divided loyalties. Thank you.

THE COURT: Thank you.

Motion for Summary Judgment Number 2 is granted in part. To the extent that you asked me to make a determination as to whether there has been a showing of a lack of disinterestedness there is a lack of disinterestedness for Margaret Cotter, Ellen Cotter, and Guy Adams.

With respect to the other directors who were involved in the motion there does not appear to be sufficient evidence presented to the Court to proceed with a claim of lack of disinterestedness.

Okay. That takes you to Number 3.

MR. TAYBACK: Your Honor, with respect to the Motion for Summary Judgment Number 3, which relates to what's called the patent vision expression of interest --

THE COURT: Yeah.

MR. TAYBACK: -- there are --

THE COURT: The unaccepted offer which may not have been a real offer.

MR. TAYBACK: Not may not have been. Was admitted by plaintiff --

THE COURT: Eh, you know.

MR. TAYBACK: Was admitted by the plaintiff was nonbinding expression of interest that could have been withdrawn or rejected at any point in time. Moreover, when you look -- that in and of itself disposes of the claim, because there are no damages that flow from that. There cannot be. And that Cook case, which is a Delaware case, but the Cook case really makes that clear.

THE COURT: I thought I wasn't supposed to look at Delaware law according to you. You know the legislature can't tell the court what it's allowed to look at.

MR. TAYBACK: And I did know that.

THE COURT: Okay.

MR. TAYBACK: I'm encouraging you to look at it.

THE COURT: I'm looking at all sorts of things, but I'm trying to interweave it into the legislative intent related to business judgment and the protections that we should give to officers and directors in Nevada.

MR. TAYBACK: Yeah. And I think what it is is it's factually analogous. It's factually analogous.

THE COURT: Right. I just had to give you a hard time. Anything else you want to tell me?

MR. TAYBACK: The only other thing that I would tell you is that when you look at what it is that the board members can look at with respect to the consideration of potential change of control overtures, call it expression of interest or anything else, it's nonexclusive. It says they may consider any of the relevant facts. And here the undisputed evidence is that they did consider a lot of relevant facts, including the views of the plaintiff, the views of the two Cotter sisters, including the presentations of the board. And they're entitled to rely upon that. And the reasonableness of the decision is not something that can be second guessed at this juncture based upon the showing that plaintiff has made.

THE COURT: Mr. Krum. Let's skip past a couple of those arguments and focus on a different issue. Other than as

evidence of breaches of fiduciary duty, do you have any claim of specific damages to the failure to accept the unsolicited offer?

MR. KRUM: Well, first, Your Honor, the notion that it's nonbinding and therefore it cannot result in damages is belied --

THE COURT: No. I asked you a very direct question.

MR. KRUM: I'm sorry.

THE COURT: Do you have damages that you have provided me evidentiary basis for strictly related to the failure of the company or the directors to accept the unsolicited offer?

MR. KRUM: Mr. Duarte Solis speaks to that in his expert opinion which was the subject of a motion in limine you denied in October of last year.

THE COURT: I know. But I'm asking you a question. Do you have specific evidence of damages related to the decision by the board not to accept the unsolicited offer?

MR. KRUM: No. The answer I have is the one I just gave, Your Honor.

THE COURT: All right. So that's the only answer you have. Okay. Anything else you want to tell me?

MR. KRUM: I just wanted to say again on law, different point, though, intentional misconduct, one of the ways that occurs is where the fiduciary acts with a purpose

other than advancing the best interests of the corporation. I think the evidence on this subject, Your Honor, the offer raises a question of fact, a disputed question of material fact as to whether that's what the directors did.

Another category of intentional misconduct is where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties. That is a pervasive and recurring phenomenon here, and I submit, Your Honor, with respect to the so-called offer that's what happened. So the point is, as I said before on the offer in particular, Your Honor, it sort of bookends this whole sequence of events, starting with the seizure of control. And you've read the papers, so I'll leave it at that.

THE COURT: Anything else?

MR. KRUM: No.

THE COURT: Okay. Because of the failure of damages related to an unenforceable, unsolicited, nonbinding offer, I am granting the motion.

However, that does not preclude the plaintiff from utilizing that factual basis for claims of a breach of fiduciary duty. Okay?

MR. TAYBACK: Or for other alleged -- to prove other alleged breaches you're saying it might be admissible as evidence.

THE COURT: Well, it may be additional evidence of breach of fiduciary duty. But they don't get to claim any damages from it, since they haven't established damages related to that because of the legal issues related to the nature of the offer.

So what is your next motion for summary judgment, if any? I think there were six.

MR. SEARCY: Your Honor, I'm addressing Motion for Summary Judgment Number 5. That relates to the CEO search. And --

THE COURT: Ready for me to say denied?

MR. SEARCY: If you'll let me --

THE COURT: You can talk, Mr. Searcy, but we're leaving here in 25 minutes whether you guys are done or not.

MR. SEARCY: All right. Well, if you're going to -- before you say denied then let me just address a few of the points in it. If you're going to say granted, then I'll certainly sit down.

THE COURT: I'm not going to say granted.

MR. SEARCY: The point, Your Honor, is that there's no dispute on the material facts here. There was a process that was undertaken by the board here to appoint a CEO. The board appointed a special committee, the special committee hired a search firm, that search firm went out and got information, they interviewed candidates, those candidates

were selected by the search firm Korn Ferry, and they were considered along with internal candidates. The board -- or the committee, rather, interviewed Ellen Cotter and decided that she was the best candidate, and the board agreed with that decision. And in the context of the law here you have a majority of disinterested directors who agreed with that decision. There's a presumption that all of this was conducted in good faith. There hasn't been a rebuttal of the presumption here, Your Honor, and, as a result, the motion should be granted.

Are there particular issues, though, that I can address for Your Honor?

THE COURT: Not that will cause you to be able to get me to change my mind on denied.

MR. SEARCY: Okay. Are there any that I can at least make an effort on, Your Honor?

THE COURT: Nope.

MR. SEARCY: Thank you, Your Honor.

THE COURT: All right. So that motion is denied.

Can we go to Number 6.

MR. SEARCY: Number 6 is mine, as well.

THE COURT: This has to do with the special bonus to Mr. Adams.

MR. SEARCY: That's correct, Your Honor. There are three main issues here. One has to do with the exercise of

options, and in that case there was an executive committee that considered those options. There's no doubt, no dispute that that was an existing plan, that the committee received advice from counsel, and approved of the -- approved of the exercise of the options.

THE COURT: Okay. Anything else?

MR. SEARCY: In addition to that -- and that's -- again, that is an exercise that is presumed to be done in good faith and especially here, where the statute provides that you can obtain information. And that's what the committee did.

In addition to that, Your Honor, there's the issue of the payment to Mr. Adams that you just raised. That again was approved by the board, approved by unanimous board who were disinterested in the subject and are entitled to business judgment on that subject.

And finally, with respect to Margaret Cotter's appointment it's certainly within the board's discretion to decide that someone who's worked for the company and been affiliated with the company for approximately 20 years or so has the qualifications to take on that job. And as Mr. Tayback said, hiring someone to fill a role is certainly -- that's an operational decision that's within the discretion of a board of directors, and certainly they're entitled to be able to exercise the business judgment when it comes to that, especially here. And with all of these decisions, Your Honor,

you're talking about a decision made by a majority of disinterested directors, directors that you've found to be disinterested.

THE COURT: Some directors I found to be disinterested.

MR. SEARCY: Well, for those directors, though, Your Honor, that you found to be disinterested, they constitute a majority of the decision makers here. And --

THE COURT: Well, they're protected. Those people are protected.

MR. SEARCY: And exercising their business judgment they approved these decisions.

THE COURT: Okay. Anything else?

MR. SEARCY: Thank you, Your Honor. That's it.

THE COURT: Denied.

So you had Number 4 I think we didn't get to. Was Number 4 reserved for this time, or had I ruled on it previously?

MR. TAYBACK: Your Honor, you --

MR. KRUM: You ruled on it previously.

THE COURT: Okay. So that takes me to your motions in limine. There were two that I think are important. One is Mr. Gould's motion in limine to exclude irrelevant and speculative evidence.

MR. RHOW: Your Honor, can I speak on this one?

THE COURT: It's your motion.

MR. RHOW: Thank you, Your Honor.

MR. FERRARIO: Hey, come on. This is his first time.

MR. RHOW: I feel honored to actually --

THE COURT: Here's my first question.

MR. RHOW: By the way, is it tentative to grant? I'd like to know that first.

THE COURT: My first question for you is one that I'm going to ask all the people in motions in limine. Did you have an opportunity to meet and confer with opposing counsel before you filed the motion to see if there were areas of agreement?

MR. RHOW: The answer is I don't think we did.

THE COURT: You know, we have a rule.

MR. SEARCY: I'm going to have to disagree with Mr. Rhow. We actually did meet and confer with Mr. Krum on the phone.

MR. RHOW: Oh. I'm sorry.

MR. SEARCY: Mr. Rhow wasn't part of the meet and confer, but his associate, Shoshana Bannett, was.

THE COURT: Oh. Okay. All right.

MR. RHOW: Okay. I had looked at -- I should have looked at Mr. Searcy.

THE COURT: Because usually -- usually I get a

declaration that tells me, we met and conferred on this date --

MR. RHOW: Correct.

THE COURT: -- so that I can then gauge whether somebody's being unreasonable or not. So it's your motion.

MR. RHOW: Thank you, Your Honor.

I think the motion was short and sweet on purpose. During the deposition of Mr. Cotter, Jr., and it lasted days and days and days, and throughout the questioning it was quite clear that he was testifying based on not what he saw, what he heard, what he observed; he was literally saying, here's what I think -- thought at the time, here's what I was thinking Mr. Gould was thinking and others were thinking and so therefore I believe the claim is sufficient because of my subjective belief as to what other directors were thinking. If that's going to be part of this trial, first, this trial's not going to be four weeks, it's going to be eight weeks; but, second, there's nothing in the law, there's nothing based on common sense that tells you that what the subjective beliefs of the plaintiff are none of that is relevant, none of that is relevant under the law, none that is relevant under common sense. So to streamline this case, if he's going to talk about what he saw, what he heard, certainly that's admissible. But if he's going to talk about what he believes, that's subjective and should not be part of this trial.

THE COURT: Thank you.

Ms. Levin, is this your motion?

MS. LEVIN: Yes, Your Honor.

As we said in our opposition, we believe this is an improper and premature motion just because Mr. Cotter obviously will be here at trial testifying.

THE COURT: So you want me to rule on the questions and answers as they're given. So if somebody asks him, well, did you talk to Mr. Adams about what he was going to do, he can then tell me what he said.

MS. LEVIN: Correct, Your Honor.

THE COURT: Well, what did you think he meant? That's speculation.

MS. LEVIN: Unless, of course, he's got a basis for his belief. And I think that some of the deposition testimony, those responses were invited by the very questions. So to the extent that he has a basis to believe -- you know, to state his belief I think that, again, it should be determined on the question by question.

THE COURT: Okay. So the motion is denied. It's premature. It's an issue that has to be handled at trial based upon the foundation that is laid related to the issue.

So -- and plus you won't be here. You won't be here; right?

MR. RHOW: I'm sorry?

THE COURT: You won't be here; right?

MR. RHOW: I don't know. I hope not. Is Your Honor saying I should not be here or that my client won't be here then?

THE COURT: That's what the business judgment ruling deals with; right? So I granted your client's business judgment rule motion. Well, you know, he may be a witness.

MR. KRUM: I'm sorry, Your Honor. Did I miss something?

THE COURT: What?

MR. KRUM: We haven't had that motion argued yet, Mr. Gould's motion.

THE COURT: I included Mr. Gould because you briefed it relate to all of the motions for summary judgment and I asked you questions about all the directors, except Mr. Adams.

MR. KRUM: I'm sorry. I didn't understand that, Your Honor. I didn't answer as to Mr. Gould.

THE COURT: Do you want to tell me an answer to Mr. Gould?

MR. KRUM: I do, because we have a hearing set for the 8th on his motion, which is why misunderstood that.

THE COURT: I used it because it was included in your opposition, the supplement to those motions.

MR. KRUM: That was confusion that we created, and I apologize. The reason we did that, Your Honor, is that we

didn't have an opportunity to prepare a Gould brief, but we didn't want to be accused of doing nothing. And some of the evidence in those motions in our view did relate to Gould, and we therefore put him on there.

That said, he filed two pieces of paper, they asked me if we could have the hearing today. I told them no, I wanted to respond. So -- but let me try to answer your question with respect to Mr. Gould. So we start, Your Honor, as we do, with the threat to terminate and the termination. And I respectfully submit --

THE COURT: I will tell you that on your Mr. Gould you've got the same list that we've already talked about. What I'm trying to find out is -- and I understand the threat is part of what you've alleged related to Mr. Gould along with the other six or seven bullet points that are on pages 5 and 6 of the opposition. Is there something else related to Mr. Gould, something like you have with Mr. Adams that would establish a lack of disinterestedness?

MR. KRUM: Let me answer, and then you'll decide.

THE COURT: Yeah. That's what I'm trying to pull out of you.

MR. KRUM: So, for example, with respect to the termination Mr. Cotter raised the question of Mr. Adams's independence before a vote was taken, and Mr. Gould asked Mr. Adams, well, can you tell us about that. And Mr. Adams got

mad and said in words or substance, no. And Mr. Gould said, okay. That, Your Honor, is a perfect example of a failure to act in the face of a known duty to act. We're not talking about someone who is unfamiliar with fiduciary obligations here. Mr. Gould is a corporate lawyer.

So we get to the -- we get to the executive committee, same meeting, June 12. Ellen Cotter says, I want to repopulate the executive committee, Mr. Gould, would you like to be on it. His testimony, his deposition testimony was that he declined because he knew that it would take a lot of time. Now, if he knew that it would take a lot of time, Your Honor, how is it that it didn't occur to him that this was what the sisters were doing in October of 2014 when they were trying to circumvent the board?

THE COURT: These are all on your list of bullet points.

MR. KRUM: Okay.

THE COURT: What I'm trying to find out is if there's anything that's not on the list of bullet points that are on pages 5 and 6 of your supplemental opposition that relate to Mr. Gould. Because when I made my ruling I was including Mr. Gould as someone because I specifically excluded Mr. Adams and the two Ms. Cotters.

MR. KRUM: Bear with me. I'm mentally working.

THE COURT: I'm watching you. I'm watching him

work.

MR. KRUM: So I don't think we had the executive committee there, but I just said that.

So then, Your Honor, the composition of the board. So Mr. Gould was not a member of the nominating committee. His testimony was that, on a Friday Ellen Cotter called me and asked me if she could come to my office and she and Craig Tompkins came to my office and showed me Judy Codding's resume and said we were going to have a board meeting on Monday to put Ms. Codding on the board. And Bill Gould said, this isn't sufficient time, I can't do my job. But he voted for her nonetheless. That, Your Honor, is the same thing that happens over and over and over again with Mr. Gould. That is, in the face of a known duty to act he chooses not to do so. That is intentional misconduct. Your Honor, you've denied the motion with respect to the CEO search. That is Mr. Gould. It is Mr. Gould and Mr. McEachern who are the ones who together with Margaret Cotter aborted the CEO search. Literally the last time they spoke to Korn Ferry was the day Ellen Cotter declared her candidacy. After the what did they do? They told Craig Tompkins to tell Korn Ferry to do no more work. And Mr. Gould, he was the one whose name was on a press release saying, Ellen Cotter was made CEO following a thorough search. She was not made CEO as a result of that search. She was made CEO in spite of that search.

THE COURT: Okay. So all of those are issues that I'm aware of considered when I had previously included Mr. Gould in the granting of the summary judgment related to the business judgment rule. The fact that I am denying certain issues related to other summary judgments does not diminish the fact that the directors that I found there was not evidence of a lack of disinterestedness have the protection the statute provides to them.

Okay. So let's go back to Mr. Cotter's Motion Number 3. This is related to the coach.

MS. LEVIN: Your Honor, this motion should be denied because the hiring of High Point, that's post hoc --

THE COURT: It's your motion. You wanted it granted.

MS. LEVIN: I'm sorry. You know, the Court -- I'm sorry. The Court should exclude the after-acquired evidence on the -- in the form of any testimony or documents relating to the hiring of High Point, because the breach of fiduciary duty claims, they are -- they concern what the directors did and knew at the time that they decided to fire the plaintiff. So we cited the Smith versus Van Gorkom case, which holds post hoc data is not relevant to the decision.

So at the time that they made this decision they did not have nor did they rely on the High Point evidence. So therefore the after-acquired evidence cannot be as a matter of

law relevant to their decision to terminate the plaintiff. That would amount to a retroactive assessment of his ability, which are not at issue. And I think that that's the -- you know, the --

THE COURT: The problem I have with that is part of what your client's position has been in this case is he is suitable to be acting as the CEO, and if there is information that is relevant to that suitability, that's where I have the problem on this. I certainly understand from a decision-making process that that information was not in the possession of anyone who was making the decisions at the time. But given the affirmative proposition by your client that he is suitable to CEO, I have concerns about granting the motion at this stage.

MS. LEVIN: Well -- okay. So -- but with respect to the decision which you can agree that they could not use that evidence to show that after the fact they made the right decision because of the after --

THE COURT: No. That's a problem if your client is saying he's suitable and therefore he should be able to be CEO. Because part of what he originally asked for was to make them make him be CEO.

MS. LEVIN: All right. And here at issue I believe it's the -- we're seeking to void the termination.

THE COURT: I know.

MS. LEVIN: So -- but I think that even -- and I think that in that respect if you were inclined to allow it on his suitability, the problem then becomes first of all the hiring of consultant doesn't necessary mean that somebody is unsuitable.

THE COURT: Absolutely. It may mean they're trying to get better.

MS. LEVIN: Exactly. And I was thinking -- when I read these facts I was thinking about the analogy. If you were a professional runner and you hire a runner coach --

THE COURT: Coach.

MS. LEVIN: -- doesn't mean that you're not a good runner. You may --

THE COURT: You want to be better.

MS. LEVIN: Exactly. So that was --

THE COURT: I understand.

MS. LEVIN: So and the other thing is that, you know, the opposition argues, well, but it looks like in his own assessment he wasn't good for it. And that, of course, again doesn't follow from that. And so then we get into the category of even if there's a remote relevance, Your Honor, then whatever that relevance is would be substantially outweighed by the unfair prejudicial effect that that would cause. Because, again, his assumed thoughts, then the jury could think like, well, you know, he thinks he's not qualified

because he hired a coach. So all in all I believe that it's unfairly prejudicial.

Just on the point of the unclean hands defense, again they are citing the Fetish, Las Vegas Fetish case. But, again, the unclean hands defense requires egregious misconduct and serious harm caused by it. And they haven't further substantiated that. So with that being said, our position is to exclude it for those reasons.

THE COURT: Thank you.

MS. LEVIN: Thank you.

THE COURT: Mr. Searcy --

MR. SEARCY: I'll address that.

THE COURT: -- I am inclined to deny the motion. But if the evidence is admitted at trial, to admit it with a limiting instruction that says that it only goes to suitability.

MR. SEARCY: And, Your Honor, I think that we're okay with that.

THE COURT: Okay.

MR. SEARCY: I just want to clarify that we can certainly ask Mr. Cotter about the Alderton documents --

THE COURT: You ask him about it, then I'm going to give the limiting instruction, and we'll probably give it five times or six times, and it'll be a written instruction, so it's part of it. And if the plaintiff doesn't want me to give

the limiting instruction because they believe that calls to much attention to it, they can, of course, waive that request.

MR. SEARCY: Thank you, Your Honor.

THE COURT: Okay. So think about whether you really want the limiting instruction, come up with your text for the limiting instruction, and then we'll talk about it when we have our final pretrial conference as to whether you think you really want it.

That takes me to the last motion in limine by Mr. Cotter, which relates to the ability of Mr. Ferrario to participate at trial, also known as Motion in Limine Number 2.

MR. KRUM: Thank you, Your Honor. I enjoy this very much, showing that perhaps I've spent too many years in the corporate governance jurisprudence. Three points, and it's not complicated. First, as a general rule a nominal defendant is not allowed to introduce evidence and defend the merits of claims against the director defendants.

Second, the handful of exceptions to that are exceptions where it's a serious fundamental corporate interest that is challenged by the derivative suit, a reorganization or restructuring, an effort to appoint a receiver. None of those exist here.

Third, if you disagree with us on all of that, there's a question of unfair prejudice and waste of time. And, you know, the individual defendants are represented by

capable counsel. They don't need a second lawyer carrying their water. And for a jury to have someone who represents the company asking questions that imply conclusions adverse to the plaintiff is, if not unfairly prejudicial, something beyond that.

So that's the argument in a nutshell, Your Honor. If you have any questions, I'd be happy to answer them.

THE COURT: Nope. Motion's denied.

All right. So let's go to your Motion in Limine Number 1 regarding advice of counsel. I forgot we need to hit that one. Ms. Levin.

And then we're going to go to the Chief Justice Steel that I'm not going to really hear, because I didn't give you permission to refile.

MS. LEVIN: Your Honor is familiar with the share options, so if I talk about the share option, I don't --

THE COURT: I am.

MS. LEVIN: Okay. Well --

THE COURT: And also with the drama related to the production and the creation and all the stuff about the advice of counsel issue.

MS. LEVIN: Okay. I'll just --

THE COURT: But I also am aware the Nevada Supreme Court has told us on a business judgment issue we cannot reach behind the advice of counsel except to make a determination as

to essentially process issues, how the attorney was hired, what the scope of the retention was, and those kind of issues, as opposed to the actual advice.

MS. LEVIN: That's true, Your Honor. And so our arguments are really twofold. Number one is that Adams and Kane, who were two of the three directors on the compensation committee, they testified, as the Court found in its October 27, 2016, hearing, that they relied solely on the substance of advice of counsel to determine whether the authorization decision to authorize the estate to invoke the option was proper. So, unlike in Wynn or in Comverge, on which the defendants rely, they did not rely on anything else. So if they are asked at trial to explain why they authorized the option, they must rely on that legal advice.

So the second point is that the defendants waived the attorney-client privilege by partially disclosing attorney-client privileged information. Now, they're saying -- or RDI says in the opposition that individual directors cannot waive the privilege.

THE COURT: That's the Jacobs versus Sands case.

MS. LEVIN: Exact, Your Honor. And I agree with that. But, of course, RDI can only act through its officers and directors.

THE COURT: That's the Jacobs versus Sands case.

MS. LEVIN: And the current officer -- and I think

in particular if you look at the Exhibit 4 that we attached to our motion, is that that email was produced by Ellen Cotter, who is a current CEO and is an officer and director, and she --

THE COURT: I understand.

MS. LEVIN: So, in other words --

THE COURT: And then Mr. Ferrario clawed it back.

MS. LEVIN: Right. So she produced it, and so there's a Supreme Court case that says, "The power to waive the corporate attorney-client privilege rests with the corporation's management and is usually -- and is normally exercised by its officers and directors." And that's what happened here.

So I think especially Exhibit 4, but even Exhibit 2 and 3, the 2 and 3 they raise the legal issues. 2 and 3 identify the legal issues of whether there was a reason why Ellen Cotter could not exercise the option and whether enough -- whether the trust documents did not pour over -- the share option didn't pour over into the trust. But Exhibit 4 specifically seeks legal advice from the company attorney and as to the legal rights of the estate to exercise the option in light of the proxy language. So that is -- under our statute is an attorney-client communication for the purpose of obtaining legal advice. So they partially disclosed that, so we believe there's a waiver issue. And under Wardleigh you

cannot use the attorney privilege both as a shield and a sword, which is what they're now doing, is because what they're going to say is, well, we partially disclosed but you cannot find out what it was. But even the very --

THE COURT: But that's the Nevada Supreme Court who's made that decision, not the rest of us. They were very clear that we're not allowed to get behind that.

MS. LEVIN: Correct. But one thing that the Wynn decision did not decide was the waiver issue. And that was in Footnote 3 of the decision.

THE COURT: I made that decision separately after that came back. But that's a case by case, and I haven't made that decision in this case. In fact, my belief is you guys have a writ pending on this issue still. Right?

MR. KRUM: I think the writ pending is on a different privilege issue, Your Honor.

THE COURT: Okay.

MS. HENDRICKS: Your Honor, the writ relating to this issue was filed by RDI, and the Supreme Court actually came back and said the facts were analogous to Wynn and it needed to make a decision, and that was shortly after you did make the decision when we were back before you on it.

THE COURT: Yeah. We had a hearing.

MS. HENDRICKS: And we had the supplemental briefing.

THE COURT: Yep. Okay. So anything else on this one?

MS. LEVIN: Only -- the only thing is that the partially disclosed privileged emails themselves show that the board had information that would cause reliance on advice to be improper. So that would --

THE COURT: Okay. So your motion's denied. Come up here. I'm going to give you these. These are your I believe documents you actually want sealed. Since I granted your motion, it was on the calendar today, hopefully you can work out with the Clerk's Office so they will actually take the sealed documents and put them so they're part of the record in some way.

MS. LEVIN: And I brought them with me, too.

THE COURT: Yeah. Good luck. You've got to do it at the counter.

MS. LEVIN: Okay. Thank you.

THE COURT: Okay. So I am declining to hear again the motion in limine on Chief Justice Steel. I've previously made a ruling on that. I've reviewed your brief, and there's nothing in it that causes me to change my mind.

I have already granted your motions to seal and redact. It was on calendar for today.

And now we need to set our final pretrial conference. I usually do it the week before.

MR. KRUM: The week before is fine, Your Honor.

(Pause in the proceedings)

THE COURT: The week before is fine?

MR. KRUM: The week before is fine, Your Honor.

THE COURT: What day are you guys arguing in the Supreme Court?

MR. TAYBACK: That's the 3rd.

THE COURT: 3rd. So do you want to come in on --

MR. TAYBACK: 4th?

THE CLERK: [Inaudible].

THE COURT: No, I'm not seeing them on January 2, you're seeing them on January 2.

How about on January 5 at 3:00 o'clock?

MR. TAYBACK: That's good. Thank you.

MR. KRUM: Perfect.

MR. FERRARIO: Thank you, Judge.

THE COURT: That will be your final pretrial conference. At your final pretrial conference we're not going to bring exhibits, because you're already going to deal with that. But you are going to bring any jury instructions, you're going to exchange your draft jury instructions. If you have limiting instructions you think are appropriate, try and have those, as well. And we're also going to deal with any exhibits that you want in a notebook for the jury. The only reason I suggest that is sometimes documents that we show on

screens aren't easily able to be seen by a juror. There's contract documents and things you may want. If there are selected items you want to have in a jury notebook, it will be a single jury notebook. It will be not more than 3 inches. So whatever we put in it has to fit in the 3 inches. And so if you have things you think you want included in that, we'll talk about that. And you're going to -- I will make final decisions on voir dire questions at that time. I encourage you to exchange them a week ahead of time.

MR. KRUM: Your Honor, with respect to exhibits we have a date this week of Wednesday or Thursday for our exhibit list. I think in view of today's developments it would be a good idea to push that back to next week.

THE COURT: You guys need to get working on it.

MR. KRUM: No, we're working on it.

THE COURT: It takes a lot longer than you think it does.

All right. Anything else that I missed?

MR. FERRARIO: There may be some utility to that, Mark, in light of the rulings of the Court today, because the complexion of the case has changed.

MR. KRUM: Well, that's -- we're working on it. We understand that, Your Honor. So may we have until Wednesday of next week you think, Mark?

MR. TAYBACK: Yeah, that's fine.

THE COURT: I still need to see representatives from those parties who remain in the case at the calendar call on December 18th. If you are out of town, I do not do call-ins for calendar calls, Mr. Krum, so just make sure Mr. Morris and Ms. Levin know whatever it is they need to say.

I am going to be asking you whether given the rulings I made today it has changed the estimate that you provided to me through Ms. Hendricks on December 4th as the amount of time for trial. Because I need to negotiate for space, and knowing the time that I need is important for me in my space negotiations.

MR. RHOW: Your Honor, sorry. One point of clarification as to Mr. Gould specifically. He is out of the case entirely?

THE COURT: Well, I granted the motion on the business judgment for him. My understanding is that is the only way that you would be involved, because there are no direct breach of contract claims against you. If there were other types of claims against you that were not protected by the business judgment rule, you might not be out. But I didn't see that in the briefing. But I don't know your case as well as you do.

MR. RHOW: Assuming that's the case, I just want to make sure that no one's going to sanction me if I don't show up.

THE COURT: Do you think you have any remaining claims against Mr. Gould given my ruling today?

MR. KRUM: Your Honor, probably not. But I'll go back through it.

THE COURT: If you could communicate if you think there are any, and then I'll have to handle that on a supplemental motion practice.

MR. RHOW: Understood, Your Honor.

THE COURT: Okay. So the people who I anticipate will be here only in the capacity as witnesses would be -- okay, I've got to go back to this list -- Kane, McEachern, Gould, Codding, Wrotniak. That's all of them. So the people who remain parties are Cotter, Cotter, Adams, and then Mr. Cotter.

MR. TAYBACK: Yes, Your Honor. I understand that.

THE COURT: All right. So see you on the 18th.

MR. TAYBACK: Thank you, Your Honor.

MR. KRUM: Thank you.

MR. EDWARDS: Your Honor --

THE COURT: Yes, Jim.

MR. EDWARDS: -- on the 2nd is local counsel going to be here for the exhibits? Do you want local counsel here?

THE COURT: Counsel does not need to be here. They can send paralegals. So local counsel does not need to come sit through it if they don't want to.

MR. EDWARDS: Okay.

THE COURT: But it may be helpful if local counsel is going to be intimately involved in the process of doing it for you to have someone here. But I leave that to work out with your people.

Anything else?

MS. HENDRICKS: Your Honor, on the exhibit list did we get an extra week, then, so we kind of work through these issues?

THE COURT: I'm not involved in the exhibit list issue. That's you guys on 2.67. I'm out of that.

MR. FERRARIO: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 12:00 NOON

* * * * *

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

12/12/17

DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 75053

Electronically Filed
Mar 20 2018 02:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JAMES J. COTTER, JR., derivatively on behalf of READING INTERNATIONAL, INC., Appellant/Cross-Respondent, *vs.* EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, and MICHAEL WROTNIAK, Respondents/Cross-Appellants, and READING INTERNATIONAL, INC., a Nevada corporation, Respondent.	District Court No. A-15-719860-B, jointly administered with No. P-14-082942-E

RESPONDENTS'/CROSS-APPELLANTS' JOINT DOCKETING STATEMENT CIVIL APPEALS

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Judicial District: Eighth Department: XI

County: Clark Judge: Elizabeth Gonzalez

District Court Case No.: A-15-719860-B, coordinated with P-14-0824-42-E

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If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

- *Counsel for other parties who have also cross-appealed, and who join in and concur with the filing of this Docketing Statement* (see signed Certification attached at the end of this document)*:*

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Clients(s): William Gould

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Clients(s): Reading International, Inc.

Item 3: **Attorneys representing Appellant/Cross-Respondent:**

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Clients(s): James J. Cotter, Jr.

Attorneys: Mark Krum and Noemi Ann Kawamoto

Firm: Yurko, Salvesen & Remz, P.C.

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Clients(s): James J. Cotter, Jr.

Item 4: **Nature of disposition below (check all that apply):**

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☒ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

Item 5: **Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

No.

Item 6: **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal.

(1) *James J. Cotter, Jr. v. Eighth Judicial Dist. Ct.*, Petition for Writ of Prohibition or, in the Alternative, Mandamus, Case No. 71267;

(2) *Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak v. Eighth Judicial Dist. Ct.*, Petition for Writ of Prohibition or, in the Alternative, Mandamus, Case No. 72261; and

(3) *James J. Cotter, Jr. v. Eighth Judicial Dist. Ct.*, Petition for Writ of Mandamus, Case No. 74759.

Item 7: **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings and their dates of disposition:

(1) *Reading International, Inc. v. James J. Cotter*, AAA Case No. 01-15-0004-2384, American Arbitration Association. Date of disposition: N/A.

(2) *In re: James J. Cotter Living Trust, dated August 1, 2000*, Case No. BP159755, Supreme Court of California, County of Los Angeles, Probate Division, Stanley Mosk Dept. 9. Date of disposition: N/A.

(3) *James J. Cotter, Jr. v. Reading International, Inc.*, Case No. A-16-735305-B, Eighth Judicial District Court, Clark County, Nevada, Dept. 11 (coordinated for certain matters with Case No. A-15-719860-B). Date of disposition: October 4, 2016 (order on motion and countermotion for summary judgment).

(4) *In the Matter of the Estate of James J. Cotter, Sr.*, Case No. P-14-0824-42-E, Eighth Judicial District Court, Clark County, Nevada, Dept. No. XXVI (coordinated for certain matters with Case No. A-15-719860-B in Dept. 11). Date of disposition: N/A.

Item 8: **Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiff James J. Cotter, Jr. ("Plaintiff" or "Appellant/Cross-Respondent") served as the President and CEO of Reading International, Inc. ("RDI"), for 10 months, between August 2014 and June 2015. In mid-June 2015, a majority of RDI's nine-member Board, including Respondents/Cross-Appellants Edward Kane and Douglas McEachern, exercised their business judgment and voted to terminate Plaintiff, concluding that his inexperience and poor judgment could not be overcome and that ending his divisive tenure was in the best interest of the Company and its stockholders. A majority of RDI's Board, including all five Respondents/Cross-Appellants, subsequently reconsidered and ratified this decision on December 29, 2017.[1]

In retaliation for his termination, Plaintiff immediately filed this "derivative" lawsuit, claiming that the RDI Board's termination decision was a breach of its fiduciary duties to minority stockholders. In doing so, he sued all of RDI's directors that voted in favor of his termination (Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, and Douglas McEachern) as well as certain other RDI directors (William Gould, Judy Codding, and Michael Wrotniak). As the primary remedy for this purported "breach," Plaintiff is seeking to be reinstated as CEO. Plaintiff has also periodically amended his complaint to challenge virtually every other material decision by RDI's Board in the years since he was terminated, such as whether these directors breached their fiduciary duties (i) in appointing certain officers or in approving their compensation, (ii) in deciding not to pursue certain indications of interest by a third party, (iii) in utilizing an executive committee, or (iv) in allowing the exercise of certain stock options.

Following the completion of discovery, Defendant William Gould moved for summary judgment on all claims against him. Similarly, Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak moved for summary judgment on every corporate decision identified by Plaintiff as constituting a breach of fiduciary duty, and also

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[1] Respondents/Cross-Appellants Judy Codding and Michael Wrotniak were not yet members of RDI's Board at the time of the June 12, 2015 termination decision, and Respondent/Cross-Appellant Gould initially voted against terminating Plaintiff on June 12, 2015 but, following further consideration, voted to ratify the Board's termination decision on December 29, 2017.

moved for summary judgment on all claims asserted by Plaintiff under Nevada's business judgment rule based on their independence and disinterestedness.

In its December 28, 2017 Order on Defendants' motions for summary judgment, the District Court implicitly recognized that Plaintiff had standing to derivatively bring each of his claims (despite Defendants' arguments otherwise) and left open the possibility that Plaintiff could be reinstated against the will of RDI's Board (despite Defendants' arguments to the contrary). However, the Court granted summary judgment in favor of Directors Kane, McEachern, Codding, Wrotniak, and Gould (the "Dismissed Directors") on the grounds that there was no genuine issue of fact as to whether they were independent or not disinterested with respect to the RDI Board decisions challenged by Plaintiff. The District Court concluded that there were such genuine issues with respect to Directors Margaret Cotter, Ellen Cotter, and Guy Adams, and denied their request for summary judgment.

Plaintiff appealed from the portion of the District Court's December 28, 2017 Order granting summary judgment in favor of the five Dismissed Directors. The District Court certified this dismissal as final under Nevada Rule of Civil Procedure 54(b) by order dated January 4, 2018. The Dismissed Directors have cross-appealed to expand the District Court's judgment, alter the scope of their rights under it, and fully protect their rights as directors of a Nevada corporation to select RDI's officers and employees.

Item 9: **Issues on cross-appeal.** State concisely the principal issue(s) in this cross-appeal (attach separate sheets as necessary):

(1) Did the District Court err as a matter of law when it determined that Plaintiff had standing to derivatively assert his breach of fiduciary duty claims against the Dismissed Directors, including those arising out of his own termination, where no other stockholder has supported his action, where courts have routinely held that the termination of an officer by a board of directors cannot support a breach of fiduciary duty claim, and where Nevada's statutory scheme and longstanding corporate law policy counsel against allowing a deposed officer to derivatively maintain such a claim?

(2) Did the District Court err as a matter of law when it ruled that extraordinary injunctive relief in the form of reinstatement may be available to a terminated officer of a Nevada corporation in the context of a fiduciary breach claim?

While not raised in their cross-appeal, Respondents/Cross-Appellants also recognize that Plaintiff in his appeal has challenged the District Court's summary judgment ruling in favor of the Dismissed Directors on certain procedural grounds and with respect to its determination that no genuine issue of fact exists with respect to the independence or disinterestedness of the Dismissed Directors. Contrary to Plaintiff's claims and as will be established in the forthcoming briefing, these rulings by the District Court were entirely correct and supportable as a matter of fact and law.

Item 10: Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Respondents/Cross-Appellants are not aware of any pending proceedings raising the same or similar issues.

Item 11: Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- [x] N/A
- [ ] Yes
- [ ] No

If not, explain:

Item 12: Other issues. Does this appeal involve any of the following issues?

- [ ] Reversal of well-settled Nevada precedent(identify the case(s))
- [ ] An issue arising under the United States and/or Nevada Constitutions
- [x] A substantial issue of first impression
- [x] An issue of public policy
- [x] An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- [ ] A ballot question

For an explanation, see Item 13 below.

Item 13: Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Respondents/Cross-Appellants agree with Plaintiff that the Nevada Supreme Court should retain this proceeding under NRAP 17(11) because it raises issues of statewide importance. Moreover, the issues raised are of first impression and implicate profound public policy concerns.

Even though the District Court granted the motions for summary judgment of the Dismissed Directors (who are now Respondents and Cross-Appellants) on the grounds that no genuine issues of fact exist as to whether they are disinterested or not independent with respect to Plaintiff's breach of fiduciary duty claims and the transactions he challenges, the District Court's decision was premised on several critical legal errors. Respondents/Cross-Appellants have filed this cross-appeal to clarify Nevada law and rectify these errors, and to expand the District Court's judgment beyond its existing parameters to its proper scope.

Specifically, in ruling on the *merits* of Plaintiff's claim, the District Court necessarily concluded that Plaintiff has standing to derivatively assert a breach of fiduciary duty claim arising from his own termination against RDI's directors—a personal claim that no other stockholder supports. The District Court further concluded, necessarily in light of Defendants' arguments below, that, as a remedy for a purported breach relating to his termination, Plaintiff may be reinstated as President and CEO of RDI *against the will* of the majority of RDI's Board.

The conclusion that Plaintiff has standing and can proceed with his derivative claim (and can potentially be reinstated), despite inherent conflicts of interest, is an especially significant question of first impression given that no court—especially in Nevada—has ever determined that a board's decision to terminate a corporate officer may constitute a breach of fiduciary duty. Nor has any court ever subjected a board's decision to terminate an officer to any "fairness" review, let alone an

"entire fairness" review, or found that factors such as directorial "independence" or "disinterestedness" are at all relevant to the decision to terminate a corporate officer. And no court has ever reinstated a former CEO as a remedy for a purported breach of fiduciary duty. The District Court's ruling substantially impacts the interpretation of Nevada's business judgment rule, NRS 78.138(3), and calls into question the scope and meaning of NRS 78.139 and NRS 78.140—which set forth the only instances previously recognized in which board members of a Nevada corporation could lose the business judgment presumption.

The District Court's ruling threatens to reverse decades of business-friendly corporate laws enacted in Nevada—leaving board members of Nevada corporations more exposed than directors of companies incorporated in any other state. If it is indeed the case that, under Nevada common law, directors who make the operational decision to remove an officer may be subject to breach of fiduciary duty claims in derivative actions by the deposed officer (and forced to accept that officer back into the company, against their will, in certain cases), they must be made aware of this pitfall. Moreover, companies that are incorporated in Nevada, and companies considering incorporation in Nevada, need to know whether the price of doing business as a Nevada corporation includes that risk that Nevada courts, unlike the courts of other jurisdictions, will micromanage a corporate board's decision to remove an officer, and possibly penalize directors for doing so. The District Court's opening of this unsuspected danger makes this issue of corporate law a serious matter of substantial public policy and worthy of a definitive ruling by the State's highest court.

Item 14: If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? ____N/A

Item 15: Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Respondents/Cross-Appellants respectfully submit that the Hon. Kristina Pickering should be recused from hearing this appeal pursuant to NRS 1.225(2)(d) and NRS 1.225(3). Justice Pickering's spouse, Steve Morris, Esq. of the Morris Law Group, represents Appellant/Cross-Respondent James J. Cotter, Jr. both in the proceedings before the District Court and on his appeal of the District Court's December 28, 2017 Order. Given Mr. Morris' significant previous and ongoing role in this litigation, Respondents/Cross-Appellants submit that Justice Pickering should voluntarily recuse herself to avoid any appearance of impropriety.

TIMELINESS OF NOTICE OF APPEAL

Item 16: Date of entry of written judgment or order appealed from

(1) December 28, 2017.

(2) January 4, 2018 is the date of the District Court's Order certifying as final the portion of the December 28, 2017 Order that is the subject of Appellant/Cross-Respondents' appeal.

Appellant/Cross-Respondent filed his Notice of Appeal on February 1, 2018. Respondents/Cross-Appellants Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak filed their Notices of Appeal on February 14, 2018. Respondent/Cross-Appellant William Gould filed his Notice of Cross-Appeal on February 15, 2018.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

Item 17: Date written notice of judgment or order was served

December 28, 2017. January 4, 2018 is the date of the District Court's Order certifying as final the portion of the December 28, 2017 Order that is the subject of Appellant/Cross-Respondents' appeal.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

Item 18: If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: January 4, 2018

(c) Date written notice of entry of order resolving tolling motion was served: January 4, 2018

Was service by:

☐ Delivery

☒ Mail

Item 19: Date notice of appeal filed

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

On February 1, 2018, Appellant/Cross-Respondent James J. Cotter, Jr. filed a Notice of Appeal.

On February 14, 2018, Respondents/Cross-Appellants Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak filed a Notice of Cross-Appeal.

On February 15, 2018, Respondent/Cross-Appellant William Gould filed a Notice of Cross Appeal.

Item 20: Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.,* NRAP 4(a) or other

NRAP 4(a)(2)

SUBSTANTIVE APPEALABILITY

Item 21: Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☒ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Under NRAP 3A(b)(1), an appeal may be taken from a "final judgment entered in an action . . . commenced in the court in which the judgment is rendered." On January 4, 2018, the district court certified as final under NRCP 54(b) that portion of its December 28, 2017 Order that dismissed five of the eight director defendants from the case—Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould. Plaintiff/Appellant/Cross-Respondent James J. Cotter, Jr. has appealed from that final disposition.

The Dismissed Directors have cross-appealed from that final disposition. Under NRS 233B.150, "[a]n aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court . . . ." As set forth in their Opposition to Plaintiff's Motion to Dismiss Cross-Appeal, filed on March 15, 2018, the Dismissed Directors are "aggrieved" under established Nevada law because, even though Plaintiff's claims against them have been dismissed on the merits, the District Court incorrectly rejected the Dismissed Directors' arguments that Plaintiff lacks standing to bring his claims and that, as a matter of law, he cannot obtain his requested equitable relief under them (reinstatement to his position as CEO, from which he was terminated nearly three years ago).

As such, even though under the District Court's judgment they no longer face personal liability, the Dismissed Directors still face the very real possibility that Plaintiff may still be reinstated contrary to their expressed business judgment, RDI's bylaws, and Nevada law. The Dismissed Directors have brought this cross-appeal because this aspect of the District Court's Order intrudes on their

unambiguous legal rights as directors—under the Company's bylaws and Nevada law—to govern RDI and make officer employment decisions (such as the hiring and firing of a CEO), and they wish to expand the District Court's judgment.

Item 22: List all parties involved in the action or consolidated actions in the district court:

(a) Parties: James J. Cotter, Jr., Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, Margaret Cotter, Ellen Cotter, Guy Adams, nominal defendant Reading International, Inc.

(b) If all parties are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendants Margaret Cotter, Ellen Cotter, and Guy Adams are not part of Plaintiff's appeal or the Dismissed Defendants' Cross-Appeal. The District Court, in its December 28, 2017 Order, denied summary judgment to these three defendants, finding that a genuine issue of material fact existed as to whether they were disinterested or not independent with respect to the at-issue decisions or transactions. As such, there is no final judgment with respect to these three defendant directors.

Item 23: Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff has pleaded the following causes of action against all Defendants : (1) breach of the fiduciary duty of care; (2) breach of the fiduciary duty of loyalty; and (3) breach of the fiduciary duty of candor. Against Defendants Margaret and Ellen Cotter, Plaintiff has asserted a fourth cause of action for aiding and abetting breach of fiduciary duty.

Item 24: Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

Item 25: If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining below:

Plaintiffs' claims for breach of the fiduciary duties of care, loyalty, and candor against Margaret Cotter, Ellen Cotter, and Guy Adams (none of whom are part of Plaintiffs' appeal or the Dismissed Directors' cross-appeal) remain pending before the District Court. In addition, Plaintiffs' claim for aiding and abetting breach of fiduciary duty against Margaret and Ellen Cotter remains pending before the District Court.

(b) Specify the parties remaining below:

See above, Item 25(a). Plaintiff James J. Cotter, Jr. and Defendants Margaret Cotter, Ellen Cotter, and Guy Adams remain parties in the ongoing proceedings before the District Court.

(c) Did the District Court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the District Court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

Item 26: If you answered "No" to any part of question 25, explain the basis for seeking appellate review *(e.g.,* order is independently appealable under NRAP 3A(13)):

N/A

<u>Item 27</u>: Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak	H. Stan Johnson
Names of appellant	Name of counsel of record
March 20, 2018	*/s/ H. Stan Johnson*
Date	Signature of counsel of record
Clark County, Nevada	
State and county where signed	

CERTIFICATION OF CONCURRENCE IN FILING

I, Shoshana E. Bannett, as counsel for Defendant William Gould, hereby certify that I concur in the filing of Respondents'/Cross-Appellants' Joint Docketing Statement Civil Appeals.



Shoshana E. Bannett

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CERTIFICATE OF SERVICE

I certify that on the 20th day of March 2018, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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Dated this 20th day of March, 2018

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