

IN THE SUPREME COURT OF NEVADA

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

Appellant,

v.

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

Respondents,

and

READING INTERNATIONAL, INC., a
Nevada Corporation,

Nominal Defendant.

Electronically Filed
Jan 22 2019 12:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 75053

JOINT APPENDIX IN SUPPORT OF
APPELLANT'S OPENING BRIEF

VOLUME V (JA1001- 1250)

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2017-11-27	Transcript of 11-20-2017 Hearing on Motion for Evidentiary Hearing re Cotter, Jr., Motion to Seal EXs 2, 3 and 5 to James Cotter Jr.'s MIL No. 1	XXI	JA5001-JA5020
2017-12-29	Transcript of 12-28-2017 Hearing on Motion for Reconsideration and Motion for Stay	XXVI	JA6186-JA6209
2018-01-05	Transcript of January 4, 2018 Hearing on Plaintiff's Motion for Rule 54(b) Certification	XXVI	JA6307-JA6325
2016-11-01	Transcript of Proceedings re: Hearing on Motions, October 27, 2016	XX	JA4750-JA4904

CERTIFICATE OF SERVICE

I certify that on the 22nd day of January 2019, I served a copy of **JOINT APPENDIX IN SUPPORT OF APPELLANT'S OPENING BRIEF VOLUME V (JA1001-1250)** upon all counsel of record:

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es); via email and/or through the court's efilg service:

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By: /s/ Patricia A. Quinn
An employee of Morris Law Group

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	JAMES J. COTTER, JR.,)	
	individually and)	
5	derivatively on behalf of)		
	Reading International,)	
6	Inc.,)	
		)	Case No. A-15-719860-B
7	Plaintiff,)	
		)	Coordinated with:
8	vs.)	
		)	Case No. P-14-082942-E
9	MARGARET COTTER, et al.,)	
)	
10	Defendants.)	
	and)	
11	READING INTERNATIONAL,)	
12	INC., a Nevada)	
	corporation,)	
13)	
	Nominal Defendant)		
14)	

15

16 DEPOSITION OF: EDWARD KANE

17 TAKEN ON: MAY 2, 2016

18

19

20

21

22

23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 and it became in- -- difficult.

2 And so the regulators came down and they
3 suggested that I leave, and I did.

4 **Q. When did you first meet Jim Cotter, Sr.?**

5 A. He was in the master's of tax program
6 with me in 1963. So I met him in the fall of 1963.

7 **Q. When did you and he become friends?**

8 A. Very shortly thereafter. We found that
9 we had similar backgrounds even though we don't --
10 didn't have similar religions.

11 But we were both middle class, lower
12 middle class. We lived in that neighborhood. We
13 didn't have any money when we went to college or law
14 school.

15 And we just -- just became fast friends.

16 He was the first person I invited to my
17 house for dinner.

18 I was married. I had gotten married in
19 the summer of '63. And we started socializing with
20 he and his, I guess, fiance, Mary Ellen Cotter, went
21 to the World's Fair with them, because Mary was
22 working for American Airlines, could get us free
23 tickets.

24 And then I got the position with Donovan
25 Leisure. And he joined the -- the IRS as a trial

1 MR. SEARCY: Objection. Vague.

2 THE WITNESS: Trying to think. I can't
3 think of any.

4 BY MR. KRUM:

5 Q. Answer this as you see fit, Mr. Kane.

6 Describe your historical relationship
7 with Ellen and Margaret Cotter.

8 MR. SEARCY: Objection. Vague,
9 overbroad.

10 THE WITNESS: I knew them as children,
11 just as I know Jim, Jr. I don't think my
12 relationship was any different with the three of
13 them.

14 It was just a relationship I've had with
15 someone I've known all my -- all their lives.

16 BY MR. KRUM:

17 Q. Do your family and the family of Jim
18 Cotter, Sr., socialize?

19 MR. SEARCY: Objection. Vague.

20 BY MR. KRUM:

21 Q. Socialize meaning see each other
22 socially.

23 A. No. No. Just because of the distance.

24 Q. Between San Diego and Los Angeles?

25 A. Right. Right. Right.

1 A. Probably two, two and a half years ago.

2 Q. What was your compensation in that role?

3 A. I think I was paid \$6500 month.

4 Q. And just to be clear, so that ended
5 in -- somewhere between the beginning and the middle
6 of 2014?

7 A. Something like that.

8 Q. Since that time have you had any income
9 other than as a Reading director?

10 MR. SEARCY: Objection. Vague.

11 BY MR. KRUM:

12 Q. Excluding passive investment income.

13 A. Well, I have self-funded -- my wife and
14 I have self-funded retirement plans. That's
15 passive, I suppose you could say.

16 Q. Okay. So, since the work ended with the
17 Community Medical Group --

18 A. Uh-huh.

19 Q. -- your sole source of income has been
20 your self-funded retirement plans and your work as a
21 Reading director, correct?

22 A. That's correct.

23 Q. How many retirement plans do you have,
24 sir?

25 A. My wife has one and I have two.

1 Q. What are the principal balances of your
2 two self-funded retirement plans?

3 A. Mine?

4 Q. Yes.

5 A. In excess of \$2 million.

6 Q. What sort of financial obligations do
7 you have of a material magnitude, whether it be
8 rent, mortgage, cars, that kind of thing?

9 A. I have home equity loans, less than
10 \$200,000.

11 I have two other home equity loans, but
12 they're joint with my children. One with one child,
13 one with the other, \$100,000. But the money is
14 sitting there in a savings account -- in the bank
15 account where -- who gave me that. That's in case
16 there's -- we're in Europe or something or something
17 fatal happens they'll have access to money right
18 away.

19 So, it's joint accounts, but it's my
20 Social Security number.

21 (Whereupon Mr. Ferrario re-entered
22 the deposition proceedings at this
23 time.)

24 BY MR. KRUM:

25 Q. Is that it -- excuse me.

1 Is that it in terms of your material
2 financial obligations?

3 A. That's it.

4 Q. Okay. Mr. Kane, I'm going to show you
5 what previously has been marked as Plaintiff's
6 Exhibit 94.

7 (Whereupon the document previously
8 marked as Plaintiffs' Exhibit 94
9 was referenced and is attached
10 hereto.)

11 MR. FERRARIO: I think you pick the most
12 inconvenient depo sites I've ever been to. From the
13 room we had to shoehorn everybody into, now to a
14 location without parking.

15 MR. KRUM: Yeah. I didn't know about
16 the parking. But I called another person who would
17 have had us in a high-rise downtown, but he just
18 retired. So, good for him.

19 MR. FERRARIO: And actually, Esquire has
20 a pretty nice facility downtown so --

21 BY MR. KRUM:

22 Q. All right. Mr. Kane, take such time as
23 you need to review this document.

24 The first question I'm going to have
25 about this and any other document I show you is do

1 real estate people or New York people with political
2 know-how and/or simply directors with real estate
3 experience in New York City, Australia and New
4 Zealand?

5 MR. SEARCY: Objection. Misstates the
6 document.

7 THE WITNESS: I think it would be
8 helpful to this board to have people with extensive
9 real estate experience. But I don't -- I don't
10 think now that it is a requirement that they be
11 knowledgeable in New York real estate, because I
12 think we have people onboard that are.

13 BY MR. KRUM:

14 Q. Does, to your knowledge, Judy Coddling
15 have any real estate expertise?

16 A. No.

17 Q. Does Michael Wrotniak have any real
18 estate expertise?

19 A. Pardon?

20 Q. Does Michael Wrotniak have any real
21 estate expertise?

22 A. I don't know.

23 Q. Did you speak with either of them before
24 they were added to the RDI board of directors?

25 A. Yes.

1 Q. Both of them?

2 A. Yes.

3 Q. Did you ask either -- did you ask
4 Wrotniak if he had any --

5 A. No.

6 Q. -- real estate expertise?

7 A. No.

8 Q. When you spoke with Mr. Wrotniak, was
9 that in person or by telephone?

10 A. I think initially it was by telephone.

11 Q. Was anyone else on the call?

12 A. Not to my knowledge.

13 Q. How long did it last?

14 A. I don't remember.

15 Q. Was it -- can you give me a time range?
16 Ten minutes? An hour?

17 A. I can't.

18 Q. Two hours?

19 A. I can't -- I don't remember. I remember
20 speaking with him. I don't know how long it went.

21 Q. Do you recall what he said or what you
22 said in words or substance?

23 A. No.

24 Q. Now, when you spoke with Ms. Coddling
25 before she was added to the RDI board, was that in

1 I think Bill Gould added a lot of value
2 and expertise.

3 I'm trying to think of the other
4 directors.

5 Of course Margaret and Ellen added value
6 because of 16 to 20 years in live theaters and
7 cinema.

8 So, these were a valuable people. But
9 the question that I was addressing was whether he --
10 he was searching for the value that they added or
11 felt he added himself, which he did.

12 BY MR. KRUM:

13 Q. Well, let's -- I want to be clear on
14 this, Mr. Kane.

15 A. Yeah.

16 Q. So your -- the value you could add is
17 what you just described with respect to tax matters,
18 right?

19 A. Right.

20 Q. And did you or did you not add that
21 value during the time you were on the board and Jim
22 Cotter, Sr., was alive?

23 A. Absolutely.

24 Q. And the value there Mr. Gould could add
25 had to do with corporate governance and legal

EXHIBIT 44

1

2

DISTRICT COURT

3

CLARK COUNTY, NEVADA

4

JAMES J. COTTER, JR.,)

5 individually and)

derivatively on behalf of)

6 Reading International,)

Inc.,)

7)

Plaintiff,)

8)

vs.)

9)

MARGARET COTTER, et al.,)

10)

Defendants.)

11 and)

_____)

12 READING INTERNATIONAL,)

INC., a Nevada)

13 corporation,)

_____)

14 Nominal Defendant) _____)

_____)

15

16

VIDEOTAPED DEPOSITION OF ROBERT MAYES

17

TAKEN ON THURSDAY, AUGUST 18, 2016

18

19

20

21

22

23

24

REPORTED BY:

25

PATRICIA L. HUBBARD, CSR #3400

Job No.: 331292

1 with him via Skype, but --

2 Q. Do you recall any other communications
3 that you or, to your knowledge, anybody else at Korn
4 Ferry had with anybody at RDI again between the
5 meeting following the interviews on that Friday to
6 which you testified and your call where Mr. Tomkins
7 told you to stand down?

8 A. Yeah. The only --

9 MS. LINDSAY: Objection. Lacks
10 foundation.

11 BY MR. KRUM:

12 Q. You can go ahead.

13 A. The only communication would have --
14 would have come from me.

15 Q. Okay. Part of the Korn Ferry engagement
16 with RDI for the C.E.O. search was to perform some
17 sort of proprietary Korn Ferry assessment of the
18 final candidates, right?

19 MS. LINDSAY: Objection. Lacks
20 foundation.

21 THE WITNESS: Yes.

22 BY MR. KRUM:

23 Q. Okay. What exactly is that proprietary
24 assessment?

25 A. It is a -- what we call a -- a success

1 plan. It's developed on the other side of the shop
2 within leadership -- within our leadership and
3 consulting business.

4 In that case we had a Ph.D. named Jim
5 Aggen, who led the success profile. And basically
6 it's a deeper dive on -- on sort of the ingredients
7 not only for the experience of the candidate but for
8 the make-up of the candidate.

9 And so to develop that success profile,
10 Jim and I, primarily Jim had longer -- had long
11 conversations with each of the search committee
12 members.

13 And the intention of that success
14 profile is to mainly go deeper with the short list
15 of candidates.

16 So, that -- that never took place. The
17 second half of that engagement, if you will, never
18 took place.

19 **Q. So that's the proprietary Korn Ferry**
20 **assessment was not done with respect to any**
21 **candidates?**

22 **A. No.**

23 **Q. Not with respect to Ellen Cotter?**

24 **A. No.**

25 **Q. Not with respect to the person who**

1 received 20 minutes of conversation during the
2 debriefing following the interviews?

3 A. No.

4 Q. No one?

5 A. No.

6 (Off-the-record discussion.)

7 BY MR. KRUM:

8 Q. Who's Robert Wagner -- Robert Wagner?

9 A. Yeah. Rob's a partner at Korn Ferry.

10 And Rob had a relationship -- has a relationship
11 with Craig Tomkins that dates back to college.

12 And so our initial relationship with RDI
13 was via that history.

14 Q. That's the answer to the next question.

15 Thank you.

16 You worked on a prior engagement for
17 RDI, right?

18 A. Yeah. Worked with Jim on the head of
19 real estate search.

20 Q. Did you ever communicate to Jim or to
21 Bill Ellis or to anybody else at RDI that you
22 thought one or more of the candidates that Korn
23 Ferry had presented for the head of real estate were
24 good fits for the position?

25 MS. LINDSAY: Objection. Vague.

1 sentence that begins "The" and then the third line
2 says "integrated search/assessment methodology."

3 Do you see that?

4 A. Yep.

5 Q. Is that a reference to the Korn Ferry
6 proprietary assessment about which you testified
7 earlier today?

8 A. Yes.

9 Q. Okay. That's all for that.

10 Okay, Mr. Mayes. I'll show you what
11 previously has been marked as Exhibit 378.

12 A. Okay.

13 (Whereupon the document previously
14 marked as Plaintiffs' Exhibit 378
15 was referenced and is attached
16 hereto.)

17 BY MR. KRUM:

18 Q. Do you recognize Exhibit 378?

19 A. Yep.

20 Q. What is it?

21 A. Typical sort of search kick-off email
22 and position spec.

23 Q. Okay. What's a position spec?

24 A. It's an approved document that we
25 utilized to effectively source candidates.

1 Q. And when you say "source candidates"?

2 A. Generate interest among the candidate
3 pool.

4 Q. Okay. Does that mean identify the
5 possible candidates and generate interest?

6 A. Sure.

7 Q. And how is the position spec or position
8 specification document created?

9 What's the -- what was the process done
10 in this case to create the draft position
11 specification that's part of 378?

12 A. Individual conversations with each of
13 the search committee members.

14 Q. Did you have those conversations?

15 A. I did.

16 Q. With each of Ellen Cotter, Margaret
17 Cotter, Bill Gould and Doug McEachern?

18 A. Correct.

19 Q. And do you recall one conversation from
20 another as you sit here today?

21 A. No.

22 Q. Is the -- is the confidential position
23 specification that's part of Exhibit 378 beginning
24 with the document that has 003 in the lower
25 right-hand corner of the document that was created

1 foundation.

2 THE WITNESS: Oh, sorry. Correct.

3 BY MR. KRUM:

4 Q. I direct your attention back to your
5 September 18 email. The second paragraph, the third
6 sentence reads, quote,

7 "The good news is that the search
8 committee is very much aligned on
9 the mandate and profile of the
10 appropriate chief executive
11 officer, with Craig having a
12 slightly different perspective that
13 we took into account," close quote.

14 Do you see that?

15 A. Yep.

16 Q. To what does that refer?

17 A. As we discussed -- or as we mentioned a
18 moment ago, Craig sort of de-emphasized the need for
19 real estate experience and emphasized the need for
20 consumer-oriented operating business experience.

21 Q. And the other -- and the four members of
22 the committee emphasized the need for what?

23 A. Real estate experience.

24 Q. So at some point in time did Korn Ferry
25 provide to the -- each of the members of the C.E.O.

1 THE WITNESS: No.

2 BY MR. KRUM:

3 Q. How many C.E.O. searches have you
4 performed approximately?

5 A. A dozen.

6 Q. Okay. How many C.E.O. searches are you
7 familiar with such that you would know the
8 composition of the search committee, if any, above
9 and beyond the dozen or so?

10 A. 50.

11 MS. LINDSAY: Objection. Vague.

12 BY MR. KRUM:

13 Q. And in how many of those searches, to
14 your knowledge, was the interim C.E.O. even a member
15 of the C.E.O. search committee?

16 A. I don't have a -- I don't have a broad
17 enough -- I can't recall.

18 Q. Okay. Directing your attention to the
19 proprietary assessment about which you've testified
20 that was part of the Korn Ferry engagement of RDI,
21 do you have that in mind?

22 A. I'm sorry?

23 Q. I direct your attention to the --

24 A. Oh, sure.

25 Q. -- the proprietary assessment that was

1 BY MS. LINDSAY:

2 Q. What are those reasons?

3 MR. KRUM: Same objections.

4 THE WITNESS: Any number of reasons. In
5 some cases a -- a company will have a preference for
6 an internal candidate, but they want to go to search
7 to sort of evaluate the candidate vis-a-vis the
8 external talent pool.

9 In other cases, on the opposite end of
10 the spectrum, you know, a client will decide that
11 the right external candidates are just too expensive
12 and would create too much disruption internally --
13 and/or would create too much disruption internally,
14 so they promote from within.

15 BY MS. LINDSAY:

16 Q. Are there advantages that a company
17 would think that an internal candidate would have?

18 MR. KRUM: Same objections.

19 THE WITNESS: The built-in advantage is
20 less disruption. That's a uniform cause.

21 Beyond that there's no common --
22 commonality.

23 BY MS. LINDSAY:

24 Q. What do you mean by "less disruption"?

25 A. Change makes team members nervous.

1 Q. In what way?

2 A. The same -- you know, the same way I
3 would be, you know, disrupted if I had a new boss or
4 if you had a new boss or if any one of us had a new
5 boss.

6 Q. In your experience, when boards are
7 evaluating candidates or the search committee,
8 whoever is evaluating candidates, is the candidate
9 background and experience only one factor in the
10 evaluation?

11 A. It's a large factor, at least for
12 getting the person the initial interview. It's the
13 primary factor.

14 Q. Do they also consider other factors,
15 like fit?

16 A. Absolutely.

17 Q. What are some other factors that they
18 might consider?

19 A. Cultural fit, motivation, drivers,
20 personal traits, style. There's many.

21 Q. And in your experience, can a strength
22 in one of those factors make up for a weakness in
23 another area?

24 A. Yes.

25 Q. In your experience, do companies

1 sometimes hire employees who don't ultimately
2 exactly fit the position specification as it was
3 written?

4 MR. KRUM: Same objections, vague,
5 incomplete hypothetical.

6 THE WITNESS: Yeah. I mean there's
7 no -- there's -- I've never met a perfect candidate.

8 BY MS. LINDSAY:

9 Q. So, that happens often?

10 MR. KRUM: Same objections, plus
11 mischaracterizes the testimony.

12 THE WITNESS: Typically, you know, the
13 successful candidate will -- will fit 80 percent of
14 the spec, 80 percent or greater. It's rare for a
15 candidate to be hired without, you know, sort of
16 that threshold.

17 BY MS. LINDSAY:

18 Q. In your experience, do some companies
19 want to fill a position more quickly than others?

20 A. Definitely.

21 Q. And why might that be a concern?

22 MR. KRUM: Same objection.

23 THE WITNESS: Why does -- I'm sorry. I
24 don't follow.

25 ///

1 **assessment process.**

2 **When was that?**

3 A. Probably about the time that he had --
4 he called me. So that would have been December when
5 they indicated that the board was inclined to name
6 Ellen permanent C.E.O.

7 I encouraged him to run -- encouraged
8 him to run her through the assessment process; not
9 so much as an evaluation but as an onboarding tool.

10 **Q. And what is marked as Exhibit 422, is**
11 **that is as a result of Ellen's assessment process?**

12 A. No. No. They chose not to.

13 **Q. And do you know why that was?**

14 A. I believe Craig told me that "We" --
15 "We, the board, already know her pretty well, so
16 there's no need."

17 And I think they, you know, frankly,
18 wanted to avoid the expense.

19 **Q. And what -- so what was this, then?**

20 A. So that -- that's a candidate report.
21 That's independent of an assessment.

22 An assessment is a far deeper -- deeper
23 dive on candidates. Sorry. No -- there were no
24 assessments ultimately done relative to this search.

25 This is -- the first half is the success

1 profile, the second half are the assessments. A
2 success profile was developed, but no assessments
3 ever took place.

4 Q. And have you had other searches where an
5 internal candidate came forward and the deep
6 assessment like you spoke about earlier did not take
7 place and the internal candidate was chosen?

8 A. Not that -- not that I can recall. But
9 this assessment technology is two years old. So,
10 limited sample size.

11 Q. Did you -- you had met with Ellen a
12 number of times, correct?

13 A. Yeah.

14 Q. Did you ever have any reason to believe
15 that she wasn't a qualified candidate for the
16 position?

17 MR. KRUM: Objection. Vague and
18 ambiguous, foundation, assumes facts.

19 THE WITNESS: I thought relative to the
20 spec that -- that she lacked real estate expertise.
21 BY MS. HENDRICKS:

22 Q. To your knowledge, does she have the
23 operating experience and the other internal
24 experience with the company?

25 A. Very much so.

1 But were any of the other candidates
2 taken through that comprehensive assessment?

3 A. No.

4 Q. Okay. Now, you said that -- that in
5 your opinion, Ellen Cotter didn't have the real
6 estate experience.

7 How much time did you spend with her or
8 talking about her real estate experience?

9 A. We talked about the real estate needs of
10 the company for a few hours.

11 Q. What about her background? Did you talk
12 in detail about her real estate --

13 A. No. No.

14 Q. Okay. Now, let me ask you a few
15 questions about Bill Gould.

16 On how many occasions did you have
17 conversations with Mr. Gould?

18 A. I suspect we had two or three
19 conversations with the search committee which he was
20 on the phone for, and then I had one -- or Jim Aggen
21 and I had one conversation with him relative to the
22 development of the success profile.

23 Q. Okay. So you only had one conversation
24 with him separate from the committee; is that
25 correct?

1 A. Correct.

2 Q. Is that right?

3 A. I think so.

4 Q. Okay. Now, during the conversations
5 with the search committee, did he ever express any
6 personal opinions or give you any feedback about
7 what he was looking for in a C.E.O.?

8 A. Yeah.

9 Q. What -- what did he say?

10 A. Like I can't remember the specifics,
11 what I can tell you is that all four members of the
12 committee were consistent at the outset. This
13 company really needs real estate expertise, we have
14 this land in Manhattan, we need to figure out what
15 to do with it to optimize value. They were very
16 consistent.

17 Q. So they were consistent also that they
18 were trying to look for the right person for the
19 job, correct?

20 A. Right.

21 Q. Okay. So, it was always clear that they
22 were -- the whole committee, including Bill Gould,
23 was trying to find the right person to be the C.E.O.
24 of the company, correct?

25 MR. KRUM: Objection. Foundation.

1 THE WITNESS: I assume that they were
2 investing the time, that that was their goal.

3 BY MR. VERA:

4 Q. You had no reason to think that everyone
5 on that committee, including Bill Gould, was doing
6 everything they could to try to find the right
7 person, correct?

8 MR. KRUM: Same objection. Misstates
9 testimony.

10 THE WITNESS: Correct. I -- again,
11 firms pay our fees and invest the time. I assume
12 that their interest is to find the right C.E.O.

13 BY MR. VERA:

14 Q. But you -- you heard nothing from Bill
15 Gould to give you any reason to think that he wasn't
16 doing his best as a fiduciary to find the right
17 person for the job?

18 A. Correct.

19 MR. KRUM: Same objection.

20 BY MR. VERA:

21 Q. Thank you.

22 Now, in your separate conversation that
23 you had with Bill Gould, did he give you -- did he
24 say anything else about what he was looking for in a
25 C.E.O.?

1 A. I can't recall.

2 Q. You don't remember anything else that he
3 said?

4 A. I think that the common themes were real
5 estate experience, someone who was a patient leader
6 who could sort of move things along slowly. Family
7 company so things had happened slowly there through
8 the years. Patient leader, and someone who, you
9 know, theoretically had the temperament to deal with
10 activist investors.

11 Those were the -- the things that came
12 out of my conversations with Doug and Bill. And
13 they were more sophisticated conversations than I
14 had with Ellen and Margaret.

15 Q. Now, did you know Bill Gould prior to
16 this search?

17 A. No.

18 Q. And the time that you met with him
19 separate from the committee, was it on the phone or
20 in person?

21 A. Phone.

22 Q. Who else was at that meeting or on that
23 call?

24 A. Jim Aggen.

25 Q. And how long did that conversation last?

1 A. Those typically are 45-minute to
2 60-minute conversations.

3 Q. Other than what you've told us so far,
4 did Mr. Gould make any other representations or --
5 or say anything else to you about what he would like
6 in terms of a new C.E.O.?

7 A. Bill was on the phone for the candidate
8 debrief call after the interviews, so he certainly
9 had opinions, but I can't recall.

10 Q. But it was your impression that he took
11 the process very seriously, correct?

12 A. Yes.

13 Q. And he was trying, again, to do
14 everything he could to find the right person for the
15 job?

16 MR. KRUM: Same objection.

17 THE WITNESS: Yeah. I mean he -- he
18 attended all the search committee calls, he was --
19 he wasn't absent.

20 BY MR. VERA:

21 Q. Right. But did he do or say anything
22 that made you think that he was doing anything other
23 than trying to find the right person for the job?

24 A. No.

25 Q. Okay.

1 MR. VERA: Thank you. I have no further
2 questions.

3 MR. KRUM: I have nothing further.
4 Thank you, Mr. Mayes.

5 THE WITNESS: Thank you.

6 MS. LINDSAY: Thank you.

7 VIDEOTAPE OPERATOR: This concludes the
8 deposition of Mr. Robert Mayes on August 18, 2016,
9 which consists of two media files.

10 The original media files will be
11 retained by Litigation Services.

12 We are off the record at 11:17.

13

14 (Whereupon at 11:17 A.M. the
15 deposition proceedings were
16 concluded.)

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EXHIBIT 45

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	JAMES J. COTTER, JR.,)	
	individually and)	
5	derivatively on behalf of)		
	Reading International,)	
6	Inc.,)	
		)	Case No. A-15-719860-B
7	Plaintiff,)	
		)	Coordinated with:
8	vs.)	
		)	Case No. P-14-082942-E
9	MARGARET COTTER, et al.,)	
)	
10	Defendants.)	
	and)	
11	READING INTERNATIONAL,)	
12	INC., a Nevada)	
	corporation,)	
13)	
	Nominal Defendant)		
14)	

15

16 VIDEOTAPED DEPOSITION OF DOUGLAS MCEACHERN

17 TAKEN ON MAY 6, 2016

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24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 Q. Okay. Well, let me ask a question.

2 Let's try it again.

3 What was your understanding, if any, as
4 to the point of hiring a director of real estate for
5 RDI?

6 A. Jim wanted to hire a director of real
7 estate who had been through some development
8 activities in the past and had responsibilities for,
9 take this building, building this building.

10 Q. When you say Jim wanted to hire him,
11 were you suggesting that somebody disagreed other
12 than Margaret?

13 A. This was his initiative. It wasn't a
14 bad idea.

15 Q. Okay. To your knowledge, did anybody
16 other than Margaret ever disagree with the notion of
17 hiring a director of real estate for RDI?

18 MR. SEARCY: Objection. Assumes facts,
19 lacks foundation.

20 THE WITNESS: I don't know. And I can't
21 tell you that Margaret didn't want to hire somebody.

22 I remember being in discussions where
23 Margaret was there and where she would be reporting.

24 BY MR. KRUM:

25 Q. So, setting aside the subject of

EXHIBIT 46

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN
TAKEN ON JULY 7, 2016
VOLUME II

JOB NUMBER 321640
REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 corporate lives.

2 BY MR. KRUM:

3 Q. What -- what did you do and, to your
4 knowledge, what did anybody else who was on the
5 special nominating committee do with respect to Judy
6 Coddling?

7 MR. SEARCY: Objection. Vague.

8 THE WITNESS: In addition to going
9 through Ms. Coddling's resume, we personally met with
10 her. And I'm trying to remember who all was in the
11 meeting. The minutes are there and they will tell
12 you who was there. It could have been Ed Kane,
13 although I don't think he was a member of the
14 committee. But we typically carpooled up to
15 Los Angeles with each other, so I think it's
16 reasonable to think he was there, Guy Adams and
17 maybe Bill Gould as a lead director.

18 And we went with Judy and talked about
19 what she had done in the past, what her business
20 experiences had been and were quite -- I, I can't
21 speak for everybody else, but I was quite favorably
22 impressed about her business background and felt
23 comfortable recommending her to the board of
24 directors.

25 Q. What is your understanding, if any, as

1 to how the resume -- the Judy Coddling resume you
2 reviewed came to be prepared?

3 A. I do not know.

4 Q. How did you receive it?

5 A. I think by email.

6 Q. From whom?

7 A. I don't know. You'd have to go back and
8 look at email to find out.

9 (Whereupon Mr. Swanis entered the
10 deposition proceedings at this
11 time.)

12 BY MR. KRUM:

13 Q. Okay. What was it about her business
14 experience that created a favorable impression for
15 you?

16 A. Not -- it's been close to -- we're
17 moving on to a year when I last saw Judy Coddling's
18 resume, but she had been in the education field on a
19 number of corporations, business experience.

20 I'd have to go through and pick out the
21 resume and tell you the points of contact that I
22 found impressive. And then her own personal
23 demeanor and how she carried herself and the way she
24 communicated, I thought she'd be very effective as
25 board member.

1 answer the question and then we'll go off the
2 record.

3 THE WITNESS: She described a
4 relationship she had and discussed having been
5 involved with Jim and his wife. As they were
6 proposing and he reached out to her, she was
7 associated with some pre-school or some prep school
8 or some private school on the west side, and Jim had
9 asked her -- Jim and his wife Gina had asked Judy to
10 help support their child's candidacy.

11 BY MR. KRUM:

12 Q. What did Judy say about her relationship
13 with Mary Cotter?

14 A. I don't know that she said anything
15 about a relationship with Mary Cotter.

16 Q. Okay. And you made some reference to a
17 relationship between Judy Coddington and Mary Cotter in
18 earlier testimony.

19 Do you have that in mind?

20 A. I do.

21 Q. And what is it you heard or learned in
22 that respect?

23 A. But I would like to -- my earlier
24 testimony I believe was I didn't know when I was
25 aware of that relationship, it could have been as

1 being considered as a board member or it could have
2 been three, four, five months later, is that she and
3 Mary Cotter had a relationship that went back 20,
4 25, 30 years, a longstanding relationship.

5 I don't know how it was created. I
6 don't know how often they saw each other. I was
7 just aware of that relationship.

8 Q. How did you come to learn about that
9 relationship?

10 A. I don't recall.

11 Q. What did Ellen Cotter tell you and
12 presumably other members of the special nominating
13 committee about the relationship between Judy
14 Coddington on one hand and any Cotter family member on
15 the other hand?

16 A. At -- we were nominating Judy Coddington to
17 fill a board position created when Tim Storey
18 resigned. That was a month, two weeks, three weeks,
19 some period of time before the annual meeting.

20 And sometime after Judy Coddington was
21 appointed to the board, a number of us received an
22 email from Andy Shapiro -- Andrew Shapiro, about
23 some background information on Judy Coddington about a
24 connection that she had with -- I don't remember the
25 name of the company. It was some software reading

1 comprehension and learning company publisher that
2 had a relationship with Apple that had a
3 relationship and was doing work for the L.A.U.S.D.,
4 Los Angeles Unified School District.

5 And pretty negative coverage had
6 appeared in a series of articles. I remember some
7 in the "L.A. Times."

8 And I think when that information
9 surfaced, there was a whole lot more discussion that
10 took place about Judy Coddling and her relationship
11 with Ellen Cotter and the family.

12 Q. What's your recollection, if any, as to
13 how Mr. Shapiro had learned that Judy Coddling -- or
14 learned about Judy Coddling -- strike that.

15 Had she already been added to the board
16 and the company announced that at the time
17 Mr. Shapiro communicated what you just described?

18 A. It had happened before Andy Shapiro sent
19 that information to us.

20 Q. What had happened before?

21 A. That she had been added to the board.

22 Q. Okay. What was the -- what steps, if
23 any, did the special nominating committee take, if
24 any, beyond interviewing candidates that Ellen
25 Cotter referred to the committee and as well as

1 A. So we didn't do a background check on
2 him.

3 Q. Who was responsible for the background
4 checks?

5 A. I believe they were done under the
6 auspices of Craig Tompkins or they could have
7 been -- I think it was Craig Tompkins.

8 Q. Was he a member of the special
9 nominating committee?

10 A. He attended as a -- he took the
11 medicine, attended the meetings.

12 Q. Did he do anything beyond that?

13 A. To the best of my knowledge, no.

14 Q. So it's your understanding that the
15 company had run a background check on Ms. Coddling
16 before she was added to the board?

17 A. Yes, it is.

18 Q. And it's your understanding that the
19 background check had not produced the information
20 that had been communicated to the board members by
21 Mr. Shapiro?

22 A. That is correct.

23 Q. Did you ever see the background check --

24 A. Yes.

25 Q. There was a document that Mr. Tompkins

1 produced that was described as a background check
2 for Judy Coddling?

3 MR. SEARCY: Objection. Lacks
4 foundation.

5 THE WITNESS: I -- I do believe I saw a
6 background check that had been done on Judy Coddling.
7 I asked to see it because, quite frankly, this was a
8 bit of an embarrassing that this information would
9 surface and we would not have been aware of it
10 beforehand.

11 When we learned of it, we changed our
12 background procedures to be more robust than they
13 had been in the past.

14 BY MR. KRUM:

15 Q. The information that Mr. Shapiro
16 transmitted to members of the RDI board of directors
17 regarding Judy Coddling was all publicly available
18 information, right?

19 A. I recall -- I think so, yes.

20 Q. So, did you ask Mr. Tompkins or anybody
21 else what sort of background check was done that
22 didn't discover publicly available information?

23 A. We had --

24 MR. SEARCY: Objection.

25 Go ahead.

1 arrangements for us to get together again with Judy
2 personally to discuss the situation.

3 BY MR. KRUM:

4 Q. Over what period of time did these
5 conversations with Ms. Cotter, who was in Florida,
6 occur relative to receipt of the information from
7 Mr. Shapiro?

8 Was it the same day? The same week?

9 A. A couple of nanoseconds.

10 Q. Okay. And how long thereafter did you
11 and others spoke with Ms. Coddling?

12 A. More than a couple of nanoseconds. It
13 could have been within the next week. I just don't
14 remember.

15 There are minutes of that meeting with
16 Ms. Coddling that will set forth the date.

17 Q. And what happened during that -- was it
18 a meeting in person?

19 A. Yes, it was.

20 Q. And who was present?

21 A. Bill Gould was there, I was there. I

22 don't remember if Ellen Cotter was there or not. I
23 think --

24 Well, get the minutes out. They'll tell
25 you who was there.

1 I -- it's conceivable Guy Adams and Ed
2 Kane were there also.

3 Q. How long did the meeting last?

4 A. No more than three hours.

5 Q. And in substance who said what during
6 that meeting?

7 A. The majority of what was communicated
8 was by Judy Coddling. And I believe we had
9 instructed -- at some point we instructed Craig
10 Tompkins to go do some research of all this stuff
11 and try to find what was going on.

12 He found some additional information
13 about Judy Coddling that had not been communicated by
14 Mr. Shapiro.

15 And Judy explained the situation between
16 Pearson -- thank you for the name of that --
17 Pearson, which was a subcontractor to Apple Computer
18 supplying and designing a curriculum for the L.A.
19 Unified School District that was principally to be
20 delivered via iPads that Apple was selling through
21 some vendor to the L.A. Unified School District.

22 Q. Where did this meeting occur?

23 A. At the Reading office.

24 Q. Was it on a weekend or a workday?

25 A. The minutes will -- I believe it was on

1 that same meeting where we met with Judy Coddling.

2 Q. Okay. Do you recall anything else that
3 anybody else said in words or substance from that
4 meeting?

5 A. At some point either at that meeting or
6 before we concluded we would go forward with Judy as
7 a nominee for the board of directors. I and others
8 were impressed with Judy's explanation and the
9 research that Craig had done into the entire matter.
10 We were positive and felt very good about
11 renominating her.

12 Q. Did anyone at Reading, whether Craig
13 Tompkins or anyone else, communicate with any third
14 parties about Judy Coddling?

15 MR. SEARCY: Objection. Vague.

16 MR. SWANIS: Join. Calls for
17 speculation.

18 THE WITNESS: I don't know.

19 BY MR. KRUM:

20 Q. Okay.

21 MR. KRUM: I'll ask the court reporter
22 to mark --

23 MR. SEARCY: Before we start on the
24 exhibits Mr. McEachern asked actually for a break a
25 while back. I wanted to --

1 Q. When you say you believe so,
2 Mr. McEachern, do you recall interviewing him?

3 A. We -- we would have had minutes that
4 discussed the interview of Mr. Wrotniak.

5 Q. Okay. But do you have any recollection
6 of doing so as you sit here today?

7 A. I don't have any specific recollection.

8 Q. Who interviewed him?

9 A. I believe it was the same group of
10 three, Guy Adams, Ed Kane and myself.

11 Q. Was that -- did that interview occur in
12 person?

13 A. I believe it took place by phone.

14 Q. How long did it last?

15 A. I don't recall.

16 Q. Who said what in words or substance?

17 A. I don't remember.

18 Q. Mr. Wrotniak was recommended by Ellen
19 Cotter; is that right?

20 A. I believe he was recommended by Margaret
21 Cotter and Ellen Cotter jointly.

22 Q. Okay. And what did they say when they
23 recommended him?

24 A. I don't recall.

25 Q. Did you ever hear or learn or were you

1 ever told that his wife is a close personal friend
2 of Margaret Cotter?

3 MR. SEARCY: Objection. Lacks
4 foundation, vague.

5 (Whereupon Mr. Swanis re-entered
6 the deposition proceedings at this
7 time.)

8 THE WITNESS: I have been told that or
9 heard that.

10 BY MR. KRUM:

11 Q. When is the first time you heard or
12 learned or were told that?

13 A. Mr. Krum, I just don't remember.

14 Q. Do you recall from whom you heard or
15 were told that?

16 A. I think from Jim Cotter, Jr.

17 Q. Was that after the committee had
18 recommended nominating Mr. Wrotniak to stand for
19 election at the 2015 annual shareholders meeting?

20 MR. SEARCY: Objection. Lacks
21 foundation.

22 MR. SWANIS: Join.

23 THE WITNESS: I think so.

24 BY MR. KRUM:

25 Q. Okay. When you interviewed him, who

1 said what, if anything, regarding how he knew or was
2 known to Ellen and/or Margaret Cotter?

3 A. I do not recall.

4 Q. What was done, if anything, to your
5 knowledge, by you or any other member of the special
6 nominating committee with respect to Mr. Wrotniak
7 other than interviewing him prior to recommending to
8 the full board of directors that he be nominated to
9 stand for election at the 2015 annual shareholders
10 meeting?

11 MR. SEARCY: Objection. Vague.

12 MR. SWANIS: Join.

13 THE WITNESS: We were doing a background
14 check on Michael Wrotniak similar to what had been
15 done on Judy Coddling and was the customary normal
16 practice for Reading.

17 Craig Tompkins was instructed, "Listen,
18 if we got all this information that showed up about
19 Judy Coddling that was easily located through some
20 Google search, well, darn it, go and do a similar
21 search on Michael Wrotniak and see if there's
22 anything out there that wouldn't have turned up in
23 something akin to the background check that we had
24 done on Michael Wrotniak."

25 And he did do that. I believe it is

1 documented in our minutes of that meeting.

2 BY MR. KRUM:

3 Q. Okay. What else, if anything, was done
4 prior to Mr. Wrotniak being selected to stand for
5 election to the RDI board of directors at the 2015
6 annual shareholders meeting?

7 MR. SWANIS: Objection. Form,
8 foundation.

9 MR. SEARCY: Join.

10 THE WITNESS: I don't recall.

11 BY MR. KRUM:

12 Q. Okay. Let me show you, Mr. McEachern,
13 what previously has been marked as Exhibit 52.

14 This may be a document to which you were
15 just referring?

16 (Whereupon the document previously
17 marked as Plaintiffs' Exhibit 52
18 was referenced and is attached
19 hereto.)

20 BY MR. KRUM:

21 Q. Let me know when you've reviewed it.

22 A. Okay.

23 Q. Do you recognize Exhibit 52?

24 A. I have a general recollection, yes.

25 Q. What is it?

1 sometime in 1985 forward and knew these people when
2 Deloitte were the -- the auditors and met Ellen
3 Cotter while she was down in Australia when I was
4 there doing company business.

5 BY MR. KRUM:

6 Q. So, back to the question. Did Korn
7 Ferry interview Ellen Cotter as a candidate for the
8 C.E.O. position?

9 A. I think I said --

10 MR. SWANIS: Objection.

11 THE WITNESS: -- I don't know.

12 BY MR. KRUM:

13 Q. Okay. Did they put Ellen Cotter through
14 their proprietary assessment process?

15 MR. SWANIS: Same objections.

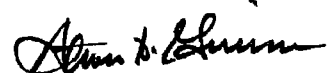
16 THE WITNESS: I don't think so.

17 BY MR. KRUM:

18 Q. They didn't do that with anybody, to
19 your knowledge, right?

20 A. To my knowledge, no.

21 Q. What discussions did you have with
22 Margaret Cotter and Bill Gould, if any, about
23 whether and how to proceed any further with the
24 other final -- with the finalist -- the persons you
25 identified as finalists after the Ellen Cotter


CLERK OF THE COURT

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

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

**INDIVIDUAL DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT (NO. 1)
RE: PLAINTIFF'S TERMINATION AND
REINSTATEMENT CLAIMS**

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: 10 / 25 / 16
Time of Hearing: 8 : 30 AM

1 **TO ALL PARTIES, COUNSEL, AND THE COURT:**

2 Pursuant to Nevada Rule of Civil Procedure 56, Defendants Margaret Cotter, Ellen
3 Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak
4 (collectively, the "Individual Defendants"),¹ by and through their counsel of record,
5 Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit
6 this Motion for Summary Judgment (No. 1) as to the First, Second, Third, and Fourth Causes of
7 Action in Plaintiff's Second Amended Complaint, to the extent that they assert claims based on
8 Plaintiff's June 12, 2015 termination as CEO and President of Reading International, Inc. ("RDI"
9 or "the Company"), and to the extent that Plaintiff seeks damages and/or an order (1) declaring
10 that his termination was "legally ineffectual and is of no force and effect," and (2) entering an
11 injunction that reinstates him as the Company's CEO and President.

12 This Motion is based upon the following Memorandum of Points and Authorities, the
13 accompanying Declaration of Noah S. Helpert ("HD") and exhibits thereto, the pleadings and
14 papers on file, and any oral argument at the time of a hearing on this motion.

15 Dated: September 23, 2016

16 **COHEN|JOHNSON|PARKER|EDWARDS**

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18 By: /s/ H. Stan Johnson
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26 ¹ Individual Defendants Coddington and Wrotniak were not members of the RDI Board at the
27 time of Plaintiff's termination; they joined months after the fact and cannot be liable for any
28 claims involving that decision. They join this motion out of an abundance of caution given
Plaintiff's failure to accurately parse the causes of action in his Second Amended Complaint.

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*Attorneys for Defendants Margaret Cotter, Ellen
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Edward Kane*

1 **NOTICE OF MOTION**

2 TO: LEWIS ROCA ROTHGERBER CHRISTIE LLP, Attorneys for Plaintiff.

3 PLEASE TAKE NOTICE that the above Motion will be heard the ²⁵ ___ day of Oct.,
4 2016 at 8:30 AM in Department ^{XI} ~~XXVII~~ of the above designated Court or as soon
5 thereafter as counsel can be heard.

6 Dated: September 23, 2016

7 **COHEN|JOHNSON|PARKER|EDWARDS**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 To the extent that Plaintiff asserts claims challenging his termination as CEO and
4 President of Reading International, Inc. ("RDI" or "the Company") and seeks reinstatement in
5 those positions, he is attempting to accomplish derivatively what he cannot individually. RDI's
6 Bylaws provide that its officers "hold office at the pleasure of the Board of Directors," and "may
7 be removed at any time, with or without cause" should a majority of the Board vote accordingly.
8 Plaintiff's Employment Contract contemplates that Plaintiff could be fired with or without cause,
9 and strictly limits his relief following a termination to monetary compensation. Unhappy with
10 the RDI Board of Directors' ("the Board") conclusion that his brief and divisive tenure should
11 come to an end, Plaintiff now claims that the Board's decision to remove him—after months of
12 internal debate and numerous attempts to address and rectify his deficiencies—was somehow a
13 violation of its fiduciary duties that injured RDI. It was not, and summary judgment is warranted
14 because Plaintiff has not met (and cannot meet) *any* of the elements required to reach trial on his
15 termination and reinstatement claims.

16 First, the Board's termination of Plaintiff cannot support a breach of fiduciary claim as a
17 matter of law. Courts regularly reject attempts by former officers to utilize fiduciary duty law
18 when challenging the propriety of their removals, especially where (as here) a bylaw authorized
19 their firing without cause. These courts have restricted their jurisdiction for good reason; actions
20 such as Plaintiff's threaten to transform every officer termination into a derivative attack on a
21 board's exercise of its duties, thereby requiring Nevada courts to become arbiters months (or
22 years) after the fact of the unique judgments a board must make regarding officer performance.
23 Plaintiff's attempted expansion of fiduciary duty law to cover purely managerial decisions by a
24 board is bad policy and contrary to well-reasoned precedent.

25 Second, even on the merits, the Board's decision to terminate Plaintiff and the process it
26 utilized leading up to that outcome were entirely appropriate and unquestionably protected by the
27 "business judgment" rule. As the evidence shows, the Board was faced with a young,
28 inexperienced CEO who could not work well with certain key executives (and attempted to

1 undermine central figures within the Company rather than address pending issues); acted in a
2 manner that was violent and abusive to fellow employees and Board members; and demonstrated
3 a lack of understanding with respect to metrics of RDI's businesses. The Board's vote to
4 terminate Plaintiff, even in the face of repeated legal threats by Plaintiff to "ruin them
5 financially" if they were to remove him, was (applying the standard articulated by the Supreme
6 Court of Nevada in *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 639-40 (2006)) at a
7 minimum taken for the benefit of the Company and therefore immune from Plaintiff's fiduciary
8 challenge. Similarly, while the Board was in no way required to provide Plaintiff with notice or
9 undertake a particular process, it repeatedly made Plaintiff aware of his deficiencies, attempted
10 to correct them, gave him a platform to defend himself, and debated his removal informally and
11 formally over several months. This was exactly how a board was supposed to act under both
12 Nevada law and RDI's Bylaws. Plaintiff's fiduciary challenge fails.

13 Third, Plaintiff's fiduciary duty claims also fail on the merits because there is no
14 evidence RDI suffered any injury from Plaintiff's termination, or that the purported breaches
15 identified by Plaintiff proximately caused damages. To sustain a breach of fiduciary claim,
16 Plaintiff must produce evidence of "economic harm suffered." He cannot. The Company's
17 share price has traded at or above the value it held as of Plaintiff's firing for the majority of the
18 ensuing period, and uncontroverted evidence reveals that insiders within RDI as well as its major
19 investors, unaffiliated with the parties, are unanimous in their conclusion that Plaintiff's
20 termination made no difference to the Company's performance or business plan. Absent any
21 harm or causation, Plaintiff's fiduciary duty claims are unsupportable.

22 Fourth, now that the evidence is in, it is plain that Plaintiff, to the extent that he is
23 complaining of his termination and seeks reinstatement, lacks standing to serve as a derivative
24 plaintiff. Clear economic antagonisms exist between Plaintiff and other stockholders. The
25 remedy sought by Plaintiff is also entirely personal; RDI's stockholders do not share Plaintiff's
26 interest in regaining his positions. Other litigation is pending regarding Plaintiff's firing and
27 ultimate control of the Company, and Plaintiff's conduct—both before and after the filing of this
28 suit—indicates that he is simply using his purported derivative claims as leverage to obtain a

1 favorable global settlement. The evidence further shows that Plaintiff's action is driven by
2 vindictiveness, both as to certain Board members and to his sisters. And outside shareholders
3 unrelated to the Cotters have stated that they would not "reinstate" Plaintiff and that he is not
4 "the best adequate representative." In their totality, these factors fatally undermine Plaintiff's
5 attempted assertion of derivative claims regarding his termination and reinstatement.

6 Fifth, in addition to these flaws, the relief demanded by Plaintiff—reinstatement—is
7 untenable and unsupportable. Equity jurisdiction does not lie where an officer was removable
8 without cause (like Plaintiff). Nor is specific performance available where, as here, the contract
9 damages provided to Plaintiff are plainly an adequate remedy. Further, there are strong policy
10 reasons against compelling the Board to reinstate Plaintiff against its wishes, including the
11 difficulty of supervision and the fact that Plaintiff's reinstatement would perpetuate a divided
12 company. Plaintiff had no vested right to remain President and CEO and, even if reinstated,
13 could simply be terminated again immediately by the Board—another factor cutting against
14 reinstatement since equity does not require the taking of futile actions. More time has elapsed
15 since Plaintiff's termination than he served as CEO, and the Company has moved on, which also
16 counsels against reinstatement. Finally, in light of the "irreparable animosity" between Plaintiff
17 and other directors, reinstatement would do nothing more than harm RDI's business.

18 **II. FACTUAL BACKGROUND**

19 **A. Plaintiff Joins RDI at His Father's Behest**

20 RDI is an internationally diversified company, incorporated in Nevada, principally
21 focused on the development, ownership, and operation of cinema exhibition and real property
22 assets in the United States, Australia, and New Zealand. (HD ¶ 22.)² James J. Cotter, Sr.
23 became the CEO and Chairman of RDI's Board in December 2000. (*Id.* ¶¶ 22-23.) Plaintiff, the
24 son of James J. Cotter, Sr., claims to be both a holder of non-voting shares of RDI stock and a
25 co-trustee of a trust which owns a large number of the Company's voting and non-voting shares.

26
27 ² The documentary and testimonial evidence supporting this Motion is attached to the
28 Declaration of Noah S. Helpen. The citations to the "HD" refer to the paragraphs of that
Declaration that authenticate and correspond to the relevant supporting evidence.

1 (Second Am. Compl. ("SAC") ¶ 17.) Plaintiff was added to the Board in March 2002 at his
2 father's behest, despite the fact that he had never previously served on the board of a public
3 company. (HD ¶ 11(c).) He was appointed Vice Chairman of the Company in September 2007,
4 and then President in June 2013. (*Id.* ¶ 11(b).) The position of President of RDI, while provided
5 for in the Bylaws, was reactivated specifically for Plaintiff, as there had been no President for
6 some time and he did not succeed anyone in that position. (*Id.* ¶ 11(e).)

7 Following his appointment as President, Plaintiff and RDI executed an agreement dated
8 June 3, 2013 (the "Employment Agreement"), which governed Plaintiff's service "in the capacity
9 of President." (*Id.* ¶¶ 21(a)-(b).) The Employment Agreement provided that Plaintiff would not
10 receive any damages in the event of a "for cause" termination. (*Id.* ¶ 21(c).) In the event that
11 Plaintiff was terminated without cause, he was entitled to receive 12 months of compensation
12 and benefits following notice of his termination; however, the Employment Agreement provided
13 no relief other than monetary damages, and contained no provision allowing for Plaintiff's
14 reinstatement or any other form of specific performance by RDI. (*Id.*)

15 **B. Plaintiff Becomes CEO of RDI Following His Father's Death**

16 James J. Cotter, Sr. was compelled to resign from his positions with RDI on August 7,
17 2014 for health-related reasons, and subsequently passed away on September 13, 2014. (*Id.*
18 ¶¶ 24, 28.) Faced with an emergency vacancy on no notice, the Board unanimously appointed
19 Plaintiff as CEO at a meeting held on August 7, 2014. (*Id.* ¶ 28.) Plaintiff was elected as CEO
20 pursuant to the Company's Amended and Restated Bylaws, which provide: "Any person may
21 hold one or more offices and each officer shall hold office until his successor has been duly
22 elected and qualified or until his death or until he shall resign or is removed in the manner as
23 hereinafter provided for such term as may be prescribed by the Board of Directors from time to
24 time." (*Id.* ¶ 20(a).) The Amended and Restated Bylaws of RDI further provide: "The officers
25 of the Corporation shall hold office at the pleasure of the Board of Directors. Any officer elected
26 or appointed by the Board of Directors . . . may be removed at any time, with or without cause,
27 by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting
28

1 thereof” (*Id.* ¶ 20(b).) As Plaintiff has agreed, RDI’s Board always had the prerogative to
2 hire and fire the Company’s officers, subject to whatever contracts might exist. (*Id.* ¶ 13(c).)

3 Besides Plaintiff, the seven remaining members of the Board at the time of Plaintiff’s
4 appointment as CEO were: (1) Margaret Cotter, Plaintiff’s sister, who had served as a director
5 since 2002 and Vice-Chairman of the Board since 2014, runs RDI’s live theater division,
6 manages certain live theater real estate, and has been responsible for re-development work on
7 RDI’s Manhattan theater properties; (2) Ellen Cotter, Plaintiff’s sister, who had served as a
8 director since March 2013 and Chairman of the Board since 2014, been an RDI employee since
9 1998, and ran the day-to-day operations of the Company’s domestic cinema operations;
10 (3) Edward Kane, who had served as a director since October 2004 (and before that from 1985-
11 1998) and served as Chair of the Tax Oversight and the Compensation and Stock Option
12 Committees; (4) Guy Adams, who had served as a director since January 2014 and is a registered
13 investment advisor and experienced independent director on public company boards; (5) Douglas
14 McEachern, who had served as a director since May 2012 and was an audit partner at Deloitte &
15 Touche from 1985-2009; (6) Timothy Storey, who had served as a director since December
16 2011; and (7) William Gould, who had served as a director since October 2004. (*Id.* ¶¶ 22, 28.)

17 **C. Significant Problems With Plaintiff’s Managerial Skills Become Obvious**

18 While it was hoped that he would develop on the job, Plaintiff—at the time of his
19 election as CEO—lacked experience in virtually all of the business areas relevant to RDI’s
20 operations, including, but not limited to, non-agricultural commercial real estate operation and
21 development, live theater, cinema, international business, and management. (*Id.* ¶¶ 8(a), (k), (p),
22 (v); 3(b); 4(h)-(i); 11(d).) The non-Cotter members of the Board soon grew concerned that
23 Plaintiff needed help both in running the company and building bridges with Ellen and Margaret
24 Cotter; accordingly, the Board began discussing getting Plaintiff a management coach. (*Id.*
25 ¶¶ 4(j); 33(a).) Plaintiff’s management style was perceived by the Board as “closed door” and
26 unengaged with RDI’s employees, and some Board members saw Plaintiff as “very reluctant and
27 very slow to make decisions,” and understood that his “office is a place where documents go to
28 get lost.” (*Id.* ¶¶ 4(f)-(g); 8(d), (o); 12(f).) Members of the RDI Board soon questioned the

1 value that Plaintiff added as the Company's CEO based on obvious defects. (*Id.* ¶¶ 3(d), (f)-
2 (g); 8(r), (u).)

3 **1. Plaintiff Could Not Work With, and Instead Undermined, Key**
4 **Executives**

5 Members of the Board were concerned with Plaintiff's inability to communicate, create
6 trust, and work cooperatively with fellow executives of the Company. (*Id.* ¶¶ 8(t), (w); 33(b).)
7 For instance, Plaintiff decided to conduct an examination of RDI's cinema operations in the fall
8 of 2014, but went around Ellen Cotter to do so—which engendered criticism from the Board
9 both for Plaintiff's duplicity and for spending his time on a pursuit better left to an independent
10 consultant. (*Id.* ¶ 8(b).) Contrary to the advice of various Board members, Plaintiff continued
11 his review of RDI's individual cinemas, and even traveled to various cinemas in Hawaii without
12 identifying himself or visiting management in a surreptitious effort to take pictures of the
13 theaters there and ultimately embarrass Ellen Cotter over the perceived need for renovations.
14 (*Id.* ¶¶ 5(c); 8(c), (n); 12(d).) Similarly, several members of the Board were alarmed by
15 Plaintiff's unilateral effort to hire a food and beverage manager without involving Ellen Cotter,
16 despite the fact that such operations fell within her purview. (*Id.* ¶¶ 8(y); 36(c).)

17 As with Ellen Cotter, members of the Board believed that Plaintiff needlessly
18 exacerbated discord with Margaret Cotter when, after months of failing to resolve her
19 employment status with the Company, he circulated a short employment contract for her with a
20 cover email outlining approximately 20 reasons why she should not be given an employment
21 contract with RDI. (*Id.* ¶¶ 8(q); 10(a).) In addition, following threats by the producers of
22 STOMP to vacate RDI's Orpheum Theater, various directors became alarmed when Plaintiff,
23 rather than working productively with Margaret Cotter to address the issue, attempted to use the
24 ensuing dispute to embarrass her before the Board. (*Id.* ¶¶ 5(d); 10(b).) Ultimately, the STOMP
25 dispute resulted in an arbitration in which it was determined that Margaret Cotter had done
26 everything required, the STOMP producers had an agenda to leave because they thought the
27 show could make more money elsewhere, and RDI was awarded more than \$2.2 million in
28 attorney's fees. (*Id.* ¶¶ 5(d); 15(g).)

1 Tensions between Plaintiff and Ellen and Margaret Cotter were further aggravated by
2 trust and estate litigation initiated in February 2015, after the death of Jim J. Cotter, Sr., which
3 involved the issue of whether Margaret Cotter, separately or together with Plaintiff, controlled
4 the RDI stock previously held by their father. (*Id.* ¶¶ 6(a); 12(b); 25; 27; 34.) As a result, the
5 non-Cotter directors were forced to spend “an inordinate amount of time” trying to ameliorate
6 the interactions between Plaintiff and his sisters. (*Id.* ¶ 6(a).)

7 **2. Plaintiff Acted in a Violent, Abusive Manner to Both Employees and**
8 **Fellow Board Members**

9 In addition to his problems with certain key executives, the RDI Board of Directors was
10 made aware of allegations that Plaintiff, as CEO, had acted in an abusive, physically threatening
11 manner toward several employees and/or outside workers, including Linda Pham, Debbie
12 Watson, and Ellen Cotter, by yelling, behaving very critically, and going through their files
13 behind closed doors. (*Id.* ¶¶ 4(a); 5(a)-(b); 8(g); 12(e); 16.) Certain female employees stated
14 that they were “physically afraid” of Plaintiff and concerned for their “actual physical safety”
15 around him; one resorted to “carrying mace to the office” due to Plaintiff’s perceived “violent
16 temper” and “anger management problem[s].” (*Id.*) Plaintiff’s violent outbursts even extended
17 to his relations with fellow members of the Board, such as Guy Adams. (*Id.* ¶¶ 4(e); 12(g).) As
18 a result of these incidents, the non-Cotter Board members had multiple conversations regarding
19 Plaintiff’s weak interpersonal skills in which they contemplated sending Plaintiff to anger
20 management classes in early 2015. (*Id.* ¶¶ 4(b)-(c); 7(a); 36(c).)

21 **3. Plaintiff Lacked an Understanding of Key Components of RDI’s**
22 **Business**

23 During Plaintiff’s tenure as CEO, the Board also identified significant problems with his
24 understanding of costs and margins pertinent to RDI’s cinema business, including his failure to
25 adjust his analysis to account for lower film rentals in Australia/New Zealand when comparing
26 margins there with U.S. theatres, and his lack of comprehension with respect to the different
27 labor cost allocations utilized by the Company in each region. (*Id.* ¶ 3(e).) Moreover, during the
28 11 months that he served as CEO, Plaintiff never presented—or even drafted—a business plan.
(*Id.* ¶¶ 11(f)-(h).) And various directors were troubled by the fact that Plaintiff, upon becoming

1 CEO, failed to visit RDI's operations in Australia and New Zealand for the first six months of his
2 tenure, despite their outsized importance to the company's financial health. (*Id.* ¶ 8(s).)

3 **D. The RDI Board Attempts to Address Plaintiff's Deficiencies**

4 Due to the need to help Plaintiff develop in the role as CEO and to lessen intra-family
5 tensions, the non-Cotter directors appointed director Storey as an "ombudsman" in March 2015
6 to work with and coach Plaintiff, and mediate any disputes between him and other executives.
7 (*Id.* ¶¶ 3(a); 5(e); 15(c); 29; 33(b) 35; 36(a).) Around this time, several non-Cotter directors also
8 considered engaging an outside consultant to perform an assessment of RDI and provide
9 recommendations regarding improvements in the Company's management. (*Id.* ¶ 12(c).) The
10 non-Cotter directors, concerned with their duty "to all the shareholders and not just to the Cotter
11 family," were attempting to address what they perceived to be "a dysfunctional management
12 team," with "'thermonuclear' hostility currently existing" between Plaintiff and his sisters. (*Id.*
13 ¶ 36(b).) Plaintiff did not disagree; as he testified, the tensions between Plaintiff and his sisters
14 had become so intense that RDI was unable to function, such that drastic reform in behavior or
15 potential termination(s) were required to get beyond the current paralysis. (*Id.* ¶¶ 13(a)-(b).)

16 In taking these steps in March 2015, the Board was specifically focused on "getting to a
17 position where the company is operating more harmoniously and with a clear direction," with the
18 idea that "if certain people were chronic offenders," the Board would "have to consider
19 terminating them" in the event that "the situation did not correct itself within a reasonable period
20 of time." (*Id.* ¶¶ 15(f); 38(a).) Some non-Cotter directors anticipated that an assessment would
21 be made at the June 2015 Board meeting regarding the progress of the Company and
22 management situation under Plaintiff; absent sufficient improvement, the non-Cotter directors
23 expected to take whatever actions they deemed appropriate. (*Id.* ¶¶ 15(e); 36(c); 37.)

24 Initially, Plaintiff was not supportive of the idea of utilizing an ombudsman, but
25 ultimately came to believe that it would be efficacious to have "an adult in the room" to assist
26 him as CEO and "let[] this play out until the end of June or whatever date agreed to and revisit."
27 (*Id.* ¶¶ 12(a); 39.) By mid-April 2015, however, director Storey concluded that Plaintiff "needs
28 to make progress in the business and with Ellen and Margaret [Cotter] quickly, or the board will

1 need to look to alternatives to protect the interests of the company.” (*Id.* ¶ 38(a)-(b).) The
2 hoped-for progress did not occur. By May 2015, multiple members of RDI’s Board had
3 concluded that Plaintiff was not correcting his deficiencies or ameliorating his inexperience, and
4 that his behavior as CEO was hindering the company. (*Id.* ¶¶ 3(c); 8(e), (h), (x).)

5 **1. The Reasoned Review Process Begins at the May 21, 2015 Board**
6 **Meeting, as Plaintiff Threatens Each Director With a Lawsuit**

7 Despite months-long efforts to address and alleviate ongoing conflicts and concerns
8 regarding Plaintiff’s performance, no resolution was in sight; as such, Plaintiff’s continuing role
9 as President and CEO was put on the agenda for the Board’s May 21, 2015 meeting as an item
10 for discussion. (*Id.* ¶ 40.) At the outset of the May 21, 2015 meeting, Plaintiff—through his
11 personal attorney—threatened to file a lawsuit based on purported breaches of the fiduciary
12 duties of care and loyalty against each Board member in the event that they decided to terminate
13 his employment. (*Id.* ¶ 30(b).) In addition to this threat of litigation made during the May 21,
14 2015 board meeting itself, Plaintiff separately threatened various Board members personally,
15 stating that they could “not fire him as C.E.O.” and intimidating them by claiming that if they
16 were “to vote to fire him, he would sue [them] and ruin them financially.” (*Id.* ¶¶ 4(d); 8(f).)

17 Once the May 21, 2015 meeting began, both RDI’s full Board as well as a session of the
18 non-Cotter directors discussed Plaintiff’s performance as CEO and the possibility of his
19 termination for nearly five hours, during which Plaintiff was permitted to speak at length
20 regarding his tenure. (*Id.* ¶¶ 30(a); 43(a).) Plaintiff was specifically asked to present his
21 Business Plan (the presentation of which had been added to the agenda for the meeting at
22 Plaintiff’s request), but declined. (*Id.* ¶ 30(a).) Outside counsel retained by the Company also
23 attended the May 21, 2015 Board meeting to provide corporate law advice, where appropriate.
24 (*Id.* ¶¶ 14; 30(a).) While various directors, including Adams, Kane, Margaret Cotter, and Ellen
25 Cotter, reviewed their assessment of observed “deficiencies” in Plaintiff’s “leadership,
26 understanding of the Company’s business, temperament, managerial skills, decision-making and
27 other attributes in the role of Chief Executive Officer,” ultimately the Board chose to take no
28 action with respect to Plaintiff’s position at the May 21, 2015 meeting, determining instead to

1 take additional time to consider what had been said and “reconvene the meeting on May 29,
2 2015 to continue its deliberations.” (*Id.* ¶ 30(c).)

3 **2. Continued Discussion at the May 29, 2015 Board Meeting**

4 As anticipated, the Board again discussed the possibility of Plaintiff’s termination at a
5 Board meeting held on May 29, 2015. (*Id.* ¶¶ 31(a); 43(b).) Once again, the Board was
6 informed at the outset of its meeting by outside counsel, separately retained by the non-Cotter
7 directors, that Plaintiff planned to serve them with a lawsuit in the event that they voted to
8 terminate his positions as President and CEO of RDI. (*Id.* ¶ 31(a).) Once the May 29, 2015
9 meeting began, Plaintiff explicitly rejected a suggestion, made at the previous meeting, that, in
10 order for him to have more time to develop, he continue as President of RDI under a new CEO,
11 for whom a search would commence. (*Id.* ¶¶ 10(c); 30(d); 31(b).) Director Adams made a
12 formal motion, seconded by director McEachern, to remove Plaintiff from his position as
13 President and CEO, “principally based on Plaintiff’s lack of leadership skills, understanding of
14 the Company’s business, temperament, managerial skills, decision-making and other attributes”;
15 although Adams “believe[d] we may have cause in this situation” to terminate for cause, his
16 motion sought termination “‘without cause’ under the terms” of Plaintiff’s Employment Contract
17 in order to “provide him with the benefit of the contractual severance pay.” (*Id.* ¶ 31(c).)

18 After the interested positions of Plaintiff and Ellen and Margaret Cotter were noted for
19 the record, the Board engaged in extensive discussions about Plaintiff’s performance as CEO and
20 President of RDI, both in and outside of the presence of Plaintiff and the Cotter sisters. (*Id.*
21 ¶ 31(d).) During a break at the May 29, 2015 meeting, Ellen and Margaret Cotter reached a
22 tentative “agreement-in-principle” with Plaintiff regarding various litigation matters existing
23 between the three Cotters individually and related trusts and estates. (*Id.* ¶ 31(e).) This
24 “agreement-in-principle,” which was subject to review by counsel, documentation to the Cotters’
25 mutual satisfaction, and approval by the Board as to certain issues, had the potential to resolve
26 some of the underlying issues affecting the Company and Plaintiff’s performance as CEO. (*Id.*
27 ¶¶ 31(e); 41.) In particular, the “agreement-in-principle” provided for a new executive structure
28 at RDI—Plaintiff would remain as CEO, but his decisions would be subject to oversight by an

1 Executive Committee composed of Ellen Cotter, Margaret Cotter, and Guy Adams. (*Id.* ¶ 41.)
2 Encouraged by the prospect of the Cotter siblings coming to a cooperative resolution, the Board
3 agreed to adjourn the May 29, 2015 meeting without resolving the pending motion to terminate
4 Plaintiff in order to see if the issues could be finally resolved in a manner acceptable to the non-
5 Cotter directors and to have additional data from which the Board could evaluate the
6 continuation of Plaintiff as CEO and President of RDI. (*Id.* ¶ 31(f).)

7 **3. Plaintiff Is Terminated at the June 12, 2015 Board Meeting**

8 The “agreement-in-principle,” struck between the three Cotters on May 29, 2015,
9 ultimately broke down by early June 2015 when the sides attempted to paper the final form of
10 the agreement. (*Id.* ¶¶ 9; 10(d).) In view of the failed break-through, Plaintiff’s continuing role
11 as President and CEO of RDI was placed back on the agenda as an item for discussion at the
12 Board of Directors’ June 12, 2015 meeting. (*Id.* ¶ 42.)

13 RDI’s Board discussed the possibility of Plaintiff’s termination for the final time on
14 June 12, 2015. (*Id.* ¶¶ 32(a); 43(c).) As the meeting began, Plaintiff asked to defer a vote on his
15 status until the next scheduled Board meeting (to be held on June 15, 2015), but there was little
16 support for his proposal, and no motion with respect to such a continuance was made. (*Id.*
17 ¶ 32(b).) The Company’s directors proceeded to discuss Plaintiff’s management skills and
18 experience, following which directors Adams, Kane, and McEachern, as well as Ellen and
19 Margaret Cotter, voted in favor of the pending motion to remove Plaintiff as the Company’s
20 CEO and President; directors Gould and Storey voted against the removal motion, while Plaintiff
21 abstained. (*Id.* ¶ 32(a).) Director Storey voted against Plaintiff’s termination on June 12, 2015
22 because he wanted to wait until the latter part of June to make a final assessment, while director
23 Gould thought that the Board should delay until all of the pending litigation between the Cotters
24 was resolved. (*Id.* ¶¶ 2(a); 6(b); 8(i), (m).) The majority of the non-Cotter directors, however,
25 concluded that further delay was not “in the best interests of the shareholders” because, due to
26 Plaintiff, “the company was not moving forward,” “[t]here was polarization in the office,” and
27 the issue “had to be resolved one way or another.” (*Id.*) None of the directors—including Storey
28 and Gould—believed that Plaintiff’s failure to settle the trust and estate litigation between him

1 and Ellen and Margaret Cotter caused his termination as CEO and President of the Company.
2 (*Id.* ¶¶ 2(b)-(c); 15(b), (d).)

3 Plaintiff was therefore terminated as CEO and President of the Company based on a
4 majority vote of the full Board and by a majority vote of the non-Cotter directors. (*Id.* ¶¶ 15(a);
5 32(a).) After Plaintiff's termination, Ellen Cotter was appointed interim CEO and President of
6 RDI. (*Id.* ¶ 26(a).) Plaintiff subsequently filed the above-captioned derivative action against the
7 other members of the Company's Board of Directors on June 12, 2015. (*Id.* ¶ 26(b).)

8 **E. No Shareholder Support Exists for Plaintiff's Reinstatement**

9 As part of Plaintiff's attempted derivative action, he seeks "a determination that the
10 purported termination of Plaintiff as President and CEO of RDI was legally ineffectual and is of
11 no force and effect," and—despite the passage of over fifteen months since his termination—
12 demands reinstatement in his former positions with the Company. (SAC at 53 ("Relief").) But
13 support for Plaintiff's requested relief is nonexistent among his fellow shareholders.

14 Jonathan Glaser, the managing member of both JMG Capital Management, LLC and
15 Pacific Capital Management, LLC (owners of approximately 526,000 shares of Class A RDI
16 stock and approximately 1,000 Class B shares), has testified that he would not seek the
17 reinstatement of Plaintiff, that "it's just not a high priority to put [Plaintiff] back," that he is
18 "personally comfortable with Ellen Cotter as CEO," and he did not "think it would make much
19 difference" to the "shareholders of Reading" if Plaintiff was CEO. (*Id.* ¶¶ 18(a)-(b), (e); 44(b).)
20 Glaser also has emphasized his view that a CEO could properly be terminated for not getting
21 along with the employees and other executives within a company. (*Id.* ¶ 18(d).) Whitney Tilson,
22 hedge fund manager of T2 Partners Management, L.P., which controls various funds owning
23 approximately 519,242 shares of Class A RDI stock and 901 Class B shares, has similarly
24 confirmed that he would not reinstate Plaintiff if he had the opportunity because "the well has
25 been poisoned" following Plaintiff's conflicts with Ellen and Margaret Cotter, his reinstatement
26 would merely perpetuate a "divided company," there is a "reasonable likelihood" that Plaintiff is
27 not "the single best qualified person to run" RDI, and Tilson's general concern that Plaintiff's
28 advancement within RDI was purely the product of "nepotism." (*Id.* ¶¶ 17(a)-(c); 44(b).) And

1 Andrew Shapiro, the president of Lawndale Capital Management, which owns approximately
2 \$13 million in RDI's Class A stock and \$30,000 in Class B stock, likewise has testified that he
3 "was not necessarily in pursuit of, of any and all of those remedies" sought by Plaintiff, he
4 "wasn't committed one way or the other than [Plaintiff] should be reinstated," and he did not
5 "think necessarily [Plaintiff] is the best adequate representative of mine or other shareholder
6 interests." (*Id.* ¶¶ 19(d), (f)-(g).)

7 Moreover, when questioned, these key investors in RDI could not predict whether
8 reinstating Plaintiff would affect the Company's share price, as many believed that the overall
9 performance of the Company, along with its business plan, have remained entirely consistent and
10 appropriate since Plaintiff's termination. (*Id.* ¶¶ 17(a), (d); 18(c), (f)-(g); 19(a)-(c), (e).)

11 **III. LEGAL STANDARD**

12 Summary judgment is warranted under Nevada Rule of Civil Procedure 56 whenever the
13 "pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are
14 properly before the court demonstrate that no genuine issue of material fact exists, and the
15 moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724,
16 731 (2005). "The substantive law controls which factual disputes are material and will preclude
17 summary judgment; other factual disputes are irrelevant." *Id.*; see also *Anderson v. Liberty*
18 *Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Factual disputes that are irrelevant or unnecessary will
19 not be counted."). A factual dispute is "genuine" only "when the evidence is such that a rational
20 trier of fact could return a verdict for the nonmoving party." *Holcomb v. Ga. Pac., LLC*, 289
21 P.3d 188, 192 (Nev. 2012) (citation omitted).

22 While the pleadings and other proof are "construed in the light most favorable to the
23 nonmoving party," *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002), that party "bears the burden to
24 more than simply show that there is some metaphysical doubt as to the operative facts in order to
25 avoid summary judgment." *Wood*, 121 Nev. at 732 (citation and internal quotation marks
26 omitted) (rejecting the "slightest doubt" standard). The nonmoving party "is not entitled to build
27 a case on the gossamer threads of whimsy, speculation, and conjecture," *id.* (citation omitted),
28 but instead must identify "admissible evidence" showing "a genuine issue for trial." *Posadas v.*

1 *City of Reno*, 109 Nev. 448, 452 (1993); *Shuck v. Signature Flight Support of Nev., Inc.*, 126
2 Nev. 434, 436 (2010) (“bald allegations without supporting facts” are insufficient); *LaMantia*,
3 118 Nev. at 29 (nonmovant must “show specific facts, rather than general allegations and
4 conclusions”). A nonmoving party that fails to make this showing will “have summary judgment
5 entered against him.” *Wood*, 121 Nev. at 732 (citation omitted).

6 **IV. ARGUMENT**

7 **A. Plaintiff’s Termination Cannot Support a Breach of Fiduciary Duty Claim**

8 It is well-settled that the only fiduciary duties owed by directors are “to the corporation
9 itself,” not to its employees. *Byington v. Vega Biotech., Inc.*, 869 F. Supp. 338, 345 (D. Md.
10 1994). Traditionally, courts have been wary of plaintiffs’ attempts to use “an appeal to general
11 fiduciary law” to transform cases involving the dismissal of an employee or officer into claims
12 that a company’s directors “breached a fiduciary duty as corporate officers” when effecting a
13 termination. *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 190 (1989) (rejecting effort by
14 operating manager and minority shareholder, upon his firing, to assert fiduciary duty violations);
15 *Hackett v. Marquardt & Roche/Meditz & Hackett, Inc.*, Civ. No. 02-990166881S, 2002 WL
16 31304216, at *2 (Conn. Sup. Ct. Sept. 17, 2002) (rejecting breach of fiduciary duty claim, and
17 holding that “the law of employment relations seems to provide sufficient protection for any civil
18 wrongs” in the event of a purportedly unlawful termination). To thread the narrow needle
19 necessary to avoid summary judgment on his termination and reinstatement claims, Plaintiff
20 must produce cognizable evidence showing (1) “the existence of a fiduciary duty”; (2) the
21 decision by the RDI Board of Directors to terminate him as CEO and President of the Company
22 represented a “breach of that duty” to RDI itself as a matter of law; and (3) “that the breach
23 proximately caused the damages” to the Company alleged. *Brown v. Kinross Gold U.S.A., Inc.*,
24 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008). Under NRS 78.138(7), in order for the Individual
25 Defendants to be liable, Plaintiff must prove that the fiduciary breach “involved intentional
26 misconduct, fraud or a knowing violation of the law.” Plaintiff cannot meet *any*—let alone all—
27 of these requirements.
28

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

3 “Ordinarily, under Nevada’s corporations laws, a corporation’s board of directors has full
4 control over the affairs of the corporation.” *Shoen*, 122 Nev. at 632 (citation and internal
5 quotation marks omitted); NRS 78.120(1) (“Subject only to such limitations as may be provided
6 by this chapter, or the articles of the corporation, the board of directors has full control over the
7 affairs of the corporation.”). All officers “hold their offices for such terms and have such powers
8 and duties as may be prescribed by the bylaws or determined by the board of directors,” and may
9 remain in office until the “expiration of his or her term” or “until the officer’s resignation or
10 removal before the expiration of his or her term.” NRS 78.130(3)-(4). “[T]here is no vested
11 right to retain one’s office in the face of a properly executed removal.” *Cooper v. Anderson-*
12 *Stokes, Inc.*, 571 A.2d 786, 1990 WL 17756, at *2 (Del. 1989) (table); *see also Roven v. Cotter*,
13 547 A.2d 603, 609 (Del. Ch. 1988) (director had “no vested vest right to hold office in defiance
14 of a properly expressed will of the majority”).

15 RDI’s Amended and Restated Bylaws mirror NRS 78.130, and provide that Plaintiff,
16 upon his election as CEO on August 7, 2014, could hold office only until the appointment of his
17 successor, his death, or “until he shall resign or is removed in the manner as hereinafter provided
18 for such term as may be prescribed by the Board of Directors.” (HD ¶ 20(a).) The Company’s
19 Bylaws further emphasize that Plaintiff served solely “at the pleasure of the Board of Directors,”
20 and that he could “be removed at any time, with or without cause, by the Board of Directors by a
21 vote of not less than a majority of the entire Board at any meeting thereof.” (*Id.* ¶ 20(b).)

22 In light of Board’s unrestricted right to terminate Plaintiff at any time, for any reason,
23 Plaintiff’s attempt to utilize fiduciary duty law—via this derivative action—to challenge the
24 propriety of his termination is untenable. Courts have rejected similar attempts by other
25 terminated officers to assert fiduciary duty claims as a “novel argument,” finding that there was
26 “no case in support.” *Carlson v. Hallinan*, 925 A.2d 506, 540 (Del. Ch. 2006) (plaintiff could
27 not “articulate a theory as to how Carlson’s removal as President . . . could be a breach of
28 fiduciary duty”); *see also Datto Inc. v. Braband*, 856 F. Supp. 2d 354, 384 (D. Conn. 2012)

1 (plaintiff's allegations of "breach of fiduciary duty" based "on her allegedly wrongful
2 termination . . . fail to state a claim"). Instead, it typically has been the case that "[q]uestions of
3 policy or management . . . are left solely to the honest decision of the directors, if their powers
4 are without limitation and free from restraint." *Treadway Cos., Inc. v. Care Corp.*, 638 F.2d 357,
5 381 (2d Cir. 1980) (citation omitted); 2 Fletcher Cyc. Corp. § 363 (2015) ("Thus, where a bylaw
6 provided that any officer might be removed by a majority vote of the entire board whenever the
7 best interests of the company require it, it was for the directors to determine what was in the best
8 interests of the company; the courts will not interfere unless for fraud or illegality.").

9 The leading treatise on the subject emphasizes that "a court has no right or jurisdiction to
10 review the discretionary action of the board in removing an officer, unless the contract rights of
11 the person removed are involved," 2 Fletcher Cyc. Corp. § 360 (2015),³ and numerous other
12 decisions have stressed that, if the removal power within a corporation's bylaws allowed the
13 termination, "[t]he motives for the acts of a board of directors, when lawful, are not properly the
14 subject of judicial inquiry." *Zannis v. Lake Shore Radiologists, Ltd.*, 432 N.E.2d 1108, 1110 (Ill.
15 Ct. App. 1982); *see also Mannix v. Butte Water Co.*, 854 P.2d 834, 842 (Mont. 1993) ("the
16 determination to terminate an officer is a *subjective* one for the *board of directors* to make," not
17 the court) (emphasis in original); *New Founded Indus. Missionary Baptist Ass'n v. Anderson*, 49
18 So.2d 342, 344 (La. Ct. App. 1950) (holding, where plaintiff sought a review of the merits of his
19 removal as president, "a court has no right or jurisdiction to review the discretionary action of
20 the board in removing an officer, unless the contract rights of the person removed are involved").

21 The reason for this deferential approach to boards in the context of their decision to
22 terminate an officer is clear: "Often it is said that a board's most important task is to hire,
23 monitor, and fire the CEO." *Klaassen v. Allegro Dev. Corp.*, C.A. Case No. 8262-VCL, 2013
24 WL 5967028, at *15 (Del. Ch. Nov. 7, 2013). It is the board, rather than a court, that is
25 "optimally suited . . . to selecting, monitoring, and removing members of the chief executive's
26

27 ³ The contract rights of Plaintiff under the Employment Contract are, of course, being
28 adjudicated in an arbitration concurrent with this action.

1 office” so that it may “replace an underperformer in a timely fashion.” *Id.* at *15 n.8 (citations
2 omitted). The kind of action attempted by Plaintiff threatens to transform *every* termination of
3 an executive from a personal dispute into a derivative attack on a board’s exercise of its fiduciary
4 duties, and would force Nevada courts to become frequent arbiters months (or, in this case,
5 years) after the fact of the unique judgments a board must make regarding the effectiveness of its
6 officers. Given that Plaintiff could be fired “at any time, with or without cause,” under RDI’s
7 Bylaws, and both a majority of the entire Board *and* a majority of the non-Cotter directors voted
8 to remove Plaintiff, the Court need not even engage in the business judgment analysis: Plaintiff’s
9 fiduciary duty claim arising from his termination is unsupportable.

10 2. **The RDI Board’s Termination of Plaintiff Fell Well Within the**
11 **Protection of the Business Judgment Rule**

12 Even reviewed on the merits, the RDI Board’s decision to terminate Plaintiff as CEO and
13 President of the Company was entirely appropriate. Under Nevada law, “[w]here a director is
14 charged with breach of his fiduciary obligation, the ‘business judgment rule’ applies.” *Horwitz*
15 *v. SW. Forest Indus., Inc.*, 604 F. Supp. 1130, 1134 (D. Nev. 1985). The business judgment rule
16 is a “presumption that in making a business decision the directors of a corporation acted on an
17 informed basis, in good faith and in the honest belief that the action taken was in the best
18 interests of the company.” *Shoen*, 122 Nev. at 632 (citation omitted); *see also* NRS 78.138(3)
19 (codifying the rule under Nevada law). “The business judgment rule postulates that if directors’
20 actions can arguably be taken to have been done for the benefit of the corporation, then the
21 directors are presumed to have been exercising their sound business judgment rather than to have
22 been responding to self-interest motivation.” *Horwitz*, 604 F. Supp. at 1135.

23 “[T]he business judgment rule applies” to the “decision to remove an officer” absent
24 “gross negligence” or “proof that the action was not taken in an honest attempt to foster the
25 corporation’s welfare,” *In re Dwight’s Piano Co.*, 424 B.R. 260, 284 (S.D. Ohio 2009), and
26 “[c]ourts are reluctant to second-guess such business judgments absent demonstrable bad faith on
27 the part of the Board.” *Franklin v. Tex. Int’l Petroleum Corp.*, 324 F. Supp. 808, 813 (W.D. La.
28 1971). “[E]ven a bad decision is generally protected by the business judgment rule,” *Shoen*, 122

1 Nev. at 636, and the “burden of showing bad faith or abuse of discretion rests upon the plaintiff.”
2 *Horwitz*, 604 F. Supp. at 1135. Nevada is particularly strict with respect to plaintiffs who
3 attempt to circumvent the business judgment rule: in the event that a director’s action (or failure
4 to act) is ultimately held to “constitute[] a breach of his or her fiduciary duties,” the director
5 faces individual liability only if “[t]he breach of those duties involved intentional misconduct,
6 fraud or a knowing violation of the law.” NRS 78.138(7)(a)-(b).

7 In light of the broad protections afforded under Nevada law to RDI’s directors, Plaintiff
8 cannot meet the showing required to avoid summary judgment for two reasons.

9 (a) **Plaintiffs’ Termination Was Justified on the Merits and a**
10 **Proper Exercise of Business Judgment**

11 First, the RDI Board’s decision to terminate Plaintiff was justified on the merits and was
12 an appropriate exercise of their business judgment—there was a “legitimate business reason” for
13 Plaintiff’s firing, the decision was “neither false, whimsical, arbitrary or capricious,” and it had
14 “some logical connection to the needs of the business.” *Mannix*, 854 P.2d at 846; NRS
15 78.138(1) (directors are to “exercise their powers in good faith and with a view to the interests of
16 the corporation”). Plaintiff’s bald allegation that personal motivations may have influenced
17 some directors is not sufficient to justify a trial on the merits of the Board’s final decision.
18 Nevada requires “intentional misconduct, fraud or a knowing violation of the law” to maintain an
19 actionable fiduciary duty claim—not just the potential that personal animus or self-interested
20 considerations played a role in a board’s decision. NRS 78.138(7); *see also Franklin*, 324 F.
21 Supp. at 813 (“intra- and intercorporate maneuvering” affecting termination decision did not
22 disturb board’s business judgment where other legitimate reasons justified firing). Purported
23 “self-interest” will not forestall application of the business judgment rule unless “that motive is
24 the sole or predominant reason” for a decision. *Horwitz*, 604 F. Supp. at 1135. It was not here.

25 With respect to Plaintiff, the RDI Board faced a CEO that was “young,” chosen on “short
26 notice,” and lacked significant hands-on experience in numerous, highly relevant business areas.
27 RDI’s Board and shareholders recognized that “nepotism” may have benefitted Plaintiff in his
28 selection as CEO, but all hoped that he could grow into the role and develop on the job. Within

1 two to three months of his election, the Board saw that Plaintiff needed help, which it attempted
2 to provide—including via director Storey’s formal participation as an “ombudsman.” But
3 Plaintiff had significant weaknesses: he could not work well with certain key executives, and
4 some Board members came to believe that he was more interested in undermining central figures
5 within the Company rather than in addressing pending issues; he acted—or was perceived to
6 act—in a manner that was violent and abusive to employees and fellow Board members; and he
7 demonstrated a lack of understanding with respect to metrics critical to evaluating RDI’s
8 businesses. Moreover, outside litigation involving Plaintiff and his sisters, who were key
9 executives in the Company and also sat on the Board, had led to a “dysfunctional management
10 team” torn apart by “‘thermonuclear’ hostility” that was clearly affecting the Company and
11 stockholder value. (*See Factual Background, supra* at 5-9.)

12 After months of contemplating anger management courses, hiring outside consultants, or
13 other changes to ameliorate Plaintiff’s deficiencies, a majority of RDI’s Board saw a lack of
14 progress. Absent evidence that Plaintiff’s tenure as CEO was creating any value or “leading us
15 forward,” the Board chose to terminate his divisive reign after several weeks of open
16 contemplation in which it debated Plaintiff’s performance “at length,” gave Plaintiff multiple
17 opportunities to make presentations defending himself, utilized the services of outside counsel,
18 attempted to find negotiated alternatives to Plaintiff’s termination, and took its role seriously in
19 the face of Plaintiff’s repeated threats to sue each of them and “ruin them financially” if the
20 Board dared to remove him. Even the directors that voted not to terminate Plaintiff on June 12,
21 2015 recognized significant problems with his performance, and objected more to the timing of
22 his removal than to the underlying basis. (*See Factual Background, supra* at 8-12.) This was
23 exactly how a board was supposed to act under both Nevada law and RDI’s Bylaws.

24 As with Plaintiff, an officer’s “inability to perform adequately” and lack of “experience,
25 expertise, and proper degree of affability” are protected reasons under the business judgment rule
26 for his or her termination. *Franklin*, 324 F. Supp. at 813; *see also Carlson*, 925 A.2d at 540
27 n.232 (where “the evidence indicated that Carlson was not effective in the role of President of
28 CR and that he had important managerial shortcomings,” “firing him could have fostered CR’s

1 welfare” and was thus protected by the business judgment rule). Plaintiff’s insinuation that his
2 termination was somehow “improper” because he was fired after he ultimately declined to settle
3 the Cotter trust litigation (SAC ¶¶ 78-94) is baseless. The “agreement-in-principle” between
4 Plaintiff and his sisters, if finalized, would have circumscribed Plaintiff’s management authority
5 and placed him under the auspices of an Executive Committee. (HD ¶ 41.) The Board’s
6 consideration of that potential deal made sense, as a finalized agreement could have reduced the
7 admitted dysfunction hampering RDI and rectified some of the otherwise-terminal problems in
8 Plaintiff’s CEO tenure, while also providing him a structure within which to grow and gain
9 experience; once that agreement fell through, the Board was left with the same intractable
10 problems as before. The fact that a company’s CEO cannot “work well” with its directors or
11 executives, and requires “close and constant supervision,” as was the case with Plaintiff, is a
12 valid basis for terminating the officer, and is a decision protected by the business judgment rule.
13 *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 72-73 (Del. 2006). Even RDI’s unaffiliated
14 investors see this as a valid reason for Plaintiff’s termination. (HD ¶ 18(d).)⁴

15 Because the RDI Board’s termination of Plaintiff can “arguably be taken to have been
16 done for the benefit of the corporation,” that merits-based decision is fully protected by the
17 business judgment rule and immune from Plaintiff’s challenge. *Horwitz*, 604 F. Supp. at 1135;
18 *see also Katz v. Chevron Corp.*, 22 Cal.App.4th 1352, 1366 (1994) (rule protects corporate
19 management decisions whenever they can be “attributed to any rational business purpose”).⁵

20
21 ⁴ The fact that the RDI Board utilized both the Company’s outside counsel and its own
22 counsel, separately retained, when evaluating Plaintiff’s performance and its duties is further
23 evidence of the exercise of protected business judgment. *See In re Walt Disney Co. Deriv. Litig.*,
24 906 A.2d at 72-73 (“business judgment” properly exercised where officer “weighed the
alternatives” and “received advice from counsel”); *Horwitz*, 604 F. Supp. at 1134-35 (directors
use of advice from “law firms” was evidence of business judgment exercise).

25 ⁵ As noted in the Individual Defendants’ contemporaneous Motion for Summary Judgment
26 on Director Independence (No. 2), each non-Cotter Board member was independent with respect
27 to the decision to terminate Plaintiff. Even if they were not, the “business judgment rule” would
28 still apply because, under Nevada law, an “entire fairness” review can be triggered only
(1) where there is a “change or potential change” in stockholder “control of [the] corporation,”
NRS 78.139, not present here; or (2) where a board “authorizes, approves, or ratifies a contract
or transaction” involving an “interested director,” a scenario also not present where there was a

1 (b) Plaintiffs' Procedural Complaints Are Unsupportable

2 Second, Plaintiff's remaining complaints regarding the "process" surrounding his
3 termination are equally invalid. (See SAC ¶¶ 72-74, 76.) It is "well settled that corporate bodies,
4 in proceedings taken for the removal of a corporate director or an officer, are not bound to act
5 with the strict regularity required in judicial proceedings." 2 Fletcher Cyc. Corp. § 360.
6 Directors need not give a CEO advance notice of a plan to remove him at a regular board
7 meeting, and RDI's Bylaws contain no notice requirement. *Klaassen v. Allegro Dev. Corp.*, 106
8 A.3d 1035, 1043-44 (Del. 2014) (rejecting claim that CEO's termination was improper because
9 of lack of agenda item giving advance notice that his performance was at issue); *OptimisCorp. v.*
10 *Waite*, C.A. No. 8773-VCP, 2015 WL 5147038, at *66-67 (Del. Ch. Aug. 26, 2015) (rejecting
11 argument that directors "breached their duty of loyalty by not advising [CEO] in advance of his
12 potential termination"); 2 Fletcher Cyc. Corp. § 357.20 (2015) (a board's failure to give CEO
13 advance notice of a plan to remove him as CEO does "not invalidate his termination").

14 Even so, here Plaintiff's performance was listed as an agenda item in advance of all three
15 Board meetings in which his potential termination was discussed, and he was repeatedly given a
16 platform before the Board to defend his tenure and present a business plan (which he declined
17 when it became apparent that no such plan existed). (See Factual Background, *supra* at 9-11.)
18 While Plaintiff may have wished to continue through June 2015 before any vote was held on his
19 performance, his removal was permissible under RDI's Bylaws "at any time" (HD ¶ 20(b)),
20 RDI's Board had "an individual who we're very concerned about" such that its "process or
21 evaluation is constantly going on" (*id.* ¶ 8(1)), and the Board had an affirmative fiduciary duty to
22 shareholders to remove Plaintiff whenever it felt that his performance was hindering the value of
23 the Company—it could not simply hold off on a final decision based on Plaintiff's preferred
24 timetable. (See also *id.* ¶ 7(b) (noting that the Board "had never set a date of June 30 for our
25 intervention" and "there was no reason for us to wait until June 30").) RDI's Board of Directors
26 in no way "ambushed" Plaintiff. *OptimisCorp.*, 2015 WL 5147038, at *67. Plaintiff "knew that
27 termination of an officer. NRS 78.140. And, even if an "entire fairness" review could apply,
28 Plaintiff's firing was unquestionably a "fair" decision by the Board in light of the above-issues.

1 his position as C.E.O. was in jeopardy for a longer period of time than just May 21” (HD ¶ 8(j)),
2 and RDI’s Board gave him far more notice and opportunity to defend his performance than
3 required by law. (*See also* HD ¶ 12(j) (per Plaintiff, RDI’s Board discussed “the possibility of
4 getting an interim CEO . . . as early as October 2014”).) Plaintiff’s process claims, as with his
5 attack on the underlying merits of his termination, are baseless as a matter of fact and precluded
6 as a matter of law by the business judgment rule.

7 **3. RDI Was Not Damaged by Plaintiff’s Termination**

8 Plaintiff’s fiduciary duty claim relating to his termination also fails because he cannot
9 prove that any “breach proximately caused . . . damages” to RDI itself. *Olvera v. Shafer*, No.
10 2:14-cv-01298, 2015 WL 7566682, at *2 (D. Nev. Nov. 24, 2015) (applying Nevada law and
11 dismissing fiduciary duty claim); *see also Carlson*, 925 A.2d at 540 (dismissing claim because
12 plaintiff could not “articulate” or “prove that any damages flowed proximately” to company
13 from his firing). To sustain a fiduciary duty claim, there must be cognizable evidence of
14 “economic harm suffered” by the Company actually resulting from the Board’s alleged “breach
15 of duties owed in a fiduciary relationship.” *Chimney Rock Pub. Power Dist. v. Tri-State*
16 *Generation & Transmission Ass’n, Inc.*, No. 10-cv-02349, 2014 WL 811566, at *4 (D. Colo.
17 Mar. 3, 2014). Nominal damages are insufficient. *See AMERCO v. Shoen*, 907 P.2d 536, 542
18 (Ariz. App. 1995) (in evaluating breach of fiduciary duty claim, finding “[w]e have no basis for
19 concluding that, in the absence of actual damage or unjust enrichment, Nevada would encourage
20 internecine corporate litigation by permitting a nominal damage claim”). Nor will mere
21 “speculative” damages suffice. *Chimney Rock*, 2014 WL 811566, at *4.

22 Plaintiff cannot meet the damages showing required to avoid summary judgment.
23 Uncontroverted testimony and documentary evidence from within RDI indicates that Plaintiff
24 “was very weak as a C.E.O. or as a manager,” that he “wasn’t really leading the business and he
25 wasn’t leading us forward,” “wasn’t progressing fast,” lacked a “vision of where we’re going,”
26 and did not do “one thing . . . that created value for the company.” (HD ¶¶ 3(d), (f)-(g); 8(r),
27 (u).) RDI’s unaffiliated major investors were also unanimous that it would not “make much
28 difference” to shareholders if Plaintiff was CEO, and that the overall performance of the RDI,

1 along with its business plan, have remained entirely consistent and appropriate since Plaintiff's
2 termination. (See Factual Background, *supra* at 12-13.) And while Plaintiff's expert Tiago
3 Duarte-Silva asserts that RDI performed differently when Plaintiff was CEO as compared to
4 Ellen Cotter, he offers no evidence or analysis connecting the purported changes in performance
5 to anything Plaintiff or Ellen Cotter did or did not do as CEO, completely avoids actual or
6 proximate causation, and does not address the essentially unchanged performance of RDI's stock
7 price. (See HD ¶ 46.)⁶

8 Because Plaintiff does not have evidence of any "economic harm" flowing to RDI
9 following his termination, let alone evidence that his firing was the "proximate cause" of such
10 harm, he cannot establish an actionable breach of fiduciary claim. See *Bd. of Managers at Wash.*
11 *Park Condo v. Foundry Dev. Co.*, 975 N.Y.S.2d 707, at *2-3 (N.Y. Sup. Ct. 2013) (table)
12 (rejecting fiduciary duty claim where there was no connection of harm to nominal plaintiff);
13 *Stafford v. Reiner*, 804 N.Y.S.2d 114, 114-15 (N.Y. App. Div. 2005) (rejecting fiduciary duty
14 claim because "proximate cause" evidence was absent, and claim was "entirely speculative" with
15 "no support in the record"). Indeed, given that he cannot satisfy *any* of the elements required to
16 sustain his fiduciary duty claim relating to his termination, each of Plaintiff's causes of action
17 should be dismissed to the extent that they relate to his removal.

18 **B. Plaintiff Cannot Maintain This Derivative Action to Assert Fiduciary Duty**
19 **Claims Relating to His Termination**

20 This Court, at the pleading stage (accepting all allegations as true), determined that
21 Plaintiff had standing to assert a derivative action on behalf of RDI itself and its shareholders

22
23 ⁶ Indeed, since Plaintiff's termination, RDI's stock has frequently traded at or above the
24 value it held on June 12, 2015. (See HD ¶ 45.) Where the market data regarding the share price
25 shows that prices have risen following disclosures, the "proximate causation" required for a
26 breach of fiduciary duty claim is entirely lacking. See *In re Acterna Corp. Sec. Litig.*, 378 F.
27 Supp. 2d 561, 588 (D. Md. 2005). Even if it had not, a mere drop in share price is insufficient to
28 satisfy the required causation. See *Morgan v. AXT, Inc.*, No. C 04-4362, 2005 WL 2347125,
at *16 (N.D. Cal. Sept. 23, 2005) (allegation that share price dropped after disclosure revealed
prior misrepresentations insufficient to constitute causation). And, of course, a "decline" in
"stock price is not even a derivative injury" and cannot support the required causation in the
context of Plaintiff's purported derivative action. *South v. Baker*, 62 A.3d 1, 25 (Del. Ch. 2012).

1 with respect to a variety of fiduciary claims, including as they related to his termination.
2 However, the elements of standing are not merely pleading requirements but, rather, are an
3 “indispensable part of the plaintiff’s case,” and “each element must be supported in the same
4 way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner
5 and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defenders of*
6 *Wildlife*, 504 U.S. 555, 561 (1992); *see also Parfi Holding AB v. Mirror Image Internet, Inc.*,
7 954 A.2d 911, 934-42 (Del. Ch. 2008) (finding, based on “evidence that arose during discovery
8 and other developments,” that plaintiffs “now lack standing to serve as derivative plaintiffs”). It
9 is now obvious, following discovery, that Plaintiff “does not fairly and adequately represent the
10 interests of the shareholders or members similarly situated in enforcing the right of the
11 corporation or association,” Nev. R. Civ. P. 23.1, in bringing fiduciary duty claims relating to his
12 termination and to the extent that he seeks reinstatement as CEO and President of the RDI. Any
13 suggestion by the Plaintiff otherwise is tilting at windmills. Thus, even if Plaintiff’s termination
14 and reinstatement claims were not entirely barred by the business judgment rule (which they
15 are), Plaintiff could not maintain a derivative action regarding such claims.

16 In pursuing a derivative action, Plaintiff “must not have ulterior motives and must not be
17 pursuing an external personal agenda.” *Energytec, Inc. v. Proctor*, Nos. 3:06-cv-0871 *et al.*,
18 2008 WL 4131257, at *6 (N.D. Tex. Aug. 29, 2008) (citation omitted) (applying Nevada law).
19 “Because of the fear that shareholder derivative suits could subvert the basic principle of
20 management control over corporation operations, courts have generally characterized
21 shareholder derivative suits as a remedy of last resort.” *Quinn v. Anvil Corp.*, 620 F.3d 1005,
22 1012 (9th Cir. 2010) (citation omitted).

23 In light of “the extraordinary nature of a shareholder derivative suit,” a purported
24 derivative plaintiff must satisfy several “stringent conditions” in order to bring such a suit. *Id.*
25 Courts carefully weigh several factors under Rule 23.1 when deciding whether a shareholder is
26 an adequate representative, such as: (1) economic antagonisms between the purported
27 representative and class; (2) the remedy sought by the plaintiff in the derivative action, including
28 the magnitude of the plaintiff’s personal interests as compared to his interest in the derivative

1 action itself; (3) other litigation pending between the plaintiff and defendants; (4) the plaintiff's
2 vindictiveness toward the defendants; and (5) the degree of support the plaintiff is receiving from
3 the shareholders he purports to represent. *Energystec*, 2008 WL 4131257, at *7 (citation
4 omitted). "It is possible that the inadequacy of a plaintiff may be concluded from a strong
5 showing of only one factor," especially if that factor involves "some conflict of interest between
6 the derivative plaintiff and the class." *Khanna v. McMinn*, No. Civ. A. 20545-NC, 2006 WL
7 1388744, at *41 (Del. Ch. May 9, 2006). Following discovery, it is clear that the vast majority
8 of these factors negate Plaintiff's attempted derivative standing with respect to his termination
9 and reinstatement claims, as there are irreconcilable conflicts of interest between Plaintiff, other
10 RDI shareholders, and the Company itself.⁷

11 Economic Antagonism Exists: "[E]conomic antagonism between . . . plaintiff and other
12 shareholders is typically fatal to a shareholder derivative suit." *Pacemaker Plastics Co., Inc. v.*
13 *AFM Corp.*, 139 F. Supp. 2d 851, 855 (N.D. Ohio 2001). As the former CEO and President of
14 RDI, Plaintiff "has a personal economic interest in reversing the events leading to his removal,"
15 but RDI's "shareholders do not share this interest, as they do not stand to regain past
16 employment or company influence." *Energystec*, 2008 WL 4131257, at *7 (rejecting derivative
17 standing by former CEO of company). Not only do Ellen and Margaret Cotter, who control the
18 majority of the voting Class B shares in RDI, oppose Plaintiff's termination and reinstatement
19 claims, significant unaffiliated shareholders in the Company have testified that they see no
20 economic benefit in pursuing Plaintiff's termination claim or in seeking his reinstatement. (*See*
21 *Factual Background, supra* at 12-13.) These outside shareholders had "no opinion" as to
22 whether Plaintiff's termination and requested reinstatement would affect RDI's share price, saw
23 no evidence that the Company's "business operations" have been affected by his termination or
24 would be benefitted by his reinstatement, and do not see "a high priority" to returning Plaintiff to
25 office. (*Id.*) Thus, there is clear economic antagonism—what is economically beneficial to
26

27 ⁷ Other traditional factors, such as "indications that the named plaintiff was not the driving
28 force behind the litigation" and "plaintiff's unfamiliarity with the litigation," *Energystec*, 2008
WL 4131257, at *7, are not at issue here and need not be discussed.

1 Plaintiff himself is not viewed by the Company or its investors as economically advantageous.

2 The Remedy Sought Is Personal: Even prior to his firing, Plaintiff repeatedly threatened
3 RDI's Board of Directors with a derivative action to entrench his position as the Company's
4 CEO and President. (See Factual Background, *supra* 9-10.) Other courts have found identical
5 conduct to be "personal," and contrary to the type of remedy sought by truly representative
6 plaintiffs in a derivative action. For instance, in *Khanna*, the court found that a suspended
7 general counsel could not maintain a derivative action because of similar threats, which
8 "demonstrate[d] a self-interested motivation that is not consistent with the continued pursuit of a
9 derivative and class action by the plaintiff." 2006 WL 1388744, at *43. As that court noted, the
10 derivative litigation was really "to provide leverage in his attempt to regain (and enhance) his
11 position" after his removal—a result whose "benefit is directed almost exclusively, if not solely,
12 to [plaintiff]." *Id.* Similarly, in *Energytec*, the court concluded that the former CEO's "interest
13 in obtaining the requested relief" of reinstatement "far outweighs that of other shareholders,"
14 who did not "share" an interest in his "regain[ing] control" of the company. 2008 WL 4131257,
15 at *7; *see also Tankersley v. Albright*, 80 F.R.D. 441, 444 (N.D. Ill. 1978) ("[W]here it appears
16 that the injury is directly suffered by an individual shareholder or relates directly to an
17 individual's stock ownership, the action is personal."). Here, Plaintiff's personal dispute relating
18 to his termination is not a harm suffered by RDI itself or any of its other shareholders, and is not
19 a proper vehicle for a derivative action.

20 Other Litigation Is Pending: In addition to this case, currently there is a California trust
21 litigation, a Nevada trust and estates litigation, and a private arbitration proceeding, all of which
22 relate to the contested control of RDI and purported misdeeds related to Plaintiff's firing.
23 "Ordinarily, other litigation, in and of itself, may warrant disqualification of a plaintiff from
24 bringing a derivative suit where it appears that the derivative plaintiff instituted the derivative
25 suit only as 'leverage' to further his individual claims." *Scopas Tech. Co. v. Lord*, No. 7559,
26 1984 WL 8266, at *2 (Del. Ch. Nov. 20, 1984). Here, Plaintiff is clearly using this "derivative
27 action as leverage to obtain a favorable settlement" in these "other actions" currently pending,
28 *Recchion on Behalf of Westinghouse Elec. Corp. v. Kirby*, 637 F. Supp. 1309, 1315 (W.D.Pa.

1 1986), as he is asserting the same arguments in those cases as in this one. For instance, Plaintiff
2 in the trust litigation has claimed—as in this action—that he was wrongfully terminated in “a
3 boardroom coup,” that “Ellen [Cotter] deliberately interfered with and corrupted a search process
4 set in motion by the RDI Board,” that Margaret Cotter was promoted to a position to which she
5 is also wholly unqualified,” and that the Board improperly increased his sisters’ compensation.
6 (See HD ¶ 47.) “In such circumstances,” where the overlap between suits is obvious, “there is
7 substantial likelihood that the derivative action will be used as a weapon in the plaintiff
8 shareholder’s arsenal, and not as a device for the protection of all shareholders,” and “other
9 courts have properly refused to permit the derivative action to proceed.” *Owen v. Diversified
10 Industries, Inc.*, 643 F.2d 441, 443 (6th Cir. 1981) (citations omitted).

11 Plaintiff Is Clearly Driven by Vindictiveness: In addition to his pre-litigation threat to
12 use a derivative suit to “ruin . . . financially” any director that challenged his position, Plaintiff’s
13 own allegations demonstrate a strong personal animus at the heart of his action. See, e.g., SAC
14 ¶ 20 (accusing Kane of threatening “Corleone (‘Godfather’) style family justice”), ¶ 33
15 (admitting that Plaintiff “alienated his sisters”), ¶ 35 (labeling Margaret Cotter’s handling of the
16 STOMP matter, which resulted in a \$2.2 million judgment for the Company, a “debacle”), ¶ 70
17 (insinuating that Adams was not forthcoming in his divorce proceedings); see also First Am.
18 Compl. ¶ 75 (alleging that Kane, with Margaret and Ellen Cotter, “launched [a] scheme to extort
19 [Plaintiff]”), ¶ 78 (accusing Adams of consistently engaging in a “search for the next public
20 company victim”). Courts have determined that similar “unmistakable personal” allegations and
21 comparable “vituperative epithets, pugilistic metaphors, and [extreme] descriptions” are
22 indicative of an “emotionally charged feud” that is not the proper subject of a shareholder
23 derivative action. *Smith v. Ayres*, 977 F.2d 946, 949 (5th Cir. 1992); see also *Love v. Wilson*,
24 No. CV 06-06148, 2007 WL 4928035, at *7-8 (C.D. Cal. Nov. 15, 2007) (complaint filled with
25 “gratuitous language” was indicative of well-known “vindictiveness and animosity” between
26 founders of The Beach Boys, and indication that one cousin could not maintain derivative action
27 against others); *Khanna*, 2006 WL 1388744, at *44 (“the tangential and acrimonious
28 employment dispute” between plaintiff “and his former employer” precluded derivative action).

1 Plaintiff Has No Shareholder Support: Even setting aside the fact that the individuals
2 who control a majority of RDI's voting shares do not support Plaintiff's derivative action or his
3 requested reinstatement, it is clear that Plaintiff has no evidence of shareholder support from
4 significant unaffiliated shareholders in RDI. Andrew Shapiro, which owns approximately \$13
5 million in RDI's Class A stock and \$30,000 in Class B stock, has testified that he "wasn't
6 committed one way or the other than [Plaintiff] should be reinstated," and he did not "think
7 necessarily [Plaintiff] is the best adequate representative of mine or other shareholder interests."
8 (HD ¶ 19(f)-(g).) Both Whitney Tilson and Jonathan Glaser, who together control over 1 million
9 shares of the Company's Class A stock and over a thousand Class B shares, have explicitly
10 rejected the idea of reinstating Plaintiff. (See Factual Background, *supra* at 12-13.) Indeed,
11 Tilson has specifically noted that "the well has been poisoned" with respect to Plaintiff as CEO,
12 and his reinstatement would merely perpetuate a "divided company." (HD ¶ 17(a).) Tilson has
13 further stressed that Plaintiff is not "the single best qualified person to run" RDI, and emphasized
14 his belief that Plaintiff's advancement within RDI was likely the product of "nepotism." (*Id.*)
15 This "lack of support" for Plaintiff's termination and reinstatement claims by relevant "non-
16 defendant shareholders" is strong evidence that Plaintiff does not have standing to maintain his
17 derivative challenge. *Love*, 2007 WL 4928035, at *6; *see also Smith*, 977 F.2d at 948 (lack of
18 "cooperation" or support from other shareholders undermined attempted derivative action).

19 In their totality, the relevant factors reveal that Plaintiff is an inadequate derivative
20 plaintiff, and that he should not be allowed to maintain a derivative action for his highly personal
21 termination and reinstatement claims. *See Aztec Oil & Gas, Inc. v. Fisher*, 152 F. Supp. 3d 832,
22 859 (S.D. Tex. 2016) (finding similar employment dispute was not a proper derivative action);
23 *cf. CCWIPP v. Alden*, No. Civ. A. 1184, 2006 WL 456786, at *10 (Del. Ch. Feb. 22, 2006)
24 ("discovery" and "[f]urther development of the facts" may prove a plaintiff is "an inadequate
25 derivative plaintiff"). Because Plaintiff lacks standing to pursue a derivative action seeking
26 relief on his termination and reinstatement claims, summary judgment is fully warranted.

27 **C. Plaintiff's Reinstatement Demand Is Unsupportable and Untenable**

28 Plaintiff's Employment Contract with RDI, which relates to his duties as President and

1 which—according to Plaintiff—continued to apply when he became CEO (HD ¶ 11(a)), provides
2 that Plaintiff will receive twelve months of “compensation and benefits” following a termination
3 “without cause,” and nothing if he was terminated for “cause.” (*Id.* ¶ 21(c).) Nowhere does the
4 Employment Contract give Plaintiff the right of reinstatement or any other right of specific
5 performance against the Company. (*Id.* ¶ 21.) “It is hardly controversial to recognize that an
6 order of specific performance is rarely an appropriate remedy for breach of an employment
7 agreement.” *Cedar Fair, L.P. v. Falfas*, 19 N.E.3d 893, 897 (Ohio 2014). The result should not
8 be different here: Plaintiff’s attempt to achieve, via this derivative action, a reinstatement
9 remedy beyond what is available under his Employment Contract is unsupportable for six
10 reasons. Accordingly, summary judgment as to the relief sought by Plaintiff is warranted.

11 First, “generally, equity will not assume jurisdiction for the purpose of reinstating a
12 removed officer.” 2 Fletcher Cyc. Corp. § 363. “An equitable action does not lie where the
13 officer was removable without cause,” *id.*, as Plaintiff was pursuant to RDI’s Bylaws, which
14 provided that he “may be removed at any time, with or without cause.” (HD ¶ 20(b).)

15 Second, specific performance is available under Nevada law only if “the remedy at law is
16 inadequate.” *Serpa v. Darling*, 107 Nev. 299, 305 (1991); *see also* 2 Fletcher Cyc. Corp. § 363
17 (“equity has no power to reinstate a removed officer . . . where they have an adequate remedy at
18 law”). Here, Plaintiff’s Employment Contract sets forth the relief owed following a termination,
19 Plaintiff is participating in a simultaneous arbitration regarding his removal, and the Company
20 itself has suffered no damages as a result of his firing. As such, a remedy at law is clearly
21 sufficient to resolve Plaintiff’s wrongful termination claims.

22 Third, “there are strong policy reasons” for the “general rule against compelling an
23 employer to retain an employee,” especially if such reinstatement—as here—is “against [the
24 employer’s] wishes.” *Zannis v. Lake Shore Radiologists, Ltd.*, 392 N.E.2d 126, 129 (Ill. Ct. App.
25 1979). Plaintiff’s reinstatement “would involve difficulty of supervision,” *Cedar Fair*, 19
26 N.E.3d at 898, and there are significant questions counseling against reinstatement as to how “a
27 large business entity” like RDI could “properly function” if it was “force[d]” to “reemploy an
28 unwanted senior officer” like Plaintiff “after it had obviously moved on.” *Id.*

1 Fourth, officers have no “vested right to serve out the remainder of their terms.”
2 *Chesapeake Corp. v. Shore*, 771 A.2d 293, 345-46 (Del. Ch. 2000). Plaintiff has “no property
3 right” in his position as CEO and, given RDI’s Bylaws, if reinstated he “could immediately be
4 fired for no reason or for any other permissible reason.” *Rosario-Torres v. Hernandez-Colon*,
5 889 F.2d 314, 323 (1st Cir. 1989). This fact alone may “support a denial of reinstatement.” *Id.*

6 Fifth, the “long period of time” that has elapsed since Plaintiff’s termination, over 15
7 months at the moment (far longer than his 10 months as CEO), counsels against Plaintiff’s
8 reinstatement. *Id.* at 324 (recognizing that “a long period of time” between “discharge” and
9 “entry of judgment” weighs against reinstatement); *Nance v. City of Newark*, Civ. No. 97-6184,
10 2010 WL 4193057, at *2 (D.N.J. Oct. 19, 2010) (same). This is especially true given that the
11 Company has moved on from the issues encountered during Plaintiff’s tenure, now has several
12 new directors serving on the Board, and its own uninterested investors recognize that Plaintiff’s
13 reinstatement would merely perpetuate a “divided company.”

14 Sixth, and finally, reinstatement is not proper where—as here—there is “irreparable
15 animosity between the parties.” *Blum v. Witco Chem. Corp.*, 829 F.2d 367, 373-74 (3d Cir.
16 1987); *Robinson v. SEPTA*, 982 F.2d 892, 899 (3d Cir. 1993) (same). It is beyond dispute that
17 there is “substantial animosity between the parties,” including, in particular, between Plaintiff
18 and his sisters; “the parties’ relationship [is] not likely to improve”; and “the nature of [RDI’s]
19 business require[s] a high degree of mutual trust and confidence,” which is “noticeably lacking.”
20 *Brooks v. Woodline Motor Freight, Inc.*, 852 F.2d 1061, 1066 (8th Cir. 1988). Plaintiff’s
21 requested reinstatement relief is therefore untenable and should be denied.

22 **V. CONCLUSION**

23 For the foregoing reasons, the Individual Defendants respectfully request that the Court
24 grant them summary judgment as to the First, Second, Third, and Fourth Causes of Action set
25 forth in Plaintiff’s SAC, to the extent that they assert claims based on Plaintiff’s June 12, 2015
26 termination as CEO and President of RDI, and to the extent that Plaintiff seeks damages and/or
27 an order both declaring that his termination was “legally ineffectual and is of no force and effect”
28 and an injunction reinstating him as the Company’s CEO and Chairman.

1 Dated: September 23, 2016

2
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15 *Edward Kane*

1 **DECLARATION OF COUNSEL NOAH S. HELPERN IN SUPPORT OF**
2 **THE INDIVIDUAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (NO. 1)**
3 **ON PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS**

4 I, Noah Helpern, state and declare as follows:

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

11 2. Attached hereto as Exhibit 1 is a true and correct copy of transcript excerpts from
12 the deposition of Timothy Storey, taken on February 12, 2016, in which the following pages are
13 relevant:

14 a.) 119:25-120:12 (Storey testifying that McEachern believed "the current

15 disharmony within the business was untenable going forward and needed to
16 be dealt with");

17 b.) 154:2-4 ("I think the comment was simply . . . that things should be dealt with
18 now. They had come to a head and there was no point in delaying. . . .

19 That's my perception, that there was – the view was there was disharmony,
20 and therefore it needed to be dealt with. It was clearly a view around the
21 board table by a number of people that the matter needed to be dealt with
22 expeditiously and rightly."); and

23 c.) 226:21-227:11 (Storey testifying that it "was not my opinion" that Plaintiff
24 was terminated as CEO as a result of "the trust and estate litigation").

25 3. Attached hereto as Exhibit 2 is a true and correct copy of transcript excerpts from
26 the deposition of Guy Adams, taken on April 28, 2016, in which the following pages are
27 relevant:

- 1 a.) 77:6-24 ("Tim Storey was coaching" Plaintiff and acting as "ombudsman" to
2 address Plaintiff's "performance and there being certain issues");
- 3 b.) 78:13-20 (according to Adams, Storey noted that "the only reason" Plaintiff
4 received the CEO "job is because his last name is Cotter," while Adams was
5 aware of Plaintiff's "shortcomings" upon his election);
- 6 c.) 78:18-21 (while Adams had hoped that Plaintiff could "learn on the job and
7 get up to speed quickly . . . by April, [Adams] was of the opinion that wasn't
8 working out");
- 9 d.) 83:23-87:23 ("I questioned [Plaintiff's] knowledge about the business he's
10 managing and his management style . . . I was forming the opinion or had
11 formed the opinion that he wasn't really leading the business and he wasn't
12 leading us forward . . . I said, We've been working with [Plaintiff] all these
13 months and I don't see progress.");
- 14 e.) 84:20-87:23 (Adams testifying that, properly adjusting for lease rentals, the
15 margins for film rental in the United States as compared to Australia and New
16 Zealand revealed a 2% gap, not a 16-18% gap as Plaintiff claimed. Similarly,
17 as RDI's ex-CFO clarified, "[i]n the USA they allocate the G and A down to
18 the theatre level so the theatre level labor cost looks high, and in Australia and
19 New Zealand, they allocate a lot of the labor costs up to G and A so the labor
20 cost looks really low.");
- 21 f.) 88:24-89:22 ("But the vision of where we're going, how we're going to lead –
22 where is our CEO leading our company, I said, We haven't heard a whiff of
23 this . . . Nobody saw it; nobody heard it."); and
- 24 g.) 89:23-90:10 (Gould "agreed" with Adams that Plaintiff "wasn't progressing
25 fast.").

26 4. Attached hereto as Exhibit 3 is a true and correct copy of transcript excerpts from
27 the deposition of Guy Adams, taken on April 29, 2016, in which the following pages are
28 relevant:

- 1 a.) 419:17-421:23 (Adams recalling occasions on which he was informed, within
2 “two days” after the events, of outbursts by Plaintiff in which he “lost his
3 temper” when dealing with Linda Pham, Debbie Watson, and Ellen Cotter);
- 4 b.) 419:11-16 (“There’s been more than one conversation by the non-Cotter board
5 members about [Plaintiff’s] interpersonal skills and anger management
6 issues.”);
- 7 c.) 422:1-18 (“Late 2014, early 2015, . . . there was a discussion . . . among the
8 board – non-Cotter board members about potentially [Plaintiff] being coaxed
9 or demanded to attend anger management classes.”);
- 10 d.) 426:19-427:9 (Adams testifying that “[c]alling up the chairman of the board
11 and saying he’s prepared to file a derivative suit” against the Company was an
12 unjustifiable attempt to pressure the Board and itself “cause to remove”
13 Plaintiff);
- 14 e.) 431:2-432:19 (When Adams was discussing estate planning with Plaintiff in
15 June 2014, Plaintiff “jumped up from his desk and turned beet red and was
16 screaming at the top of his lungs at [Adams],” and then “marched up and
17 down, paced, and was yelling at [Adams]” before “apologiz[ing]” for his
18 outburst.);
- 19 f.) 451:25-452:16 (Plaintiff’s “door was shut a considerable amount of time. I’m
20 not sure exactly what was going [on] during the time the door was shut.”);
- 21 g.) 451:25-454:25 (further noting that Plaintiff “seemed very slow, very hard to
22 make decisions”);
- 23 h.) 460:12-24 (“Tim Storey voiced the opinion that if his last name wasn’t Cotter,
24 he wouldn’t be CEO.”);
- 25 i.) 462:14-25 (Adams believed that, at the time of Plaintiff’s election, he “was
26 young” and “didn’t have that much experience”); and
- 27 j.) 463:9-464:7 (Storey “appointed himself” coach for Plaintiff because, “within
28 two or three months, it became clear to the board that [Plaintiff] needed help

1 in his role, not only as CEO in running the company but trying to make
2 amends or find bridges that he could work with his sisters.”).

3 5. Attached hereto as Exhibit 4 is a true and correct copy of transcript excerpts from
4 the deposition of Edward Kane, taken on May 2, 2016, in which the following pages are
5 relevant:

- 6 a.) 134:1-135:22 (Kane believed that there was a “toxic office and polarization”
7 in RDI because of, in part, incidents between Plaintiff and various employees,
8 which led Linda Pham to contact McEachern regarding “her concern for her
9 actual physical safety” and Debbie Watson to “carry[] mace to the office”);
- 10 b.) 137:12-140:15 (Linda Pham filed two complaints that were turned over the
11 McEachern and Storey because she was “physically afraid” of Plaintiff,
12 especially “when she was there after-hours.”);
- 13 c.) 159:10-160:12 (Plaintiff insisted on showing the board pictures of theatres in
14 Hawaii that Plaintiff believed were in disrepair to the Board, without first
15 raising the issue with Ellen Cotter, in an attempt to make Ellen “the fall
16 person for this,” even though “[s]he had nothing to do with the issues, if there
17 were any.”);
- 18 d.) 161:4-162:11 (Rather than ask, “Margaret, how can I help in solving this
19 issue?,” Plaintiff “attack[ed] his sister” and “used [the STOMP dispute] as a
20 tool to embarrass her in front of the board,” which is “not what a C.E.O.
21 would do when you have two experienced executives,” and “[t]he net result”
22 of the STOMP dispute “is that Margaret by herself handled this arbitration
23 with her lawyers and we just got an award for more than \$2.2 million.”); and
- 24 e.) 164:3-21 (Storey was acting “as the ombudsman” to try to get Plaintiff “to
25 work together” with Ellen and Margaret Cotter).

26 6. Attached hereto as Exhibit 5 is a true and correct copy of transcript excerpts from
27 the deposition of Edward Kane, taken on May 3, 2016, in which the following pages are
28 relevant:

- 1 a.) 251:13-253:6 (“The independent committee . . . spent an inordinate amount of
2 time trying to come up with ways of ameliorating the . . . way . . . the Cotters
3 interacted with each other.”); and
4 b.) 331:11-332:17 (Kane explaining opinion of majority of non-Cotter directors
5 as to why further delay on vote to terminate Plaintiff at the June 12, 2015
6 Board meeting would have been problematic and suboptimal for the
7 Company’s shareholders).

8 7. Attached hereto as Exhibit 6 is a true and correct copy of transcript excerpts from
9 the deposition of Edward Kane, taken on June 9, 2016, in which the following pages are
10 relevant:

- 11 a.) 529:22-530:2 (Kane noting that Gould and Storey saw “a psychologist or
12 psychiatrist and wanted us to mandate that [Plaintiff] visit this psychologist or
13 psychiatrist.”); and
14 b.) 532:12-534 (testifying that the Board “had never set a date of June 30 for our
15 intervention” and “there was no reason for us to wait until June 30”).

16 8. Attached hereto as Exhibit 7 is a true and correct copy of transcript excerpts from
17 the deposition of Douglas McEachern, taken on May 6, 2016, in which the following pages are
18 relevant:

- 19 a.) 49:25-50:7 (Plaintiff “had no real estate experience, no international
20 experience, no management experience, no cinema experience and no live
21 theater experience”);
22 b.) 50:19-51:12 (Storey and McEachern cautioned Plaintiff for “going around
23 Ellen’s back” and wasting “valuable” time “doing financial analysis of
24 individual cinemas” where a “consultant [could] do this”);
25 c.) 51:13-52:1 (Plaintiff visited RDI cinemas in Hawaii and “didn’t talk to
26 anybody, just went and took pictures” so that he could “undercut” Ellen
27 Cotter);
28

- 1 d.) 52:2-5 (Plaintiff “had a habit of coming into the office, sitting in his office and
2 shutting the door, by himself and being there all day.”);
- 3 e.) 71:2-18 (identifying “sometime in mid to late May of 2015” when McEachern
4 decided to support the termination of Plaintiff as CEO);
- 5 f.) 78:14-79:2 (McEachern testifying as to a personal meeting with Plaintiff in
6 May, in which he threatened to go “after everybody”);
- 7 g.) 112:18-113:24, 114:6-15 (Linda Pham “felt that [Plaintiff] was being abusive
8 in his behavior towards her,” and Debbie Watson’s “comments were
9 supportive of Linda Pham’s concerns.”);
- 10 h.) 163:20-164:5 (“I was not comfortable with [Plaintiff] having the authority and
11 responsibilities on his own as C.E.O. of Reading”);
- 12 i.) 167:4-25 (explaining why Gould’s proposal, which involved delay of
13 potentially “two years” on decision regarding Plaintiff as CEO, was not “in
14 the best interest of shareholders”);
- 15 j.) 176:1-9 (Plaintiff “knew that his position as C.E.O. was in jeopardy for a
16 longer period of time than just May 21”);
- 17 k.) 177:5-11 (recalling emails from Storey regarding “the holes in” Plaintiff’s
18 “expertise or ability to function as C.E.O. and where he needed further
19 handling”);
- 20 l.) 219:2-24 (noting that the Board had “an individual who we’re very concerned
21 about” such that its “process or evaluation is constantly going on”);
- 22 m.) 229:4-6 (McEachern explaining Storey’s preference at the June 12, 2015
23 Board meeting to conclude the process relating to the evaluation of Plaintiff as
24 CEO “at the end of June time frame or 90-day time frame when he started”);
- 25 n.) 285:5-8 (noting Plaintiff’s plan “to make some sort of presentation about the
26 ugliness of the theaters which hadn’t had any capital put into them for quite a
27 while”);
- 28

1 o.) 285:23-286:11 (after complaints from McEachern over the course of “a month
2 or two” that his “closed door” policy was sending the message that he was
3 “not being engaged with the employees of the company,” Plaintiff “open[ed]
4 the door to his office one inch,” which “really caused some great angst”);
5 p.) 287:21-24 (Plaintiff “traveled around with his dad looking at things in
6 Australia and possibly New Zealand, but in terms of any real operational
7 effect or activities, nothing”);
8 q.) 288:19-289:8 (likening Plaintiff’s response to “throw[ing] hand grenades in
9 something that you’re trying to do on a positive basis”);
10 r.) 292:2-5 (“The company from August of 2014 until Jim’s termination, I cannot
11 tell you one thing that we did that created value for the company, one thing
12 that Jim Cotter, Jr., managed to do. Nothing.”);
13 s.) 292:6-24 (Following Plaintiff’s election as CEO, “August, September,
14 October, November, December, January, February – six months goes on and
15 he hasn’t gone to visit anybody who has – connected our big activities that are
16 taking place, which are doing exceedingly in Australia and New Zealand.”);
17 t.) 292:25-293:9 (identifying Plaintiffs’ “[i]nability to work with executives” of
18 RDI);
19 u.) 293:4-9 (recalling emails in which Storey “alluded to” the fact that Plaintiff
20 “was very weak as a C.E.O. or as a manager”);
21 v.) 293:10-13 (noting Plaintiff’s idea “to go to U.C.L.A. to learn how to manage”
22 and “get an M.B.A.”);
23 w.) 293:23-294:8 (Plaintiff had “an inability to operate as a manager, an inability
24 to create trust, an inability to communicate with people.”);
25 x.) 294:3-15 (“That lack of experience that [Plaintiff] had all painted a picture
26 that we’re not making progress that our shareholders expect us to make in this
27 organization, and we got to get somebody in here who can help us move the
28 company forward.”); and

1 y.) 302:21-303:13 (McEachern emphasizing his belief that Ellen Cotter "should
2 be in charge of going and figuring out where to go" with respect to food and
3 beverage changes, "not the C.E.O. going and undercutting an individual
4 running that operation").

5 9. Attached hereto as Exhibit 8 is a true and correct copy of transcript excerpts from
6 the deposition of Margaret Cotter, taken on May 12, 2016, in which the following pages are
7 relevant:

8 a.) 275:14-278:12 (discussing factors leading to the dissolution of the
9 "agreement-in-principle" as it was revised and lawyers for each side attempted
10 to put it into final form).

11 10. Attached hereto as Exhibit 9 is a true and correct copy of transcript excerpts from
12 the deposition of Margaret Cotter, taken on May 13, 2016, in which the following pages are
13 relevant:

14 a.) 301:17-302:6 ("I believe that the email had 23 reasons why he shouldn't be
15 giving me this employment agreement. And the employment agreement was
16 very restricted, where if I didn't hand in a report at some particular time, I
17 could be terminated.");

18 b.) 304:5-23 (Plaintiff "just wanted to find all the fault in what I had done rather
19 than deal with the situation in hand and getting this [preliminary injunction
20 motion] filed to prevent the show from leaving the theater.");

21 c.) 367:20-368:12 (Gould suggested that Plaintiff remain as President while
22 stepping down as CEO at the May 21, 2015 meeting, following which
23 Margaret Cotter recognized that Plaintiff "can get [his] training over the next
24 five years and gain more experience and possibly [he] could become C.E.O. in
25 another five years"); and

26 d.) 368:13-371:20 (describing negotiations regarding additional items and
27 revisions during the attempted finalization of the agreement-in-principle).
28

1 11. Attached hereto as Exhibit 10 is a true and correct copy of transcript excerpts
2 from the deposition of James J. Cotter, Jr. ("Plaintiff"), taken on May 16, 2016, in which the
3 following pages are relevant:

4 a.) 30:25-37:9 (Plaintiff contends that his Employment Contract, which covered
5 his duties as RDI President, continued to apply when he became CEO);

6 b.) 133:13-17 (Plaintiff testifies that he was appointed Vice Chairman of the
7 Company in September 2007, and then President in June 2013);

8 c.) 133:18-134:11, 135:23-144:1 (Plaintiff states that he joined the RDI Board in
9 March 2002 at his father's behest, and had never previously served on the
10 board of a public company);

11 d.) 152:13-153:21 (Plaintiff concedes that he no "experience at all in the cinema
12 or theater business of any sort" outside of his tenure as an RDI director, no
13 experience "with business in Australia or New Zealand" other than as an RDI
14 director, and his exposure to real estate was confined to a few transactions "as
15 a corporate lawyer" and one "cinema transaction with Reading as a lawyer.");

16 e.) 163:19-165:1 (the position of President of RDI was reactivated specifically for
17 Plaintiff; there had been no President for some time and he did not succeed
18 anyone in that position);

19 f.) 198:19-21 ("I was on the verge of putting together budgets for the whole
20 company with stretch goals.");

21 g.) 205:19-206:6 (Plaintiff admits that he "did not have a draft" business plan
22 prepared as he was "waiting" for the completion of the plans from various
23 divisions); and

24 h.) 235:18-21 (Plaintiff concedes that he "never presented a plan to the board
25 prior to being terminated, but that was one of the action items that I thought
26 was important for the company.").

27 12. Attached hereto as Exhibit 11 is a true and correct copy of transcript excerpts
28 from the deposition of Plaintiff, taken on May 17, 2016., in which the following pages are

1 relevant:

- 2 a.) 315:22-317:16 (Plaintiff admits, "Initially, I was not supportive of the idea [of
3 an ombudsman]. . . . I was protective of maintaining my authority as
4 CEO[.]");
- 5 b.) 344:24-345:12 (Plaintiff testifying that he "found it difficult working with [his
6 sisters] because, by that point, the issues that I was having with them relating
7 to the trust and estate matters had permeated the company");
- 8 c.) 354:23-357:24 (Gould and Storey met with Bryant Crouse, an outside
9 consultant, to discuss getting "involved in the company and perform[ing] an
10 assessment and provid[ing] recommendations to the company, to the
11 management team . . . on ways to improve the management and corporate
12 governance");
- 13 d.) 447:18-448:4 (Plaintiff testifying that he visited every theater on Oahu but did
14 not identify himself to management there "[b]ecause I wanted to almost be a
15 mystery shopper");
- 16 e.) 481:24-483:5 (Plaintiff admitting that he "heard [] from the directors" that
17 there was a "perception at Reading by employees" that he had "a volatile
18 temper" and "an anger management problem," and that he told the Board that
19 they "should all investigate" the accusations);
- 20 f.) 509:10-15 (Plaintiff admitting that "someone communicated" to him that he
21 needed to keep his door open when in the office);
- 22 g.) 517:2-17 (Plaintiff admits yelling at Adams "sometime in 2014"); and
- 23 h.) 528:9-529:20 (Plaintiff concedes that the Board discussed "the possibility of
24 getting an interim CEO . . . as early as October 2014").

25 13. Attached hereto as Exhibit 12 is a true and correct copy of transcript excerpts
26 from the deposition of Plaintiff, taken on July 6, 2016, in which the following pages are relevant:

- 27 a.) 696:22-700:3 (Plaintiff describing his relationship with Margaret Cotter as
28 "dysfunctional" and claiming that she "literally refused to report to me");

- 1 b.) 704:7-22 (noting his understanding that the independent directors would
2 utilize director Storey's findings to "possibly take actions in response to those
3 findings and recommendations"); and
4 c.) 705:13-706:9 (Plaintiff agreeing that a board of a company always "has the
5 power to hire and fire a CEO" "[s]ubject to agreements made, written
6 contracts made," "or possibly a resolution").

7 14. Attached hereto as Exhibit 13 is a true and correct copy of transcript excerpts
8 from the deposition of Ellen Cotter, taken on May 18, 2016, in which the following pages are
9 relevant:

- 10 a.) 156:19-165:18 (testifying that she and Adams also spoke with outside counsel
11 at Akin Gump prior to May 21, 2015).

12 15. Attached hereto as Exhibit 14 is a true and correct copy of transcript excerpts
13 from the deposition of William Gould, taken on June 8, 2016, in which the following pages are
14 relevant:

- 15 a.) 86:12-22 (at the June 12, 2015 Board meeting, "even without [Ellen and
16 Margaret Cotter's votes, . . . the parties moving for termination had sufficient
17 votes . . . to accomplish what they wanted to do");
18 b.) 110:13-20 ("Guy, Doug and Ed Kane sa[id] they felt . . . that [Plaintiff's]
19 performance was such that he should be replaced.");
20 c.) 119:1-120:2 ("[A]ll the directors felt that [Storey's appointment as
21 ombudsman] was a reasonable approach to try.");
22 d.) 123:15-21 (At the June 12, 2015 Board meeting, the majority of the non-
23 Cotter directors "made the statements . . . they felt that they were convinced
24 [Plaintiff's] performance was such that it had to be cut off at an earlier point;
25 that the time had come to make decision, and we should not wait the extra
26 month or so to get Tim Storey's final report.");
27 e.) 133:17-134:5 (describing plan to "get a report from [Storey] and then make a
28 final decision whether some or all of the Cotter family members would have

1 to improve their performance or change . . . what they were doing”);

2 f.) 134:6-24 (further emphasizing that the Board was prepared “to take drastic
3 steps which might involve terminating one or more of the Cotters”); and

4 g.) 210:25-211:4 (Margaret Cotter “later was vindicated when the Court ruled in
5 Reading’s favor[.]”).

6 16. Attached hereto as Exhibit 15 is a true and correct copy of transcript excerpts
7 from the deposition of William D. Ellis, taken on June 28, 2016, in which the following pages
8 are relevant:

9 a.) 55:21-57:5 (testifying that he was aware that the Board had “some concerns
10 about [Plaintiff’s] behavior,” including his “[t]emperament and what I think
11 people characterized as anger issues,” and that he personally heard Plaintiff
12 “yelling at times” because his office “shared a thin wall” with that of
13 Plaintiff).

14 17. Attached hereto as Exhibit 16 is a true and correct copy of transcript excerpts
15 from the deposition of Whitney Tilson, taken on May 25, 2016, in which the following pages are
16 relevant:

17 a.) 150:6-154:23 (Tilson stating that he would not reinstate Plaintiff if he had the
18 opportunity because “the well has been poisoned” following Plaintiff’s
19 conflicts with Ellen and Margaret Cotter, his reinstatement would merely
20 perpetuate a “divided company,” there is a “reasonable likelihood” that
21 Plaintiff is not “the single best qualified person to run” RDI, he was concerned
22 that Plaintiff’s advancement within RDI was purely the product of
23 “nepotism,” “[t]here was nothing that was a real outlier, either positive or
24 negative, in the couple quarters that [Plaintiff] was the CEO” and that “my
25 general sense is that just because you happen to have the same genetic code of
26 the person who founded and built the company doesn’t make you the best
27 qualified CEO”);
28

- 1 b.) 155:16-156:9 (confirming that he would not seek “the reinstatement or
2 rehiring of [Plaintiff] as CEO”);
3 c.) 176:2-25 (“I personally, speaking only for myself, am not an advocate for
4 returning [Plaintiff] to the CEO position.”); and
5 d.) 182:14-183:3 (admitting that “[t]he business operations” of RDI have
6 “remained pretty steady” since Plaintiff’s termination).

7 18. Attached hereto as Exhibit 17 is a true and correct copy of transcript excerpts
8 from the deposition of Jonathan Glaser, taken on June 1, 2016, in which the following pages are
9 relevant:

- 10 a.) 155:13-157:6 (Glaser testifying that he would not seek the reinstatement of
11 Plaintiff, “it’s just not a high priority to put [Plaintiff] back,” he is “personally
12 comfortable with Ellen Cotter as CEO,” and he did not “think it would make
13 much difference” to the “shareholders of Reading” if Plaintiff was CEO);
14 b.) 154:13-19 (Glaser testifying, “I actually don’t really have a problem with
15 Ellen as CEO.”);
16 c.) 160:10-19 (testifying that he did not “have an opinion” on whether
17 reinstatement would affect RDI’s share price, and that if Plaintiff “were
18 reinstated, I have no idea if the market would react positively or not”);
19 d.) 222:13-20 (confirming that “a CEO could properly be terminated for not
20 getting along with the employees and other executives of the company,” and
21 that failure to get along “would be a major factor”);
22 e.) 243:14-244:18 (estimating current RDI stock ownership);
23 f.) 242:9-243:2 (“I don’t really have a huge problem with the way the company is
24 running day to day.”); and
25 g.) 258:22-259:5 (Glaser noting that he does not “have any evidence that [Ellen
26 Cotter] [is] not a good CEO” and that he “was not necessarily troubled by” her
27 election as permanent CEO).
28

1 19. Attached hereto as Exhibit 18 is a true and correct copy of transcript excerpts
2 from the deposition of Andrew Shapiro, taken on June 6, 2016, in which the following pages are
3 relevant:

- 4 a.) 40:8-17 (“I haven’t had a disagreement with their direction . . . with Senior,
5 with [Plaintiff], or with what Ellen has been doing I think the business
6 plan has been fairly consistent.”);
- 7 b.) 41:8-11 (“[W]ith the current assets that they have, [Plaintiff] was migrating
8 the company towards building upon what the company had, and I feel Ellen
9 and the new regime is similarly doing that.”);
- 10 c.) 42:18-43:2 (“So during both periods of time, the operating performance of the
11 company has kind of chugged along. I don’t feel there’s any differences
12 between the operational direction. I can’t tell of any difference between the
13 operational direction that [Plaintiff] was leading the company and that Ellen is
14 leading the company.”);
- 15 d.) 50:22-57:5 (outlining Shapiro’s position with Lawndale and ownership of
16 RDI stock);
- 17 e.) 98:19-23 (“I don’t really have a bias between [Plaintiff’s] regime or Ellen’s
18 regime, if that’s what you say. I think that she’s been advancing the company
19 forward, similar to what I observed [Plaintiff] doing.”);
- 20 f.) 187:19-188:14 (discussing decision not to intervene because he “was not
21 necessarily in pursuit of, of any and all of those remedies” sought by Plaintiff,
22 he “wasn’t committed one way or the other than [Plaintiff] should be
23 reinstated”); and
- 24 g.) 236:18-237:17 (criticizing representativeness of Plaintiff’s derivative action
25 purportedly on behalf of RDI’s shareholders, including that Shapiro did not
26 “think necessarily [Plaintiff] is the best adequate representative of mine or
27 other shareholder interests”).
- 28

1 20. Attached hereto as Exhibit 19 is a true and correct copy of the Amended and
2 Restated Bylaws of RDI, last revised December 28, 2011, in which the following provisions are
3 relevant:

4 a.) Art. IV ("Officers"), § 1 ("Election") ("Any person may hold one or more
5 offices and each officer shall hold office until his successor has been duly
6 elected and qualified or until his death or until he shall resign or is removed in
7 the manner as hereinafter provided for such term as may be prescribed by the
8 Board of Directors from time to time."); and

9 b.) Art. IV ("Officers"), § 10 ("Removal; Resignation") ("The officers of the
10 Corporation shall hold office at the pleasure of the Board of Directors. Any
11 officer elected or appointed by the Board of Directors, or any member of a
12 committee, may be removed at any time, with or without cause, by the Board
13 of Directors by a vote of not less than a majority of the entire Board at any
14 meeting thereof or by written consent.").

15 21. Attached hereto as Exhibit 20 is a true and correct copy of the June 3, 2013
16 Employment Agreement between Plaintiff and Reading International, Inc. ("RDI" or "the
17 Company"), previously marked as Exhibit 178 during the Plaintiff's deposition, in which the
18 following provisions are relevant:

19 a.) § 1 ("Term of Employment") ("Subject to the provisions of Section 10 below,
20 the Company shall employ the Executive, and the Executive shall serve the
21 Company in the capacity of President for a term commencing as of June 3,
22 2013 . . .");

23 b.) § 2 ("Duties") ("During the Term of Employment, the Executive will serve as
24 the Company's President and will report directly to the Chief Executive
25 Officer."); and

26 c.) § 10 ("Termination") ("In the event of termination under this Section 10 or
27 under Section 5 (except as provided therein), the Company's unaccrued
28 obligations under this Agreement shall cease and the Executive shall forfeit all

1 right to receive any unaccrued compensation or benefits hereunder but shall
2 have the right to reimbursement of expenses already incurred. If the
3 Company terminates Executive without Cause, the Executive shall be entitled
4 to compensation and benefits which he was receiving for a period of twelve
5 months from such notice of termination.”).

6 22. Attached hereto as Exhibit 21 is a true and correct copy of a Form 10-K filed by
7 RDI on March 7, 2014, in which the following page is relevant:

8 a.) 3 (describing focus of RDI’s business and extent of its operations).

9 23. Attached hereto as Exhibit 22 is a true and correct copy of a Form DEF 14A filed
10 by RDI on April 25, 2014, in which the following pages are relevant:

11 a.) 3-6 (providing biographies of member of the RDI Board of Directors as of
12 April 2014 and a breakdown of their committee memberships, including with
13 respect to James J. Cotter, Sr.).

14 24. Attached hereto as Exhibit 23 is a true and correct copy of an RDI press release
15 dated September 15, 2014, in which the following page is relevant:

16 a.) 1 (announcing the death of James J. Cotter, Sr. on September 13, 2014).

17 25. Attached hereto as Exhibit 24 is a true and correct copy of a Form 8-K/A filed by
18 RDI on February 18, 2015, previously marked as Exhibit 63 during Guy Adams’ deposition, in
19 which the following page is relevant:

20 a.) -5591 (summarizing trust and estate litigation).

21 26. Attached hereto as Exhibit 25 is a true and correct copy of a Form 8-K filed by
22 RDI on June 18, 2015, in which the following Items are relevant:

23 a.) Item 5.02 (announcing Plaintiff’s termination and appointment of Ellen Cotter
24 as Interim CEO and President of RDI); and

25 b.) Item 8.01 (announcing the filing of Plaintiff’s derivative action).

26 27. Attached hereto as Exhibit 26 is a true and correct copy of a Schedule 14A filed
27 by RDI on November 10, 2015, previously marked as Exhibit 392 during William Gould’s
28 deposition, in which the following page of the included October 16, 2015 Proxy Statement is

1 relevant:

2 a.) 22 n.8 (further describing trust and estate litigation).

3 28. Attached hereto as Exhibit 27 is a true and correct copy of the Minutes of the
4 Meeting of the RDI Board of Directors held on August 7, 2014, previously marked as
5 Exhibit 179 during Plaintiff's deposition, in which the following page is relevant:

6 a.) 1 (reflecting the elections of Plaintiff, Ellen, and Margaret Cotter to new
7 leadership positions on the Board of Directors, and the health-related
8 resignation of James J. Cotter, Sr..).

9 29. Attached hereto as Exhibit 28 is a true and correct copy of the Minutes of the
10 Meeting of the RDI Board of Directors held on March 19, 2015, previously marked as Exhibit 72
11 during Guy Adams' deposition, in which the following page is relevant:

12 a.) -3830 (reflecting that Storey "will be assisting with planning and governance
13 issues over the next three months").

14 30. Attached hereto as Exhibit 29 is a true and correct copy of the Minutes of the
15 Meeting of the RDI Board of Directors held on May 21, 2015, previously marked as Exhibit 199
16 during Plaintiff's deposition, in which the following pages are relevant:

17 a.) 1 (noting for the record the attendance of in-house counsel Bill Ellis and Craig
18 Tompkins, and outside counsel from Akin Gump Strauss Hauer & Feld, LLP,
19 on behalf of RDI; that Plaintiff "stated that he was not prepared to make a
20 presentation on the Company's operations"; and that the Board "proceeded to
21 discuss at length the performance of [Plaintiff] as Chief Executive Officer and
22 President since he was appointed in August 7, 2014");

23 b.) 1-2 (reflecting that Plaintiff threatened a lawsuit and his attorney addressed
24 the full Board);

25 c.) 3-4 (describing presentations before the Board by certain directors regarding
26 observed "deficiencies" in Plaintiff's "leadership, understanding of the
27 Company's business, temperament, managerial skills, decision-making and
28 other attributes in the role of Chief Executive Officer," with the Board

1 ultimately deciding to “reconvene the meeting on May 29, 2015 to continue
2 its deliberations”); and

3 d.) 4 (Plaintiff requested time until the next Board meeting to “give further
4 consideration to continuing in the role of President of the Company under the
5 leadership of a new Chief Executive Officer”).

6 31. Attached hereto as Exhibit 30 is a true and correct copy of the Minutes of the
7 Meeting of the RDI Board of Directors held on May 29, 2015, previously marked as Exhibit 200
8 during Plaintiff’s deposition, in which the following pages are relevant:

9 a.) 1 (reflecting outside counsel’s discussion of a telephonic conversation with
10 Plaintiff’s attorney on May 28, 2015 regarding authorization “to accept serve
11 of process on behalf of the independent directors of the Company” with
12 respect to Plaintiff’s threatened lawsuit and new discussion surrounding
13 Plaintiff’s potential termination);

14 b.) 1-2 (Plaintiff “would not agree to remain employed as President of the
15 Company under the leadership of a new Chief Executive Officer”);

16 c.) 2 (reflecting motion by Director Adams, seconded by director McEachern, to
17 remove Plaintiff from his position as President and CEO);

18 d.) 2-3 (Board discusses Plaintiff’s performance as CEO and President of RDI,
19 both in and outside of the presence of Plaintiff and the Cotter sisters);

20 e.) 3-4 (recounting progress and ultimate agreement-in-principle between the
21 Cotter siblings during the course of the May 29, 2015 Board meeting, with a
22 general description of the contours of the agreement reached); and

23 f.) 4 (noting adjournment of meeting, with “[n]o action . . . taken by the board
24 with respect to the motion made earlier in the meeting,” to “permit the Cotters
25 to move forward to document their settlement”).

26 32. Attached hereto as Exhibit 31 is a true and correct copy of draft Minutes of the
27 Meeting of the RDI Board of Directors held on June 12, 2015, previously marked as Exhibit 346
28 during William Ellis’ deposition, in which the following pages are relevant:

- 1 a.) 1-2 (reflecting Board discussion regarding Plaintiff's performance and
2 outcome of the ultimate vote on the pending termination motion); and
3 b.) 2 (noting that Plaintiff asked to defer a vote on his status until the next
4 scheduled Board meeting (to be held on June 15, 2015), but there was little
5 support for his proposal, and no related motion was made).

6 33. Attached hereto as Exhibit 32 is a true and correct copy of an email sent by
7 Timothy Storey to William Gould re: "Reading," with attachment, dated February 5, 2015,
8 previously marked as Exhibit 189 during Plaintiff's deposition, in which the following pages are
9 relevant:

- 10 a.) 2 (Storey indicating his belief that Plaintiff "assumed CEO role on short
11 notice with limited experience"); and
12 b.) 3 (Storey noting that, under Plaintiff, "morale poor and needs to be improved"
13 and Plaintiff "need[s] to establish teamwork etc," and writing that "CEO
14 inexperienced and needs help to lead/develop leadership role").

15 34. Attached hereto as Exhibit 33 is a true and correct copy of an email sent by
16 Edward Kane to William Gould and Timothy Storey re: "A follow up," dated February 25, 2015,
17 previously marked as Exhibit 100 during Edward Kane's deposition, in which the following page
18 is relevant:

- 19 a.) -204 (Kane discussing a conversation in which Plaintiff mentioned that his
20 "reply" to the trust and estate litigation would be "very upsetting," leading
21 Kane to fear that this "will exacerbate the dissension" between Plaintiff and
22 Ellen and Margaret Cotter).

23 35. Attached hereto as Exhibit 34 is a true and correct copy of an email sent by
24 Timothy Storey to William Gould re: "Reading- issues," dated March 6, 2015, previously
25 marked as Exhibit 6 during Timothy Storey's deposition, in which the following page is relevant:

- 26 a.) 1 (Storey noting that "we need to help [Plaintiff] learn and to manage the
27 business").
28

1 36. Attached hereto as Exhibit 35 is a true and correct copy of an email sent by
2 William Gould to Guy Adams, Edward Kane, Douglas McEachern, and Timothy Storey re:
3 “Confidential Memo – Reading International,” dated March 7, 2015, previously marked as
4 Exhibit 11 during Timothy Storey’s deposition, in which the following pages are relevant:

5 a.) 2 (Gould outlining role for Storey to “act as an ombudsman (and mention to
6 [Plaintiff]”);

7 b.) 2-3 (Gould writes, “The Independent Directors cannot allow the hostility
8 engendered by the Cotter litigation to affect the Company. As Ed Kane has
9 often pointed out, our duty is to all the shareholders and not just to the Cotter
10 family. We cannot accept a dysfunctional management team under any
11 circumstances But we must ask ourselves, how can we insure that the
12 three Cotters will work together given the ‘thermonuclear’ hostility currently
13 existing?”); and

14 c.) 3 (Gould indicating that Plaintiff “can’t go around Ellen and deal only with
15 Bob Smerling or interview and hire a high level food and beverage executive
16 in Ellen’s area of responsibility without consulting Ellen”; “the Independent
17 Directors may require [Plaintiff] to take an anger management class”; and
18 plan that, “[a]t the June Board meeting, we will make an assessment of how
19 things are going and if there has not been sufficient improvement, we will take
20 whatever actions we deem necessary or appropriate”).

21 37. Attached hereto as Exhibit 36 is a true and correct copy of a Summary Agenda for
22 an RDI Conference Call, dated April 8, 2015, previously marked as Exhibit 14 during Timothy
23 Storey’s deposition, in which the following page is relevant:

24 a.) -726 (agenda for conference call lists “Face-to-face meeting of Independent
25 Directors in June before the Shareholders Meeting to assess status” of Plaintiff
26 and “Possible options” as items for discussion).

27 38. Attached hereto as Exhibit 37 is a true and correct copy of an email sent by
28 Timothy Storey to Plaintiff re: “draft email,” dated April 15, 2015, previously marked as

1 Exhibit 190 during Plaintiff's deposition, in which the following pages are relevant:

- 2 a.) 1 (Storey noting goal to operate "more harmoniously" and writing, "I have
3 made it clear to Jim – and EC and MC – that things have to improve and that
4 improvement has to be sustained, otherwise the board will need to look to
5 other steps to protect the company's position"); and
6 b.) 2 (Storey concluding that "it is difficult for someone to change 'character'
7 overnight" and "back sliding is not acceptable").

8 39. Attached hereto as Exhibit 38 is a true and correct copy of an email sent by
9 Edward Kane to Guy Adams re: "Fw: Update report – confidential," dated May 9, 2015,
10 previously marked as Exhibit 76 during Guy Adams' deposition, in which the following page is
11 relevant:

- 12 a.) -5484 (Plaintiff recognizes that "I need a grown-up (who knows how a public
13 company should operate) in the room with me and my two sisters," "I am OK
14 with an adult in the room periodically making sure we continue momentum,"
15 and "I am ok letting this play out until the end of June or whatever date agreed
16 to and revisit").

17 40. Attached hereto as Exhibit 39 is a true and correct copy of an email sent by Ellen
18 Cotter to Plaintiff, Margaret Cotter, Edward Kane, Douglas McEachern, Timothy Storey, Guy
19 Adams, William Gould, and William Ellis re: "Agenda – Board of Directors Meeting – May 21,
20 2015," dated May 19, 2015, previously marked as Exhibit 124 during Douglas McEachern's
21 deposition, in which the following page is relevant:

- 22 a.) -5340 (listing "Status of President and CEO" listed as the first subject to be
23 discussed at the May 21, 2015 Board meeting).

24 41. Attached hereto as Exhibit 40 is a true and correct copy of a "Confidential
25 Settlement Memo of Understanding" sent by Harry Susman, counsel for Ellen and Margaret
26 Cotter, to Adam Streisand and Meg Lodise, dated May 27, 2015, previously marked as
27 Exhibit 98 during Guy Adams' deposition, in which the following pages are relevant:
28

1 a.) -7576-7579 (version of the tentative agreement-in-principle on certain Cotter-
2 specific issues, providing that "JJC would continue to serve as CEO and
3 President under the terms of his existing contract, but in the overall
4 management structure and subject to the limitations set forth below,"
5 including (1) an "Executive Committee" with "EMC, AMC, JJC, and Guy
6 Adams (Chairman)" that had delegated authority extending to the
7 hiring/firing/compensation of "all senior level consultants/employees," review
8 and approval/disapproval "of all contracts/commitments" in excess of \$1
9 million, and review and approval of RDI's "annual Budget and Business
10 Plan"; and (2) investor relations would be handled henceforth "by CFO in
11 consultation with the GC, not CEO").

12 42. Attached hereto as Exhibit 41 is a true and correct copy of an email sent by
13 Plaintiff to Ellen Cotter, Margaret Cotter, Edward Kane, Douglas McEachern, Timothy Storey,
14 Guy Adams, William Gould, and William Ellis re: "Board Meeting – Tomorrow," dated June 11,
15 2015, previously marked as Exhibit 403 during Plaintiff's deposition, in which the following
16 pages are relevant:

17 a.) -5519-5520 (email from Ellen Cotter to the Board "reconvening the original
18 May 21, 2015 meeting" and placing "Item 1 of this Agenda," "Status of the
19 President and CEO," as the primary agenda item for the board meeting
20 "tomorrow").

21 43. Attached hereto as Exhibit 42 is a true and correct copy of Plaintiff's Amended
22 Responses to Edward Kane's First Set of Requests for Admission, dated July 27, 2016, in which
23 the following Responses are relevant:

- 24 a.) Resp. to RFA No. 15 (Plaintiff admitting that the possibility of his termination
25 was discussed by the Board in his presence at the May 21, 2015 Board
26 meeting);
27 b.) Resp. to RFA No. 16 (Plaintiff admitting that the Board again discussed the
28 possibility of his termination at a Board meeting held on May 29, 2015); and

1 c.) Resp. to RFA No. 17 (Plaintiff admitting that the Board discussed the
2 possibility of his termination for the final time on June 12, 2015).

3 44. Attached hereto as Exhibit 43 is a true and correct copy of the Intervening
4 Plaintiffs' Amended Responses to Margaret Cotter's First Set of Interrogatories, with Exhibits A
5 and B thereto, dated May 16, 2015, previously marked as Exhibit 232 during the deposition of
6 Jonathan Glaser, in which the following Responses are relevant:

7 a.) Interrog. Resp. No. 20 & Ex. A thereto (listing relevant RDI stock ownership
8 and trades made by the entities controlled by Tilson); and

9 b.) Interrog. Resp. No. 20 & Ex. B thereto (listing relevant RDI stock ownership
10 and trades made by entities controlled by Glaser).

11 45. Attached hereto as Exhibit 44 is a true and correct copy of the historical share
12 price of RDI's Class A stock for the period from March 20, 2015 to September 21, 2016.

13 46. Attached hereto as Exhibit 45 is a true and correct copy of the Expert Report of
14 Tiago Duarte-Silva, Plaintiff's expert, dated August 25, 2016.

15 47. Attached hereto as Exhibit 46 is a true and correct copy of James J. Cotter, Jr.'s
16 Petition for Immediate Suspension of Powers of Ann Margaret Cotter and Ellen Cotter as Co-
17 Trustees and For Appointment of Temporary Trustee in the related trust litigation, dated
18 March 24, 2014, in which the following pages are relevant:

19 a.) 1-4 (Plaintiff arguing that he was wrongfully terminated in "a boardroom
20 coup," that "Ellen [Cotter] deliberately interfered with and corrupted a search
21 process set in motion by the RDI Board," that Margaret Cotter was promoted
22 to a position to which she is also wholly unqualified," and that the Board
23 improperly increased his sisters' compensation).

24 48. This declaration is made in good faith and not for the purpose of delay.
25
26
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28

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

3 Executed on the 23rd day of September, 2016, in Los Angeles, California.

4

5

/s/ Noah Helpern

Noah Helpern

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CERTIFICATE OF SERVICE

I hereby certify that, on September 23, 2016, I caused a true and correct copy of the foregoing **INDIVIDUAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (NO. 1) RE: PLAINTIFF'S REINSTATEMENT AND TERMINATION CLAIMS** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ C.J. Barnabi
An employee of Cohen|Johnson|Parker|Edwards

EXHIBIT 1

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and
derivatively on behalf of Reading
International, Inc.,
Plaintiff,
vs.
MARGARET COTTER, ELLEN COTTER, GUY
ADAMS, EDWARD KANE, DOUGLAS MCEACHERN,
TIMOTHY STOREY, WILLIAM GOULD, and
DOES 1 through 100, inclusive,
Defendants.
and
READING INTERNATIONAL, INC., a
Nevada corporation,
Nominal Defendant.

No. A-15-719860-B
Coordinated with:
P-14-082942-E

DEPOSITION OF TIMOTHY STOREY, a defendant herein,
noticed by LEWIS ROCA ROTHGERBER CHRISTIE LLP, at
1453 Third Street Promenade, Santa Monica,
California, at 9:28 a.m., on Friday, February 12,
2016, before Teckla T. Hollins, CSR 13125.
Job Number 291961

1 aware that he was doing -- Guy Adams was doing some work
2 in relation to estate assets, but my understanding was
3 pretty minimal, something to do with looking at assets
4 in Texas.

5 MR. KRUM:

6 Q. Did you ever hear or learn or were you ever
7 told that Mr. Adams had a carried interest in certain
8 dealings or properties in which the Cotter family -- in
9 which the Cotter family had an interest?

10 MR. SEARCY: Objection. Vague. Lacks foundation.

11 THE WITNESS: I heard nothing regarding that until
12 this meeting.

13 MR. KRUM:

14 Q. Take a look at the next page bearing production
15 number 1102 on Plaintiff's 17. Can you read for us the
16 handwritten note on the top?

17 A. "Notes from Tim on performance."

18 Q. No, I'm sorry. The prior page.

19 A. Okay. "No harmony with girls and" --

20 THE REPORTER: I'm sorry?

21 THE WITNESS: "No harmony with girls and needed.
22 Not showing ability to run company." Comments from Ed
23 Kane.

24 MR. KRUM: Okay.

25 Q. And then further down on that same page,

1 there's the name -- handwritten name "Doug" and there's
2 a line that follows that. What does that say?

3 A. "Current position untenable."

4 Q. And is that a comment Mr. McEachern made?

5 A. Yes.

6 Q. And do you recall with any greater specificity
7 what he said? Or failing that, what you understood him
8 to mean?

9 A. My recollection is that he made a very brief
10 comment to the intent that the current disharmony within
11 the business was untenable going forward and needed to
12 be dealt with.

13 Q. Let's look at the last page of Plaintiff's 17.
14 What do these notes reflect?

15 A. I think these are the notes I made for myself,
16 should I give comments on the chief executive's
17 performance.

18 Q. Okay.

19 Did you have occasion to do that?

20 A. I don't recollect I did.

21 Q. Okay. We're done with this, or at least for
22 the time being.

23 I have a few documents that I'm going to try to
24 cover fairly quickly. Mr. Storey, I'll ask you to look
25 at it and tell me if you recognize the document and can

1 MR. SEARCY: Objection. Vague.

2 THE WITNESS: I think the comment was simply that
3 they -- that things should be dealt with now. They had
4 come to a head and there was no point in delaying.

5 MR. KRUM:

6 Q. Are you referring to your prior testimony about
7 disharmony?

8 MR. SEARCY: Objection. Vague.

9 THE WITNESS: That's my perception, that there
10 was -- the view was there was disharmony, and therefore
11 it needed to be dealt with. It was clearly a view
12 around the board table by a number of people that the
13 matter needed to be dealt with expeditiously and
14 rightly.

15 MR. KRUM:

16 Q. Did any of Ellen Cotter, Margaret Cotter, Guy
17 Adams and/or Doug McEachern ever respond to comments by
18 you and/or Bill Gould to the effect that the ombudsman
19 process was supposed to continue into June?

20 MR. SEARCY: Objection. Vague. Lacks foundation.

21 THE WITNESS: I don't recollect -- Excuse me. I
22 don't recollect any particular comment, other than it
23 was necessary to get on with matters.

24 MR. KRUM:

25 Q. At the -- At the board meeting at which Ellen

1 Calls for speculation. Calls for improper opinion.

2 THE WITNESS: I don't think that we had yet got to
3 that stage where the detailed work had to be done.

4 MR. ROBERTSON:

5 Q. And in your view, did that disharmony -- was
6 that the driving factor in the termination of
7 Mr. Cotter, Jr.?

8 MR. SEARCY: Objection. Lacks foundation. Calls
9 for speculation. Calls for opinion.

10 MR. RHOW: I would add vague and ambiguous.

11 THE WITNESS: Well, I can only speak for myself.

12 MR. ROBERTSON:

13 Q. That's all I'm asking.

14 A. My view was that the disharmony wasn't at a
15 position where it -- where it gave rise to me thinking
16 that we should change the CEO. I think it all -- pretty
17 close to that day, that time in May, we were making
18 reasonable progress in getting plans and budgets put
19 together, albeit process, but the executives largely
20 were cooperating with each other.

21 Q. In your view, based on your experience on the
22 board of directors, but for the existence of the trust
23 and estate litigation, do you believe that
24 Mr. Cotter, Jr. would have been terminated as CEO of
25 Reading?

1 MR. SEARCY: Objection. Vague. Lacks foundation.

2 Calls for opinion. Calls for speculation.

3 MR. RHOW: Join all of those.

4 MR. FERRARIO: Me too.

5 MR. RHOW: And I think it's vague and ambiguous
6 also.

7 THE WITNESS: Well, as I just said, I don't -- that
8 wasn't my opinion.

9 MR. ROBERTSON:

10 Q. I'm sorry, that was or was not your opinion?

11 A. That was not my opinion.

12 Q. Okay.

13 A. But, I mean, you know, there are different
14 opinions that can be had.

15 Q. Based upon your involvement, why was
16 Mr. Cotter, Jr. terminated as the CEO?

17 MR. RHOW: Same objections. I think it calls for
18 speculation. You're asking what --

19 MR. ROBERTSON: What was his understanding of why
20 Mr. Cotter, Jr. was terminated as CEO of Reading.

21 MR. RHOW: Same objections.

22 MR. SEARCY: Join.

23 THE WITNESS: As you have heard, we had a series of
24 board meetings which dealt with the matter. I don't
25 think we dealt with -- At those board meetings, we

EXHIBIT 2

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR.,)
derivatively on behalf of)
5 Reading International, Inc.,)

6 Plaintiff,) Case No.
A-15-719860-B

7 vs.)

8 MARGARET COTTER, ELLEN) Case No.
COTTER, GUY ADAMS, EDWARD) P-14-082942-E
9 KANE, DOUGLAS MCEACHERN,)
TIMOTHY STOREY, WILLIAM) Related and
10 GOULD, and DOES 1 through) Coordinated Cases
100, inclusive,)

11 Defendants,)

12 and)

13 READING INTERNATIONAL, INC.,)
a Nevada corporation,)

14)
Nominal Defendant.)

15)

16 Complete caption, next page.

17

18

19 VIDEOTAPED DEPOSITION OF GUY ADAMS

20 LOS ANGELES, CALIFORNIA

21 THURSDAY, APRIL 28, 2016

22 VOLUME I

23

24 REPORTED BY: LORI RAYE, CSR NO. 7052

25 JOB NUMBER: 305144

1	EIGHTH JUDICIAL DISTRICT COURT)	
2	CLARK COUNTY, NEVADA)	
3	JAMES J. COTTER, JR.,)	
4	derivatively on behalf of)	
5	Reading International, Inc.,	)	Case No.
6	Plaintiff,	)	A-15-719860-B
7	vs.	)	P-14-082942-E
8	MARGARET COTTER, ELLEN)	
9	COTTER, GUY ADAMS, EDWARD)	
10	KANE, DOUGLAS McEACHERN,)	
11	TIMOTHY STOREY, WILLIAM)	
12	GOULD, and DOES 1 through)	
13	100, inclusive,)	
14	Defendants.)	
15	and)	
16	READING INTERNATIONAL, INC.,)	
17	a Nevada corporation,)	
18	Nominal Defendant.)	
19	T2 PARTNERS MANAGEMENT, LP,)	
20	a Delaware limited)	
21	partnership, doing business)	
22	as KASE CAPITAL MANAGEMENT,)	
23	et al.,)	
24	Plaintiffs,)	
25	vs.)	
26	MARGARET COTTER, ELLEN)	
27	COTTER, GUY WILLIAMS, EDWARD)	
28	KANE, DOUGLAS McEACHERN,)	
29	WILLIAM GOULD, JUDY CODDING,)	
30	MICHAEL WROTONIAK, CRAIG)	
31	TOMPKINS, and DOES 1 through)	
32	100, inclusive,)	
33	Defendants,)	
34	and)	
35	READING INTERNATIONAL, INC.,)	
36	a Nevada corporation,)	
37	Nominal Defendant.)	

1 THE VIDEOGRAPHER: We are off the record --

2 MR. TAYBACK: I don't think that's what he
3 said.

4 THE VIDEOGRAPHER: Sorry.

5 BY MR. KRUM:

6 Q. So how did that telephone conversation
7 come about?

8 A. I called Ed or Ed called me. I don't
9 remember.

10 Q. As best you can recall, what did he say
11 and what did you say?

12 A. We were talking about Jim Junior's
13 performance and there being certain issues. And
14 Tim Storey was coaching him. I think we called him
15 ombudsman, and we discussed that, how effective
16 that was. And in the conversation, I said, I'm
17 going to talk to Bill Gould, the lead director.

18 Q. You said certain issues.

19 To what are you referring?

20 A. Tim Storey's coaching Jim Junior as CEO.

21 Q. Anything else?

22 A. Those issues and just in general, Jim
23 Junior's abilities as CEO, what we saw there, what
24 we felt.

25 Q. In particular, to what were you referring

1 by his abilities, and likewise his performance?

2 A. Well, for me, we -- I think Tim Storey
3 had a check sheet of things he wanted done, one of
4 which was some strategy for the company, a vision
5 for the company, where we're going, once we get the
6 budget, how do we get there. That comes from the
7 CEO. We wanted to firm up contracts for -- my
8 recollection is Craig Tompkins and Margaret Cotter.
9 We wanted to get that done. I think -- I can't
10 remember what -- the things Ed said. Ed had a list
11 of things as well.

12 I had -- over the months, I -- we elected
13 Jim Junior. We all wanted him to succeed. And Tim
14 Storey said that the only reason he's getting the
15 job is because his last name is Cotter. And I
16 said, That might be true. What our job is as a
17 board is to help him be the best CEO he can be.

18 And we talked as directors about
19 shortcomings, and I felt he can learn on the job
20 and get up to speed quickly. And by April, I was
21 of the opinion that wasn't working out.

22 Q. Now, during this telephone conversation
23 with Mr. Kane, was there any discussion of the
24 interpersonal dynamic between Jim Cotter Junior on
25 the one hand and either or both Margaret and Ellen

1 discussed with Mr. Kane the subject of you serving
2 as interim CEO, did you say to him, in words or
3 substance, Have we already concluded that Jim
4 Cotter Junior will be terminated as CEO?

5 A. There was a notion that we would have a
6 board meeting and the independent directors would
7 discuss this and there would be a vote. And I
8 wasn't -- I wasn't sure how the vote would come
9 out. I didn't know. But there was a -- everyone
10 had concerns. Ed and I had a concern about it,
11 wanted to talk about it.

12 Q. When was the first time you had a
13 conversation with someone other than Ed Kane about
14 the subject of the termination or possible
15 termination of Jim Cotter Junior as CEO?

16 A. Bill Gould.

17 Q. And --

18 A. First week or so of April.

19 Q. Was that in person or by phone?

20 A. In person.

21 Q. Was anyone else present?

22 A. No.

23 Q. Where did that occur?

24 A. I went to his office. We walked across
25 the street and had lunch. I don't know the name of

1 the restaurant.

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

3 A. I told him, We've been down this process
4 with Jim Junior as CEO. We all wanted him to
5 succeed. We all wanted him to take the reins and
6 lead the company forward but there were glaring
7 deficits. And I recounted to him how we formed
8 this committee, if you will, resolution committee
9 or conflicts committee, of which Tim Storey and
10 Doug McEachern were on for the Cotter siblings to
11 meet and talk. And McEachern told me that was --
12 didn't work that well.

13 Then we had Tim Storey acting as Jim
14 Junior's coach. And later Tim Storey was promoted
15 to ombudsman for this position and Tim got very
16 involved in working with Jim Junior and coaching
17 him. And Tim Storey was giving every month,
18 glowing, glowing reports about how good things were
19 going with Jim Junior.

20 And I disagreed with those reports and I
21 told both Ed Kane on the phone and I told Bill
22 Gould in person when I met him about that. And
23 then I told Bill Gould two concerns that I had.
24 The first concern was at some point, and I don't
25 remember the exact date, it could have been

1 December, it could have been January, but Jim
2 Junior had an analysis of movie theatres in
3 Australia and New Zealand and their margins in
4 Australia, and movie theatres in the USA, their
5 margins, and there was a gap. I don't remember the
6 precise gap but maybe it was -- the margin gap was
7 maybe 16, 18 percent.

8 And Junior showed me one time in his
9 office the spreadsheet and said, you know, Look at
10 the gap, This is terrible. If the USA theatres
11 operated there and had the same margins, think what
12 the impact that would be on our earnings,
13 et cetera, et cetera.

14 So there was a board meeting. I came in
15 early for the board meeting and I went into
16 Junior's office. In the board book, they laid out
17 the margins for Australia and the USA. And if you
18 adjusted the margins for the film rental in the USA
19 compared to the film rental in Australia and New
20 Zealand, two different markets, and you adjusted --
21 made adjustments for the rental, the lease rentals,
22 it wasn't a 16 or 18 percent gap. It was like a
23 2 percent gap.

24 And Jim Junior says, Yeah, well, I don't
25 care about that now. And this was something he was

1 really concerned about, I mean, for months. And
2 then he said, Well, I'm not worried about that now.
3 I'm concerned about the labor. The labor in
4 Australia and New Zealand is a lot less than labor
5 costs in the US. And I said, Well, I don't know
6 anything about that. You're going to have to look
7 into that.

8 So that was an hour before the board
9 meeting. We went to the board meeting and Jim
10 Junior brought up to the board this thing about the
11 labor costs. USA theatre labor costs versus
12 Australia and New Zealand labor costs.

13 And Ellen didn't really have an answer at
14 the time. She -- she said she'd look into it,
15 et cetera. And I thought, okay, we'll get to the
16 bottom of it.

17 And later that week or the next week or
18 the next week, I saw Andrzej Matyczynski, the
19 ex-CFO of the company, and I said, What is this
20 about the labor cost? Why is the labor cost so
21 high for theaters in Australia and New Zealand --
22 so low in Australia and New Zealand and so high
23 here? And Andrzej says, Well, that's easy. In the
24 USA they allocate the G and A down to the theatre
25 level so the theatre level labor cost looks high,

1 and in Australia and New Zealand, they allocate a
2 lot of the labor costs up to G and A so the labor
3 cost looks really low.

4 And I said, Does Jim Junior know this?
5 He says, Yes, I've told him this before. And I
6 said, We're looking at this and the board's -- he's
7 got the board concerned about this. And Andrzej
8 says, Yeah, I wish you all would have called me in.
9 I could explain that.

10 So I told Bill Gould that -- the
11 following: I like Jim Junior, I want him to
12 succeed as much as anyone, but it's clear, not
13 understanding the theatre margins, I questioned his
14 knowledge about the business he's managing and his
15 management style of bringing to the board this
16 problem about labor costs.

17 And he hadn't even, in my opinion,
18 properly investigated that himself. I was forming
19 the opinion or had formed the opinion that he
20 wasn't really learning the business and he wasn't
21 leading us forward. And I told Bill that. I said,
22 We've been working with Jim Junior all these months
23 and I don't see progress.

24 Q. When did you tell Mr. Gould that?

25 A. At this lunch meeting.

1 Q. The lunch meeting in April?

2 A. In April, yes.

3 Q. And this -- you told him in April about
4 this --

5 A. These two examples.

6 Q. These two examples that were raised at
7 the board meeting in December of '14 or January of
8 '15?

9 A. Yeah.

10 Q. And let me be clear. What you just
11 described, was that the two concerns you talked
12 about when you prefaced your lengthy answer?

13 MR. TAYBACK: Object to the -- object to the
14 form of the question to the extent it
15 mischaracterizes his testimony.

16 You can answer.

17 BY MR. KRUM:

18 Q. Let me ask it this way --

19 A. That's all --

20 Q. -- you used the term "two concerns" that
21 you described to Mr. Gould, or words to that
22 effect.

23 A. Yes.

24 Q. Is there anything else that falls into
25 the category of two concerns beyond what you just

1 described?

2 A. There may have been one more concern that
3 I can recall was about the leadership of the
4 company and working on the budget. And Jim Junior
5 complained that Ellen and Margaret weren't getting
6 their budget in on a timely basis and whatnot.

7 I explained to Bill Gould that for the
8 CEO, getting the division's budget, that's income
9 they expect to receive and expenses they expect to
10 spend. But the vision of where we're going, how
11 we're going to lead -- where is our CEO leading our
12 company, I said, We haven't heard a whiff of this.
13 And I discussed this with Jim Junior several times
14 over the last three months prior to this, and he
15 said he's working on it. Nobody saw it; nobody
16 heard it.

17 And I told Bill Gould, you know, To be a
18 CEO, you have to lead. And I thought this was
19 another item that raised my concern. There may
20 have been other items we discussed over lunch
21 regarding this matter but I don't remember them at
22 this time.

23 Q. And what did Mr. Gould say at that lunch?

24 A. He said -- he agreed with me that Junior
25 wasn't progressing fast. He disagreed with me that

1 Tim Storey wasn't doing a good job. He thought Tim
2 Storey was doing a great job. He disagreed with me
3 that we should act. He told me let's wait. And I
4 said, Why are we waiting? He said, Well, let the
5 thing be adjudicated and we'll find out how it
6 turns out. And I said, That could take years. I
7 think we need to make a decision what's best for
8 the company now. And he says he wanted to wait.
9 And I said, Bill, you and I have a different
10 opinion about this.

11 Q. Did you ever tell Tim Storey you
12 disagreed with his glowing reports about Jim
13 Junior?

14 A. Yes.

15 Q. When?

16 A. It was later on. Probably around March,
17 I would say, at a March meeting that -- along that
18 timeline. I don't remember a specific day. But
19 the --

20 Q. Was it at a board meeting?

21 A. Yeah, after a board meeting, yes.

22 Q. Okay. And what did you say and what did
23 he say, generally?

24 A. I said, Tim, I appreciate your efforts.
25 I know you're doing this with the best of

EXHIBIT 3

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

FRIDAY, APRIL 29, 2016

VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER 305149

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 JAMES J. COTTER, JR.,)
 derivatively on behalf of)
 4 Reading International, Inc.,)

5 Plaintiff,)
 vs.)

Case No.
 A-15-719860-B
 P-14-082942-E

6)
 MARGARET COTTER, ELLEN)
 7 COTTER, GUY ADAMS, EDWARD)
 KANE, DOUGLAS McEACHERN,)
 8 TIMOTHY STOREY, WILLIAM)
 GOULD, and DOES 1 through)
 9 100, inclusive,)

10 Defendants.)

and)

11)

12 READING INTERNATIONAL, INC.,)
 a Nevada corporation,)

13 Nominal Defendant.)

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

17 Plaintiffs,)

vs.)

18)

MARGARET COTTER, ELLEN)
 19 COTTER, GUY WILLIAMS, EDWARD)
 KANE, DOUGLAS McEACHERN,)
 20 WILLIAM GOULD, JUDY CODDING,)
 MICHAEL WROTONIAK, CRAIG)
 21 TOMPKINS, and DOES 1 through)
 100, inclusive,)

22 Defendants,)

23 and)

24 READING INTERNATIONAL, INC.,)
 a Nevada corporation,)

25)

Nominal Defendant.)

1 Q. Did you add any substantive comments to
2 the document based on feedback from Frank Reddick?
3 Don't tell me what they are, just yes or no.

4 A. No, not really.

5 Q. Now, directing your attention to Roman
6 Numeral iii, you refer to apparent anger management
7 issues and so forth.

8 Do you see that?

9 A. I didn't read Number i, ii and iii to the
10 board.

11 Q. When you drafted this, to what were you
12 referring when you used the balance of that
13 sentence, starting with the word "apparent"?

14 A. There's been more than one conversation
15 by the non-Cotter board members about Jim Junior's
16 interpersonal skills and anger management issues.

17 Q. What anger management issues, is what I'm
18 asking you.

19 A. There were claims in the office that some
20 people claim he's lost his temper with them.

21 Q. Who?

22 A. I believe Linda Pham is one of them.

23 Q. Anyone else?

24 A. Debbie Watson.

25 Q. Debbie Watson? Who is Debbie Watson?

1 A. She is an accountant for Jim Cotter's
2 estate.

3 Q. She's in RDI's offices?

4 A. Sometimes, occasionally. Yes, she has a
5 desk there.

6 Q. She has no job at RDI?

7 A. No.

8 Q. To whom does she work when she renders
9 services to the estate of James Cotter Senior?

10 A. The estate trustees.

11 Q. Ellen and Margaret?

12 A. Yes.

13 Q. Anybody else other than Linda Pham and
14 Debbie Watson?

15 A. Ellen Cotter recited an incident about
16 Jim Junior's anger.

17 Q. When?

18 A. Maybe 2014.

19 Q. She recited it then, it occurred then or
20 both?

21 A. No, no, no. She told me about it -- I
22 don't know. I don't know when she told me about it
23 but she told me in past tense about the incident.

24 Q. So in 2014 is did you understood the
25 incident to have occurred?

1 A. I think it was 2014.

2 Q. Did she give you any context --

3 Here is the question: Did she give you
4 any context about the incident?

5 A. Yes.

6 Q. Which was what?

7 A. She and Debbie Watson were working late
8 and Jim Junior came in there and lost his temper to
9 both of them, and they both told me independently
10 of this incident.

11 Q. And the incident, you understood,
12 occurred in 2014?

13 A. It could have been '15. It could have
14 been '15. I'm not clear on when it happened. I'm
15 just very not clear on that.

16 Q. And both Ellen and Debbie Watson told you
17 about it after the fact?

18 A. After the fact, yes.

19 Q. Meaning some number of months after the
20 fact; correct?

21 MR. SWANIS: Objection; form.

22 THE WITNESS: Debbie Watson told me about it
23 two days later.

24 BY MR. KRUM:

25 Q. Okay. When was that?

1 A. Late 2014, early 2015, I'm not sure. And
2 there was a discussion -- getting back to your
3 question about anger management, there's been
4 discussion among the board -- non-Cotter board
5 members about potentially Jim Junior being coaxed
6 or demanded to attend anger management classes.

7 Q. What was the conclusion reached by the
8 non-Cotter board members about that?

9 A. Well, it was split, believe it or not.
10 My recollection is that I think Bill Gould and Tim
11 Storey may have had a position that that would have
12 been a beneficial thing.

13 Ed Kane and I thought that was not
14 beneficial. It was demeaning. It could be
15 productive. And I remember -- I do remember at the
16 independent directors meeting, Doug McEachern
17 saying you can't teach interpersonal skills, so he
18 was also not for it.

19 Q. Now, the precipitating events of the
20 discussion you just described, what was the
21 precipitating event? Was it the Linda Pham report?
22 The supposed Linda Pham incident? I'm sorry.

23 A. I'm sorry. You're referring to the
24 board -- the independent directors meeting?

25 Q. Let me ask a complete question.

1 MR. TAYBACK: I think you talked past each
2 other.

3 MR. KRUM: I think we're talking past each
4 other.

5 Q. Do you see in this paragraph, you say:
6 "I personally believe we may have cause"?
7 Do you see that? It's the fifth line of
8 the eight lines?

9 A. The one under here?

10 Q. The left-hand margin begins, quote:
11 While I personally believe we may have
12 cause.

13 A. Yes.

14 Q. But to put it in context for us,
15 Mr. Adams, you see in the prior line, you're
16 talking about "removed without case," but I think
17 that should be "cause"; right?

18 A. Yes.

19 Q. What was the basis for your personal
20 belief that there may have been cause to remove
21 Mr. Cotter Junior as president and CEO?

22 MR. TAYBACK: I'll only admonish you not to
23 divulge communications with lawyers that you may
24 have had that contributed to that, but you can give
25 your opinion.

1 THE WITNESS: One is his inabilities to work
2 with employees and contractors in the office, the
3 name of those women I just named. Calling up the
4 chairman of the board and saying he's prepared to
5 file a derivative suit and conspire with hedge
6 funds to take over the company. I thought those
7 were potentially reasons. But you're right, the
8 paragraph is -- reads "without cause."

9 BY MR. KRUM:

10 Q. So your view, Mr. Adams, was that the
11 supposed incidents with Linda Pham and Debbie
12 Watson were a basis upon --

13 A. And Ellen Cotter.

14 Q. -- and Ellen Cotter, were a basis upon
15 which to terminate Jim Cotter Junior on or about
16 May 20-something, 2015?

17 A. No, I didn't say that.

18 Q. Was it your view that the supposed
19 incidents with Linda Pham, Debbie Watson and/or
20 Ellen Cotter were a basis upon which -- well,
21 strike that.

22 Did those factor into your
23 decision-making?

24 A. Yes.

25 Q. How many conversations did you have with

1 your testimony about it.

2 Was anything else said about the supposed
3 Linda Pham incident or the supposed Ellen Cotter
4 and Deborah Watson incident beyond that
5 conversation, other than what you've told me?

6 MR. SWANIS: Objection; form, and I'm going to
7 lodge an objection to the "supposed" language
8 there.

9 MR. TAYBACK: Join.

10 THE WITNESS: There was one other thing. A
11 director made a comment that was anybody ever
12 seeing or being witnesses to this. Everybody was
13 dead silent.

14 I raised my hand and I said, Well, once I
15 had an incident with Jim Junior and he jumped up
16 from his desk and turned beet red and was screaming
17 at the top of his lungs at me, and I sat down and
18 he marched up and down, paced, and was yelling at
19 me. And finally he sat down and collected himself
20 and I asked him, you know, was there anything else
21 he wanted me to do, and he said no and he
22 apologized. He apologized.

23 But in that board meeting with the
24 independent directors, when they were saying has
25 anybody seen this, it happened to me.

1 BY MR. KRUM:

2 Q. But the answer is, nobody had seen or
3 witnessed the supposed Linda Pham incident;
4 correct?

5 A. Yes.

6 Q. And nobody had seen or witnessed the
7 supposed Ellen Cotter or Debbie Watson incident;
8 correct?

9 A. Yes.

10 Q. Hence, supposed.

11 When was your incident, as you described
12 it?

13 A. Probably June 2014.

14 Q. And what was the subject matter?

15 A. We were talking about Mr. Cotter Senior's
16 estate planning. And I didn't really realize how
17 sick Mr. Cotter was, and Jim Junior was in -- was
18 not pleased how long things were taking, and that
19 was the subject matter of that discussion.

20 Q. Okay. You'll be pleased to know,
21 Mr. Adams, I'm in the process of eliminating lots
22 of other documents that I might have otherwise
23 shown to you.

24 I'll ask the court reporter to mark as
25 Exhibit 88, a multi-page document bearing

1 A. It was unanimous.

2 Q. Was that in August of 2014?

3 A. Yes, it was.

4 Q. And did you and James Cotter Junior work
5 in the same office from then forward? Did he
6 come in -- let me back up.

7 After James Cotter Junior became CEO, did
8 he continue coming into the office at Reading where
9 you were working three days a week?

10 A. Yes, Junior did, yes.

11 Q. And how much time did he spend in the
12 office, to your perception?

13 A. From my perception, he worked long hours.
14 I mean, I don't know what time he got there in the
15 morning, but he seemed to work till 5:00, 6:00 at
16 night.

17 Q. Is it fair to say or correct to say that
18 James Cotter Junior would arrive before you did in
19 the morning?

20 A. Certainly.

21 Q. And then would be there till 5:00 or 6:00
22 at night?

23 A. From the times I was there, it appeared
24 that he was there before me and he stayed after me.

25 Q. Is it an accurate statement -- I know

1 we've been at this for almost two days now and, I
2 don't want to summarize things too simply, but is
3 it an accurate statement to say that James Cotter
4 Junior had what you would consider a good work
5 ethic?

6 A. Yes and no. I'm not trying to evade the
7 question. There was -- he was in the office, so
8 yes, he was there. So that's the yes part of the
9 question. The no part of the question is, his door
10 was shut a considerable amount of time. I'm not
11 sure exactly what was going during the time the
12 door was shut. And so I mean, it -- he seemed very
13 slow, very hard to make decisions.

14 They were trying to encourage him that
15 it's okay, he can make -- he's CEO. But he seemed
16 very reluctant and very slow to make decisions.

17 Q. I'm focusing in on his work ethic, how
18 hard he was laboring at the task.

19 Based upon that, did it seem that he was
20 laboring at the task of being CEO?

21 MR. SWANIS: Objection; form.

22 MR. TAYBACK: Object to the form.

23 MR. NATION: I'll rephrase the question.

24 Q. Did it seem that James Cotter Junior was
25 putting in the time and effort that you would

1 expect of someone in his position trying to take on
2 the challenges of being CEO?

3 A. Initially, yes.

4 MR. TAYBACK: I'm going to object to that as
5 vague.

6 You can answer.

7 THE WITNESS: Initially, yes.

8 BY MR. NATION:

9 Q. When you say "initially, yes," you mean
10 August, September?

11 A. October, November.

12 Q. And on? What about December and January?

13 A. Well, the reason I said "initially" is
14 because there was some point, and I don't remember
15 precisely when it was, but three or four months
16 into the job, where I went to his secretary with
17 documents and said, Where are those documents I put
18 on Jim's desk? And she said, Oh, my God, don't
19 ever put documents on his desk. I said, Well, what
20 do I do? And she said, Give them to me and I'll
21 log them and hound him to get them signed and
22 returned to you. I said, Sure. I just didn't want
23 to bother you. And she said, Jim's office is a
24 place where documents go to get lost.

25 Q. Which secretary was that?

1 A. Antoinette. I don't remember her last
2 name.

3 Q. Sounds like my office.

4 A. And I wasn't sure of the time spent
5 behind closed doors. I wasn't sure what's going on
6 during that time, what's happening there.

7 He made all the -- I'll tell you this:
8 To his credit, he made -- like all the management
9 meetings I was aware of, he made all the management
10 meetings, every week, two a week, he made them all,
11 that I know of.

12 Q. With regard to the documents going into
13 the office to disappear, as put by his assistant,
14 did you take that to mean that James Cotter Junior
15 did not let documents go without first processing
16 them or did you take it some other way?

17 MR. TAYBACK: Objection; vague.

18 THE WITNESS: I took it from the standpoint
19 that he must bring them home and read them or he
20 had a lot of documents in his office and they just
21 got lost in there. That's how I took it.

22 BY MR. NATION:

23 Q. Did you ever have a document that you
24 provided get lost?

25 A. Yes.

1 He was gaining experience. So the vetting, as you
2 referred to, there's some amount of vetting seeing
3 the guy work as president. There's some vetting
4 process we see, interacting and whatnot with him at
5 that time.

6 So to the extent we would have a formal
7 vetting process, no. We knew him and saw him -- I
8 saw him a short period of time. The other
9 directors saw him much longer. So there was some
10 amount of vetting but it wasn't a vetting process.

11 BY MR. NATION:

12 Q. Did you receive any input from the other
13 directors about the appropriateness of electing
14 James Cotter Junior to be CEO in August of 2014?

15 MR. SWANIS: Objection; form.

16 MR. TAYBACK: Join.

17 THE WITNESS: Yes. We had an independent
18 directors meeting after this meeting or the meeting
19 afterwards. I don't remember which one. And at
20 that time, Tim Storey voiced the opinion that if
21 his last name wasn't Cotter, he wouldn't be CEO.
22 And I said, Yes, but he is and now our job is to
23 support him and help him and help make him a great
24 CEO.

25 ///

1 MR. TAYBACK: Object to the extent that calls
2 for speculation as to what other board members may
3 have thought or expected.

4 But you may answer.

5 THE WITNESS: If Jim Cotter Junior had
6 expectations?

7 BY MR. NATION:

8 Q. I'm asking about -- let me rephrase the
9 question.

10 A. Okay.

11 Q. It takes a little while to get warmed up
12 sometimes in these things.

13 A. Okay.

14 Q. I'm focusing around the time that James
15 Cotter Junior was elected as CEO.

16 Did you, as a member of the board, have
17 expectations how he was going to perform as CEO
18 going forward from there?

19 A. I had expectations. I don't know about
20 the other members of the board, what theirs were.
21 But my expectations were that he was young, he
22 didn't have that much experience and that he would
23 be improving as he went. And I was expecting
24 improvement as the months and years flew by. I was
25 very optimistic that he would be a really good CEO.

1 Q. Why?

2 A. He's smart. He has experience. He spent
3 what, three years as president prior to this? It
4 appeared from that first meeting, his sisters
5 supported him. They voted for him. I imagine his
6 father wanted him to progress and run the company
7 and I figured he'd settle in and learn his way,
8 feel his way and be CEO and improve as he went.

9 Q. Did it start -- at some point, Tim Storey
10 began, as referred to in some other documents, as
11 shadowing James Cotter Junior in his job as CEO in
12 order to try and help him out.

13 A. Yes.

14 Q. And is that something that was initiated
15 right at the beginning in August of 2014?

16 A. No.

17 Q. How long before that was it initiated?

18 A. I think -- my answer is as follows:

19 I think Tim, bless his heart, appointed
20 himself that, maybe after three months, maybe after
21 four, and then he started communicating to the
22 board things he would find having spent time with
23 Jim Junior. And then we -- we called it Tim
24 coaching Jim Junior.

25 The point is, within two or three months,

1 it became clear to the board that Jim Junior needed
2 help in his role, not only as CEO in running the
3 company but trying to make amends or find bridges
4 that he could work with his sisters. And that was,
5 in part, Tim Storey's duties, to help him in the
6 CEO function and find ways to make new bridges with
7 his sisters.

8 Q. Was it your perception that the issue of
9 improving at the CEO function and bridging the gap
10 with his sisters were hand in hand as two sides of
11 the same problem?

12 MR. SWANIS: Objection; form.

13 THE WITNESS: No. I didn't -- me personally,
14 Guy Adams, I didn't see that as the same thing.

15 BY MR. NATION:

16 Q. So you saw it as two --

17 A. Yes.

18 Q. -- two discrete kind of issues, one is
19 growing into the job and the other is getting along
20 with the other players?

21 A. Yes.

22 MR. NATION: All right. Always good when you
23 reach for a document and the one you expect comes
24 up.

25 Okay. Exhibit 92.

EXHIBIT 4

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

DEPOSITION OF: EDWARD KANE
TAKEN ON: MAY 2, 2016

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 Was that the trust and estate disputes
2 in litigation?

3 A. Not necessarily, no.

4 Q. Well --

5 A. I think I was referring to what was
6 becoming a toxic office and polarization of the
7 office.

8 And I'm not laying -- I did not lay
9 blame on either Mr. Cotter or his sisters, but it
10 needed to be better.

11 Q. You're referring to the second paragraph
12 under the subsection that begins with,

13 "The second issue is, of course" --

14 A. Right.

15 Q. -- "the atmosphere in the L.A.
16 office which I'm told is toxic"?

17 A. Right.

18 Q. I'll get to that in a minute, sir.

19 A. Okay.

20 Q. Do you recall anything else to which you
21 were referring in the first paragraph when you said
22 "resolving current disputes"?

23 MR. SEARCY: Objection. Asked and
24 answered.

25 THE WITNESS: I can't recall what I had

1 in mind, but it wasn't -- I don't think it was the
2 litigation.

3 BY MR. KRUM:

4 Q. Very well. So, going back to where we
5 were a moment ago and the sentence that uses the
6 word "toxic" --

7 A. Uh-huh.

8 Q. -- what was the source or what were the
9 sources of your information that led you to say
10 that?

11 A. I think the office was -- I was told was
12 becoming polarized and there had been incidents
13 between Jim, Jr., I think, prior to this and Bill
14 Ellis's secretary, Linda Pham, and also with Debbie
15 Watson and with Ellen.

16 And Linda Pham had contacted Doug
17 McEachern, I think, and someone else about her
18 concern for her actual physical safety. Debbie
19 Watson was carrying mace to the office, and they
20 were alleging Jimmy had yelled at them to the point
21 that they were afraid physically. And Ellen
22 reported the same thing. And --

23 Q. You think that's to what this is
24 referring?

25 A. I think that the -- it may be. I don't

1 A. If I said it, yes.

2 Q. Okay. So, I'm referring to that
3 testimony --

4 A. Okay.

5 Q. -- Mr. Kane. I'm not trying to put
6 words in your mouth. So when you said --

7 A. I thought you were referring to
8 something else.

9 MR. SEARCY: You have to let him finish
10 his question. Okay?

11 BY MR. KRUM:

12 Q. When you -- when you said in words or
13 substance something about employees taking sides, my
14 question is, was Linda Pham one of the employees who
15 had taken a side?

16 MR. SEARCY: Objection. Vague.

17 THE WITNESS: I think Linda Pham had
18 filed a complaint against Jim. And whether that
19 amounted to taking sides, it was more personal. She
20 was physically afraid of him.

21 And that was turned over to
22 Mr. McEachern and Storey.

23 BY MR. KRUM:

24 Q. Well, you don't know if she was
25 physically afraid.

1 You just know she filed a complaint and
2 said whatever she said, correct?

3 A. I believe --

4 MR. SEARCY: Objection.
5 Mischaracterizes his testimony.

6 THE WITNESS: I believe in her complaint
7 she talked about she was physically afraid.

8 BY MR. KRUM:

9 Q. You understand that Linda Pham was
10 terminated, right?

11 A. Yes, I do.

12 Q. You understand that she was terminated
13 for taking confidential emails between Jim
14 Cotter, Jr., and Bill Ellis and forwarding them to
15 Margaret Cotter.

16 Did you know that?

17 MR. SEARCY: Objection. Lacks
18 foundation, calls for speculation.

19 THE WITNESS: That's not my
20 understanding.

21 BY MR. KRUM:

22 Q. What's your understanding?

23 A. My understanding is that after her first
24 complaint, she issued a second complaint saying
25 nothing has been done and she was still afraid of

1 Mr. Cotter when she was there after-hours.

2 And then Tim Storey took it upon himself
3 to fire her.

4 Q. How do you come to have that
5 understanding?

6 A. Because he did fire her. And he
7 certainly didn't run that by the so-called
8 independent committee.

9 And I don't know what authority he had
10 to do that, but he did it.

11 Q. Why did he fire her?

12 A. He never said why he fired her.

13 Q. Did you ask?

14 A. It was too late.

15 Q. Did you ask?

16 A. I think I knew -- well, she had already
17 been fired and they had already settled on an amount
18 to give her to leave.

19 Q. Okay. Did you think --

20 You didn't ask Mr. Storey what happened,
21 correct?

22 A. All he said was he fired her.

23 Q. What did you say?

24 A. I didn't say anything. It had been
25 done.

1 And if he did fire her, I should have
2 said -- I didn't say -- "who gave you the authority
3 to do it?"

4 But I didn't because she was already
5 fired.

6 Q. So, what further communications did you
7 have with anyone with respect to the termination of
8 Linda Pham, if any?

9 A. I was told, and I don't know who told me
10 this, that at that time she was working for Bill --
11 Bill Ellis as his secretary. And she was -- the
12 termination was such that he ended up crying in his
13 office, he was so upset.

14 Q. Who told you that?

15 A. I don't remember.

16 Q. Did you ever hear or learn or were you
17 ever told that Bill Ellis was with Mr. Storey when
18 Ms. Pham was terminated?

19 MR. SEARCY: Objection. Vague.

20 THE WITNESS: I don't remember.

21 BY MR. KRUM:

22 Q. Did you ever speak to Bill Ellis about
23 the termination of Linda Pham?

24 A. No.

25 Q. Did you ever speak to anyone other than

1 THE WITNESS: I can't -- I just can't
2 remember.

3 BY MR. KRUM:

4 Q. When was the first time you told anyone,
5 whether Ellen or Margaret or Guy Adams, that you
6 would support the removal of Jim Cotter, Jr., as
7 president, C.E.O. or both?

8 A. I just can't remember what that time
9 line was.

10 Q. Do you recall a circumstance? Can you
11 put it in context between events?

12 A. There were a number of events that
13 evolved over a period of time based upon his
14 actions.

15 Q. What actions are you referencing?

16 A. The first issue I had was when he went
17 to Hawaii on vacation and -- it was near Christmas
18 of 2014. And he -- he sent me some email pictures
19 of a few of the theaters that he thought were in
20 disrepair. And he was going to show them to the
21 board.

22 I said to him, "Don't show them to the
23 board. If she wasn't your sister, would you be
24 sending them to the board?"

25 And he said "no," he acknowledged that

1 he wouldn't. But later on he did.

2 Then I suggested to him before he did
3 that, "Why don't you say to Ellen, 'Come with me, I
4 want -- I have some issues with the Hawaiian
5 theaters, and just go with me and I'll point out my
6 concerns and see how we can rectify them.'"

7 He didn't do that.

8 And in fact I started thinking Ellen was
9 the fall person for this. She had nothing to do
10 with the issues, if there were any, in those
11 theaters, and there were reasons for that why she
12 didn't.

13 Then there were -- there was other
14 issues. We went to a board meeting, and he demanded
15 that he have the authority to spend \$10 million on
16 any project without the approval of the board. And
17 he said "My father had it."

18 Well, he was not then nor now is he his
19 father.

20 And he actually said he should get more
21 authority to spend that kind of money because
22 inflation had occurred and his father had that
23 \$10 million right, which his father I don't believe
24 ever exercised.

25 It didn't make any sense to me. But I

1 voted for it, although Tim Storey was opposed to it,
2 because I knew he would never pull the trigger, he
3 couldn't pull the trigger on anything.

4 Then there was the issue of the Stomp
5 situation where Stomp sent a letter that they were
6 going to leave the Orpheum Theatre, and that was a
7 big money-maker for the company.

8 What he should have done is to get on a
9 plane and go back and sit with Margaret and say,
10 "Margaret, How can I help in solving this issue?"

11 Instead he used it as a tool to
12 embarrass her in front of the board. That was a big
13 problem for me, because that's not what a C.E.O.
14 would do when you have two experienced executives.
15 You work with them. And if it comes to the point
16 you need to get rid of them, then that's another
17 situation.

18 But he did not handle it appropriately
19 at all.

20 And actually as a side, he -- it's in
21 his Complaint against me and others about the Stomp
22 and how bad she did.

23 Well, we had an arbitration, and the
24 arbitrator said that Margaret had done everything
25 required and more than everything required, and that

1 Stomp had an agenda to leave because they thought
2 they could make more money in another theater.

3 The net result is that Margaret by
4 herself handled this arbitration with her lawyers,
5 and we just got an award for more than \$2.2 million.

6 So, instead of attacking his sister, he
7 should have supported her at least to a point.

8 I think he was not treating his sisters
9 as executives. This was my thought at the time. He
10 was treating them as the opposition, which was
11 inappropriate.

12 There were other issues. I can't recall
13 all of them right now. But he was not acting like a
14 C.E.O. would act.

15 Q. So was it your view, Mr. Kane, that Jim
16 Cotter, Jr., needed to act as a C.E.O. but Margaret
17 Cotter, Jr., could act as an adversary on account of
18 the disputes the two of them had both at RDI and in
19 the trust and estate case?

20 MR. SEARCY: Objection. Argumentative,
21 mischaracterizes testimony, lacks foundation.

22 THE WITNESS: Absolutely not.

23 I don't --

24 BY MR. KRUM:

25 Q. What did you do, if anything, to

1 board that was mediating and -- or supposedly, Tim

2 Storey.

3 BY MR. KRUM:

4 Q. When was Mr. Storey charged with
5 mediating between Jim Cotter, Jr., on the one hand
6 and Ellen -- either or both Ellen and Margaret
7 Cotter on the other hand?

8 A. When Bill Gould thought we should have
9 this non-Cotter committee, he -- I think
10 Mr. McEachern and Mr. Storey I believe met with
11 Ellen and Margaret and Jimmy to try to create an
12 office relationship that was -- that would move the
13 company forward.

14 Then later Mr. Storey was, in my
15 judgment -- or at least my understanding, he was
16 there to get them to work together. So, that was an
17 ongoing thing.

18 Q. Was Mr. Storey when he was doing this as
19 a committee of one, in effect, referred to as the
20 ombudsman?

21 A. Yes.

22 Q. Do you recall ever being present where
23 one or the other or both of Ellen and Margaret
24 Cotter called Jim Cotter, Jr., a liar?

25 A. I don't remember being present.

EXHIBIT 5

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DISTRICT COURT

4

CLARK COUNTY, NEVADA

5

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

8

Plaintiff,)

Case No. A-15-719860-B

9

vs.)

Coordinated with:

10

MARGARET COTTER, et al.,)

Case No. P-14-082942-E

11

Defendants.)

12

and)

13

READING INTERNATIONAL,)
INC., a Nevada)
corporation,)

14

15

Nominal Defendant)

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VIDEOTAPED DEPOSITION OF EDWARD KANE

18

TAKEN ON MAY 3, 2016

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VOLUME 2

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Job no. 305191

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REPORTED BY:

25

PATRICIA L. HUBBARD, CSR #3400

1 Q. Directing your attention to the end of
2 your March 27, 2015 email to Jim Cotter, Jr. --

3 A. Uh-huh.

4 Q. -- as part of Exhibit 110, I
5 particularly direct your attention to the text six
6 lines from the bottom that begins you will -- quote,
7 "You will go a long way toward
8 obviating a need for Tim's
9 intrusion," and so forth.

10 A. Yes.

11 Q. You see that?

12 A. Yes, I do.

13 Q. Were each of the non-Cotter members and
14 the RDI board of directors, including Tim Storey in
15 particular, spending extra time dealing with the
16 issues raised by the disputes among the Cotters,
17 meaning Ellen and Margaret Cotter on one hand and
18 Jim Cotter, Jr., on the other?

19 MR. SEARCY: Objection. Vague.

20 THE WITNESS: The independent committee
21 or so-called independent committee, non-Cotter
22 committee, spent an inordinate amount of time trying
23 to come up with ways of ameliorating the -- the way
24 the company -- the Cotters interacted with each
25 other.

1 BY MR. KRUM:

2 Q. Directing your attention, Mr. Kane, to
3 the last two lines of your May 27 email to Jim
4 Cotter, Jr., as part of Exhibit 110.

5 A. Yes.

6 Q. They read, quote,

7 "There is no downside to this.
8 There is potential downside to
9 letting things fester. Think about
10 it," period.

11 What were you communicating or
12 attempting to communicate to him when you said
13 there's potential downside to letting things fester.

14 A. I think -- and I can't be specific, but
15 I think there was a feeling among most, if not all
16 of the non-Cotter directors that if things didn't
17 improve, we might have to terminate one or more of
18 them.

19 Q. Well, that would be effective only if
20 the person or persons terminated did not control the
21 RDI/Cotter-related class B voting stock, right?

22 MR. SEARCY: Objection. Argumentative,
23 lacks foundation.

24 THE WITNESS: It might. But it would
25 send a message to everyone that there was an

1 alternative that -- I'll point out -- you didn't ask
2 me, but you'll will find out later that
3 Mr. McEachern actually sent around saying all of the
4 directors should resign, all the non-Cotter
5 directors. That was an alternative; either we fire
6 one of them or we all resign.

7 Q. And you understood the point of
8 Mr. McEachern's comment about everyone resigning to
9 acknowledge that some or all of -- well, either
10 Margaret or Margaret and Jim ultimately -- Jim, Jr.,
11 ultimately were going to control the voting stock
12 and be able to elect the board, right?

13 A. Yes.

14 MR. SEARCY: Objection. Lacks
15 foundation.

16 THE WITNESS: Yes.

17 BY MR. KRUM:

18 Q. Take a look back at Exhibit 110.

19 On the second page do you see that it
20 reflects that on March 30 you forwarded to someone,
21 but it doesn't indicate, your March 27 email to Jim
22 Cotter, Jr.?

23 I'm referring, Mr. Kane, to just past
24 halfway down on the second page. It reads on --

25 "On Mar 30, 2015, at 4:39 P.M."

1 Q. Who is the "us" to which you just
2 referred?

3 A. I think that all of the so-called
4 independent directors saw that.

5 Q. When did that become clear to you?

6 A. I can't remember exactly.

7 Q. Can you approximate when that became
8 clear to you whether by a date or by reference to
9 some other event or events?

10 A. I can't.

11 Q. What did any of the other non-Cotter
12 directors say to you or communicate to you that led
13 you to the conclusion that you just articulated to
14 the effect that they had concluded that a resolution
15 of the disputes between the Cotters could not be
16 reached?

17 A. I think all five of us knew that there
18 was no resolution at that point.

19 Q. Isn't it the case that Mr. Gould
20 articulated a position to the effect that the
21 disputes between the Cotters should be resolved in
22 the pending litigation?

23 MR. SEARCY: Objection. Vague, assumes
24 facts.

25 THE WITNESS: I think -- and I'm not

1 entirely clear, I think he wanted to wait until that
2 litigation was concluded. That was his position.

3 BY MR. KRUM:

4 Q. Did you ever tell him that you disagreed
5 other than when you chose to vote to terminate Jim
6 Cotter, Jr.?

7 A. If -- if we had a discussion, I would
8 have told him that -- and I don't know if I did --
9 that we could not wait that long. We had to come to
10 some resolution. If the Cotter -- Cotters couldn't
11 come to one among themselves, we would have to.

12 Q. Why was that?

13 A. Because, as I just said, the company was
14 not moving forward. There was a polarization in the
15 office among the employees, and it had to be
16 resolved one way or another.

17 That was my opinion.

18 Q. So as of the date of -- excuse me.

19 As of the date and time of Exhibit 80,
20 you had determined that, if necessary to carry the
21 vote, you would vote in favor of the termination of
22 Jim Cotter, Jr., as president and C.E.O., correct?

23 A. I don't know if at that time I had that
24 decision. As I said before, I wouldn't have invited
25 him to come to my house if I had had a firm decision

EXHIBIT 6

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DISTRICT COURT

4

CLARK COUNTY, NEVADA

5

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

8

Plaintiff,)

Case No. A-15-719860-B

9

vs.)

Coordinated with:

10

MARGARET COTTER, et al.,)

Case No. P-14-082942-E

11

Defendants.)

12

and)

13

READING INTERNATIONAL,)
INC., a Nevada)
corporation,)

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Nominal Defendant)

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VIDEOTAPED DEPOSITION OF EDWARD KANE

18

TAKEN ON JUNE 9, 2016

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VOLUME 3

20

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22

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Job No.: 315759

24

REPORTED BY:

25

PATRICIA L. HUBBARD, CSR #3400

1 And you sent it to him on May 9, 2015,
2 right?

3 A. Uh-huh, yes.

4 Q. And your email reads as follows, quote,
5 "I've had it with Bill Gould and
6 Tim Storey. I am seriously
7 considering getting off the
8 so-called independent committee.
9 Your thoughts," question mark.

10 What prompted you to send this email?

11 A. I thought that -- again, that Tim Storey
12 had moved from his role as mediator between the
13 Cotter family to placing himself in management. And
14 I had had complaints throughout the time both from
15 Jim Cotter, Jr., Ellen and Margaret in that regard.
16 And he certainly didn't have experience in cinema or
17 live theaters, as far as I know.

18 And the committee wasn't working. Bill
19 Gould and Tim Storey were doing things without the
20 input or permission of the rest of us. And I didn't
21 see any need to continue on it.

22 Q. What were they doing without the
23 permission of the rest of you?

24 A. Well, for one thing they did is go out
25 and see a psychologist or psychiatrist and wanted us

1 to mandate that Jim Cotter, Jr., visit this
2 psychologist or psychiatrist.

3 Q. That was Bill Gould's second go-around
4 with the psychologist as a -- as a proposed advisor
5 to RDI, wasn't it?

6 MR. SEARCY: Objection.

7 THE WITNESS: This had to do -- this is
8 the only one I know of, and it had to do with Jim
9 Cotter, Jr.

10 BY MR. KRUM:

11 Q. What else, if anything?

12 A. What else -- pardon?

13 Q. What else, if anything, referring to
14 your answer -- go ahead.

15 A. I think they had -- they seemed to have
16 an agenda, and I didn't feel I was part of that
17 agenda.

18 Q. Why do you say that?

19 A. Because they said, for example, that
20 we'll make a decision on Jim Cotter, Jr., on
21 June 30.

22 I never agreed to that. They said we
23 had agreed to it. Guy never remembered that.

24 They were -- I had the feeling they were
25 excluding us from their discussions and they had

1 hostile at the time.

2 Q. "At the time" being when?

3 A. When we had the meetings.

4 Q. Which meetings were hostile? Were they
5 in 2014? 2015?

6 A. Around this time and going forward.

7 Q. May 9th and going forward?

8 A. Yes, yes.

9 Q. So we're clear on the record, May 9th,
10 and going forward?

11 A. Yes, yes.

12 Q. What happened about that time that
13 created, in your view, what you viewed as hostility?

14 A. Well, when we -- when I said -- and I
15 don't know if others said it, but we had never set a
16 date of June 30 for our intervention -- so-called
17 intervention of it -- and Jim Cotter, Jr., 's
18 situation, the tenure. They -- they were upset that
19 I said that, but it happened to be the case.

20 And then it turned out that there was no
21 reason for us to wait until June 30. Our -- our
22 counsel told us --

23 MR. SEARCY: Hold on.

24 THE WITNESS: All right. There was no
25 reason. And we had never agreed to it.

1 So I thought that Bill Gould and -- and
2 Tim Storey were not including the three of us in
3 their discussions and their agenda, so to speak.

4 BY MR. KRUM:

5 Q. Did some -- were there some exigent
6 circumstances that arose in or about May of 2015
7 that required a decision to be made regarding Jim
8 Cotter, Jr.'s remaining C.E.O. or not remaining
9 C.E.O.?

10 MR. SEARCY: Objection. Vague.

11 MR. VERA: Join.

12 THE WITNESS: There were issues. I
13 can't recall -- recall the time line. But there
14 were various issues with regard to Jim Cotter, Jr.,
15 and his remaining as C.E.O.

16 BY MR. KRUM:

17 Q. Did any of those issues arise in or
18 after April 2015?

19 A. I can't remember the date. I can
20 remember some of the issues, but I can't remember
21 the date.

22 Q. Okay. I'm not going to ask you to
23 repeat testimony from your prior sessions. So,
24 subject to that, if you would, please, just identify
25 the issues to which you were referring.

1 A. Okay. One issue was Jim Cotter, Jr.,
2 going to Hawaii, taking pictures of the theaters and
3 trying to use them to show that Ellen was not doing
4 a proper job.

5 Q. That occurred in about December of 2014,
6 correct?

7 A. I don't remember when it occurred.

8 Q. Okay. And what other issues were there?

9 A. I didn't like the way Jim Cotter, Jr.,
10 was handling the Stomp. It appeared -- issue. It
11 appeared to me that he was focusing on Ellen --
12 excuse me -- Margaret in front of the board. I
13 thought that was inappropriate.

14 Q. And by that you're referring to the
15 purported notice of termination by the Stomp
16 producers at the board meeting about which you
17 testified earlier today?

18 A. Yes.

19 Q. Okay. What other issues?

20 A. Then there were issues of -- try to best
21 describe it. What three female employees called
22 harassment by Jim Cotter, Jr.

23 Q. Those were the -- and you're referring
24 to Linda Pham, non-employee Deborah Watson and Ellen
25 Cotter; is that correct?

EXHIBIT 7

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,)
individually and)
derivatively on behalf of)
Reading International,)
Inc.,)
) Case No. A-15-719860-B
Plaintiff,)
) Coordinated with:
vs.)
) Case No. P-14-082942-E
MARGARET COTTER, et al.,)
)
Defendants.)
and)

READING INTERNATIONAL,)
INC., a Nevada)
corporation,)
)
Nominal Defendant) _____

VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN
TAKEN ON MAY 6, 2016

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 I didn't think they went anywhere, and I
2 was getting sick and tired of the whole lot of
3 everybody in this whole deal, quite frankly.

4 At some point -- I don't know -- in
5 February or March, sometime in that time frame, I
6 was ready to quit the board and just get out of
7 Dodge and say I'm done with all this, and concluded
8 at some point, Mr. Krum -- and I can't tell you
9 when -- in my mind I thought we had to do something.

10 I thought that either we -- we had to do
11 nothing about the situation, we had to terminate
12 Jim, we had to terminate Ellen and Margaret, or fire
13 all three of them and move forward with the company
14 in the best interest of the shareholders, because we
15 weren't getting anywhere.

16 And so when you say -- and by the way, I
17 vocalized that view of the world.

18 And things continued to evolve in my own
19 mind. Started to have further discussions with Jim
20 over his performance as a C.E.O.

21 Mr. Storey was appointed by Mr. Gould,
22 the best I can tell -- I don't think the board ever
23 did this -- to work with Jim to try to help make him
24 a C.E.O.

25 Bear in mind we made -- hope this

1 doesn't get anybody mad -- we made a mistake making
2 Jim Cotter C.E.O. in August of 2014. We made an
3 individual who had no real estate experience, no
4 international experience, no management experience,
5 no cinema experience and no live theater experience.
6 Other than that, in retrospect he was very
7 qualified.

8 (Whereupon Mr. Swanis entered the
9 deposition proceedings at this
10 time.)

11 THE WITNESS: When we met with Jim in
12 the fall it became very, very clear after hearing
13 from some of the executives in the company that Jim
14 was doing an analysis of the cinema operation. That
15 sounded like a pretty good thing to go do.

16 BY MR. KRUM:

17 Q. I'm sorry. I'm sorry. Wait a minute.
18 Where are you in time?

19 A. In the fall of 2014.

20 Jim was doing an examination of the
21 cinema operations. He was going around Ellen Cotter
22 to get information from our then C.F.O. Andrzej
23 Matyczynski and Robert Smerling and others about
24 financial performance of the cinemas.

25 Tim and I found out about this and said,

1 "Jim, we understand you're doing this analysis of
2 the cinemas. Jim, but you're going around Ellen's
3 back. This is not what a C.E.O. should be doing. A
4 C.E.O.'s time is too valuable than to be spending it
5 doing financial analysis of individual cinemas. Go
6 hire a consultant to do this. And by the way, if
7 you continue down the same path you're on, you're
8 going to get perceived as only doing this to try to
9 nail your sister."

10 And by the way, put those words down and
11 attribute it to me, because I think I did say that
12 to him.

13 He continued on doing this and in fact
14 in December went to Hawaii with his family and did a
15 similar review of something -- some of the theaters
16 in Hawaii.

17 The only reason I know about that is I
18 approve his expenses, and the expense came through.

19 But during that time he went and visited
20 cinemas; didn't talk to anybody, just went and took
21 pictures of the cinemas.

22 Now, the comments and the counsel to Jim
23 were, "Jim, it's could quite conceivably be that our
24 cinemas need to be enhanced and operations improved,
25 but we're not going to get there with you going and

1 trying to undercut the person who's doing it."

2 That then translated into other comments
3 to Jim. Jim had a habit of coming into the office,
4 sitting in his office and shutting the door, by
5 himself and being there all day.

6 Q. How do you know that?

7 A. Because I saw it. And I counseled with
8 him and I talked to him about it.

9 Q. How many times did you see that?

10 A. Every time I went to the office.

11 Q. How often was that?

12 A. I couldn't tell you. I didn't keep
13 track. I don't have a calendar that would tell you
14 when.

15 But I also heard from executives in the
16 company that he was doing that.

17 Q. Let me ask the questions, though.

18 So, you reside a Rancho Santa Fe,
19 correct?

20 A. I didn't at the time.

21 Q. Where did you reside?

22 A. Arcadia.

23 Q. I lived in Los Angeles for 20 years and
24 I'm sorry, sir, I don't know where that is.

25 Where is Arcadia?

1 ground.

2 Q. When did you first decide,
3 Mr. McEachern, that you would seek or support the
4 termination of Jim Cotter, Jr., as C.E.O.?

5 A. Could you read that question to me
6 again. I'm sorry.

7 MR. KRUM: Sure. I'll have the court
8 reporter read it back.

9 (Whereupon the question was read
10 as follows:

11 "Question: When did you first
12 decide, Mr. McEachern, that you
13 would seek or support the
14 termination of Jim Cotter, Jr., as
15 C.E.O.?"

16 THE WITNESS: I do not have a specific
17 date to give you, Mr. Krum, but it was sometime in
18 mid to late May of 2015.

19 BY MR. KRUM:

20 Q. Can you place it in time relative to an
21 event, conversation or anything else?

22 A. No, I can't.

23 Q. When was the first time you communicated
24 to anyone that you were prepared to support or seek
25 the termination of Jim Cotter, Jr., as C.E.O.?

1 technique or something in between?

2 A. I'm trying to think of how I do --
3 sometimes I try to do the normal typing. That's --
4 that may be about 50 percent of the time. And then
5 the other 50 I have to go and find out where the
6 letters are or the numbers.

7 Q. Well, as I said, I'm old enough to ask
8 that question.

9 Did you ever communicate to Jim Cotter,
10 Jr., that you were assessing whether he should
11 remain C.E.O. of RDI?

12 MR. SEARCY: Objection. Vague, vague as
13 to time.

14 THE WITNESS: Sometime in May Jim
15 Cotter, Jr., and I had a discussion about replacing
16 him as C.E.O. And I remember the discussion, I
17 think it was in his office, and he told me that I
18 could not fire him as C.E.O. And he told me that if
19 I were to vote to fire him, he would sue me and ruin
20 me financially, to which my response was "Jim, we
21 have D and O insurance."

22 His response was "I don't think it
23 covers this."

24 "Well, Jim, we have an indemnification
25 from the company."

1 "It's not any good. I'm going after
2 everybody."

3 And that -- because of that discussion,
4 we did talk about it and I remember it. I can't
5 tell you when it happened.

6 BY MR. KRUM:

7 Q. Was it after the first supposed RDI
8 board of directors meeting at which the subject of
9 his termination was raised?

10 MR. SWANIS: Objection. Form.

11 MR. SEARCY: Join.

12 THE WITNESS: I'm sorry. What?

13 MR. SEARCY: He objected to form.

14 THE WITNESS: Oh. I do not know if it
15 was before or after.

16 BY MR. KRUM:

17 Q. So you believe that you may have spoken
18 to Jim Cotter, Jr., and indicated to him that you
19 were prepared to vote to terminate him prior to the
20 subject being raised at an RDI board of directors
21 meeting?

22 MR. SWANIS: Objection. Form.

23 MR. SEARCY: Join. Object that it's
24 vague.

25 THE WITNESS: I don't know that I had

1 THE WITNESS: I don't -- I don't know
2 how to answer the question.

3 BY MR. KRUM:

4 Q. What is --

5 A. You're referring --

6 Q. What is it you investigated -- strike
7 that.

8 What is it that you found troublesome?

9 A. Linda Pham made, I think it was, a phone
10 call to the employee hotline about concerns and
11 issues about what was going on or it was treated as
12 a call to a hotline reporting a trouble.

13 I do recall speaking with Bill Gould
14 about the situation and telling him that I thought
15 that I should meet with Linda Pham and understand
16 what her concerns were, and I did.

17 Q. When?

18 A. That's why I say it's October, November
19 2014.

20 I went to the office. She and I -- she
21 felt very, very uncomfortable. I had not met her
22 before. And we went to the Starbucks across the
23 street and spent an hour or two hours listening to
24 what her concerns were about Jim Cotter, Jr.

25 She asked me to speak with Debbie Watson

1 and a Rick Bruce, who were in the office, about her
2 concerns to validate what she was telling me.

3 A month or so later I had not spoken
4 with Debbie -- two or three weeks later or Rick
5 Bruce, and she chastised me for not following up.

6 I subsequently had a discussion with
7 Debbie Watson and with Rick Bruce. Rick had nothing
8 to add. He said he was not there at the time --
9 period of time.

10 But Debbie Watson, as I recall, her
11 comments were supportive of Linda Pham's concerns.

12 Q. When did you speak to Ms. Watson?

13 A. It was an afternoon of a Tuesday or
14 Thursday on my way to a class at Claremont McKenna,
15 and it was by phone. I want to say sometime late
16 November, early December.

17 Q. What was the resolution of the situation
18 with Linda Pham?

19 A. To the best of my knowledge, we did
20 nothing.

21 Q. Well, what did you do after you -- if
22 anything, after you did what you just described?

23 A. I reported it back to Bill Gould, the
24 lead director.

25 Q. And in the course of your conversations

1 with Linda Pham, what discussions, if any, did you
2 have concerning her relationship with either Ellen
3 or Margaret Cotter?

4 A. I do not recall.

5 Q. And what was her complaint?

6 A. What was her complaint?

7 She felt that Jim was being abusive in
8 his behavior towards her and going through -- as I
9 recall, he was going through her files -- I had
10 difficulty understanding this, but she -- she felt
11 he was going through her files and/or doing things
12 secretively behind his closed doors.

13 She was very, very -- her office was
14 right next to Jim's, and she was very critical of
15 his behavior in the office.

16 Q. Did she say anything substantive to
17 substantiate the claim that he was abusive to her?

18 MR. SEARCY: Objection. Vague.

19 THE WITNESS: I cannot recall.

20 BY MR. KRUM:

21 Q. And your best recollection is that you
22 concluded your -- that you spoke to -- strike that.

23 So your recollection is you spoke to
24 Linda Phan herself --

25 A. Pham, P-h-a-m.

1 president and he didn't have the C.E.O. position, I
2 was fine with that.

3 I recall Margaret at one of these
4 meetings when we -- and this is where it gets
5 muddled. I don't remember what happened at what
6 meeting -- said there would be a position where we
7 hired a C.E.O., bring him in, Jim would be in some
8 role.

9 And Margaret said, "Jim, let's go along
10 with this and in five years maybe figure out how to
11 be a C.E.O., and you can take over as C.E.O. of the
12 company?"

13 Q. Do you recall what -- anybody saying in
14 words or substance during the early evening call on
15 the Friday that we've been discussing that Jim
16 Cotter, Jr., could or would remain as C.E.O., but
17 that in practice or reality he would simply be one
18 member of an executive committee?

19 MR. SEARCY: Objection. Vague.

20 THE WITNESS: I remember discussions
21 about how to not embarrass Jim Cotter, Jr., how to
22 get something transitioned, something that would be
23 palatable, something that we could move forward
24 with.

25 But I do recall some group of people

1 that Jim would be participating in something. I was
2 comfortable with that.

3 I was not comfortable with him having
4 the authority and responsibilities on his own as
5 C.E.O. of Reading.

6 BY MR. KRUM:

7 Q. Do you recall who the group of people
8 was?

9 A. Well, I know I wasn't part of whatever
10 that group was going to be. I suspect it was
11 Margaret and Ellen and potentially Ed or -- or Guy
12 Adams.

13 Q. Let me prompt your -- attempt to prompt
14 your memory.

15 Do you recall that it was Guy Adams
16 along with Margaret, Ellen and Jim, Jr., and that
17 Guy Adams was to be the chair or chairman of this
18 committee?

19 A. I get confused as to who was doing what
20 and what executive committee when. Because we
21 formed a subsequent executive committee after Jim
22 was terminated.

23 That Guy would be on the committee I'm
24 not surprised about. That Guy would share it I'm
25 not surprised about.

1 answered.

2 THE WITNESS: No.

3 BY MR. KRUM:

4 Q. What else, if anything, do you recall
5 from your conversation or conversations with
6 Mr. Adams regarding the termination of Jim Cotter,
7 Jr., prior to the vote to do so, if anything?

8 A. I believe I discussed with him my
9 conversations about voting to terminate Jim Cotter,
10 Jr., with Bill Gould, which I found a little
11 perplexing.

12 As I said, we had four choices: Do
13 nothing, fire Jim, fire the girls, fire all three of
14 the Cotters.

15 And in my discussions with Bill Gould,
16 Bill stated he wanted to do nothing. Bill wanted to
17 sit with the situation as it was, which I found very
18 frustrating, for upwards of two years until some
19 court decided who voted the voting stock.

20 I told Bill that that was not our job to
21 figure out who voted the stock; our responsibility
22 was to the shareholders of this corporation and to
23 do what was in the best interest of the shareholders
24 and that I did not believe waiting two years with
25 the situation we had was -- was possible.

1 THE WITNESS: I think Jim, Jr., knew
2 that his position as C.E.O. was in jeopardy for a
3 longer period of time than just May 21st.

4 BY MR. KRUM:

5 Q. Well, do you base conclusion that on any
6 conversation you had with him?

7 A. Based upon assigning Tim Storey to work
8 with him because of his C.E.O. skills, one would
9 think that he would have figured that out.

10 Q. That's your understanding of what
11 Mr. Storey's role was?

12 A. Yes.

13 Q. And the basis of that understanding is
14 what?

15 A. Discussions with Bill Gould.

16 Q. Do you recall a meeting of the five
17 non-Cotter directors at which Mr. Storey was charged
18 with a function that came to be referred to as
19 ombudsman?

20 A. No, I do not.

21 Q. Do you recall a meeting of five
22 non-Cotter directors of which Mr. Storey was charged
23 with working with Jim Cotter, Jr., as C.E.O. and, in
24 particular, working with him and the Cotter sisters
25 to attempt to enable them to work together as

1 professionals instead of siblings with fights?

2 MR. SEARCY: Objection. Vague,
3 compound, argumentative.

4 MR. SWANIS: Object to form.

5 THE WITNESS: He was to figure out how
6 to do things that were in the best interest of the
7 shareholders. And I recall emails from -- email or
8 emails from Tim about the holes in -- and that's my
9 phrase, not Tim's -- in Jim's expertise or ability
10 to function as a C.E.O. and where he needed further
11 handling.

12 BY MR. KRUM:

13 Q. When was this?

14 A. Sometime after he started working with
15 him.

16 Q. When was that?

17 A. Sometime after the -- I think the end of
18 March.

19 Q. Did you ever hear or learn or were you
20 ever told that the role of Mr. Storey commencing in
21 or after March, whatever it was, was to -- was to
22 continue into June 2015?

23 MR. SWANIS: Objection. Form.

24 THE SEARCY: Join. Also lacks
25 foundation.

1 BY MR. KRUM:

2 Q. Well, we were talking about evaluating
3 the C.E.O. That was my first question. So let me
4 go back to that.

5 What process had been put in place at
6 any time prior to Exhibit 124 to assess or evaluate
7 the performance of the C.E.O. of RDI?

8 MR. SWANIS: Objection. Form.

9 MR. SEARCY: Objection. Also assumes
10 facts.

11 THE WITNESS: The evaluation of
12 performance by executives in a company is an ongoing
13 activity. This is no different than any of the
14 other companies I've been associated with.

15 Typically at the end of the year there
16 is an evaluation done, a process to evaluate the
17 performance, look at compensation and decide how to
18 reward somebody for bonus or not for performance.

19 Here when you've got an individual who
20 we're very concerned about, process or evaluation is
21 constantly going on.

22 BY MR. KRUM:

23 Q. Who was doing that?

24 A. I think the entire board.

25 Q. Well, what was Mr. Kane doing?

1 Q. But you never had any communications
2 with either of them about the subject or the notion
3 that the C.E.O. position was to be reviewed in June?

4 A. I recall some discussion with Tim about
5 an end of June time frame or 90-day time frame when
6 he started, yes.

7 Q. What do you recall about --

8 A. Just that.

9 Q. Nothing else?

10 A. No.

11 Q. That was a bad question and an unclear
12 answer because of the question.

13 Other than what you just said, do you
14 recall anything from your discussion with Tim Storey
15 about an end of June or 90 daytime frame?

16 A. No.

17 Q. Now, there came a point in time,
18 Mr. McEachern, when you became a member of a
19 so-called special nominating committee; is that
20 correct?

21 A. Yes.

22 Q. How did that happen?

23 A. Are we talking about the nominating
24 committee for a member of the board of directors?

25 Q. Well, let me ask the first -- another

1 went around to the theaters, didn't introduce
2 himself to any of the theaters, taking pictures of
3 the state of our theaters in Hawaii where we have a
4 fairly big footprint.

5 I think he was coming back, planning to
6 make some sort of presentation about the ugliness of
7 the theaters which hadn't had any capital put into
8 them for quite a while. That never happened.

9 But as Ed Kane tells me, he had
10 discussions with Jim who showed Ed these pictures,
11 said, "Jim, what are you doing with this? Are you
12 trying to undercut your sister with the board of
13 directors? Why don't you sit down and go to Hawaii
14 with your sister, look at the operations and what
15 can be done to enhance them."

16 At the same time in the fall, hearing
17 that Jim is operating behind closed doors, but,
18 really, how can that possibly be and how do you
19 create trust? And I mentioned that earlier.

20 Jim, as would be reported, would come to
21 the office, go into his office and shut the door and
22 spend all day behind closed doors.

23 The message that he was told by me that
24 he was sending was one of not being engaged with the
25 employees of the company.

1 I said, "Jim, you got to open the door
2 to the office."

3 This went on for a month or two.

4 Finally Jim opens the door to his office, he opens
5 the door to his office one inch. And nominally can
6 you report that the door is open? Yes. In form it
7 is. In substance is it? Not.

8 That really caused some great angst.
9 You go back and start evaluating and you say, "Well
10 we made this guy the C.E.O., and you reflect upon
11 what he had done.

12 Now, my exposure to Jim -- I hope I'm
13 not going on too much.

14 Q. I want a complete list.

15 A. My exposure to Jim -- I joined the board
16 in June of 2012 -- had been exposure to him for a
17 couple of years in meetings. He sat in the board
18 meetings. I recall nothing that Jim Cotter, Jr.,
19 ever had to say in any board meeting at all.

20 And when his dad died in early September
21 of 2014, I went to Jim and said, "Listen, Jim, my
22 relationship was with your dad. I knew him for a
23 long period of time. I don't know your three kids,
24 who now seem to be the ones who are running the
25 company. I'll be happy to resign from the board if

1 you want."

2 And he said, "No. Stay on the board.
3 We need you," and some other stuff. So I stayed on
4 the board.

5 But we had these interactions in
6 meetings, and you try to mentor and help somebody
7 move their self along. From that point -- and this
8 is now moving into January, February of 2015,
9 getting to a point where this is just -- I'm pulling
10 my hair out, and I think the other directors were
11 too, a point where it's like why don't we just all
12 resign and call it a day and move on. We're not
13 getting any progress, we're not helping the
14 shareholders of this organization, we're not causing
15 value to be created.

16 And upon reflection, we put a C.E.O. in
17 place who had, as I said earlier, no real estate
18 experience, no management experience, no live
19 theater experience, no cinema experience and no
20 international experience.

21 Yeah, he traveled around with his dad
22 looking at things in Australia and possibly New
23 Zealand, but in terms of any real operational effect
24 or activities impact, nothing.

25 And then we moved into this Stomp

1 situation. The Stomp situation, Jim initially
2 wanted to use that, in my judgment, to case Margaret
3 Cotter in a very negative light with the board. At
4 the same time she was looking to try to get hired by
5 the company and get an employment contract and move
6 from her contractor or outside contractor status to
7 an employee of reading.

8 Talked about what she wanted to do, but
9 that's what she wanted to have happen. That I
10 recall from the fall of 2014.

11 And Ellen wanted to have a similar
12 contract.

13 Jim's comments constantly were to me "I
14 know what my dad wants. I know what my dad wants."
15 It's like the specter of Jim Cotter, Sr., is hanging
16 over all this. I don't know. He never told me what
17 his dad wants. But he would say it on a regular
18 basis.

19 It got to the point where now Ellen and
20 Margaret are trying to get their employment status
21 squared away. And sometime in maybe -- I don't
22 know -- March or April Jim finally sends a contract
23 to Margaret, an employment contract, a draft. And
24 it wasn't long, it was three or four pages as I
25 recall.

1 But as a preamble to it was a cover memo
2 that -- an email that had 23 or 4 or 17 or 20
3 reasons why Margaret should not get an employment
4 contract with the company.

5 And it was like, "Jim, if you're trying
6 to get -- mend fences and move forward. You don't
7 sit there and throw hand grenades in something that
8 you're trying to do on a positive basis."

9 But I know Jim had to do that. And then
10 Stomp happened. And I think that the employment
11 contract business happened before Stomp.

12 And Stomp came to his attention at some
13 point in April, May, and we ended up with a lot of
14 consternation about what went on. People were
15 jumping to conclusions before they had any facts,
16 which Bill Gould, bless his heart, he -- he had us
17 meet -- I don't know if it was the entire board, but
18 we met around the board room.

19 I had a granddaughter did that to me.
20 Scared me.

21 (Whereupon Mr. Rhow left the
22 deposition proceedings at this
23 time.)

24 THE WITNESS: He met around the board
25 room and had a discussion with Margaret on the phone

1 discussions that he had had.

2 The company from August of 2014 until
3 Jim's termination, I cannot tell you one thing that
4 we did that created value for the company, one thing
5 that Jim Cotter, Jr., managed to do. Nothing.

6 He ended up going to Australia and New
7 Zealand sometime in maybe February, but Ed Kane was
8 the one banging on the table saying "You know, you
9 got to get out of the office. We got to get this --
10 this toxic environment where everyone's just at
11 wit's end out of here. And he had numerous
12 discussions telling Jim, "Go to Australia and New
13 Zealand and get out of here."

14 And so now -- Australia and New Zealand
15 was 50 percent of our activities, maybe. Maybe 60.
16 I'm not sure what the percentage is. It's in the
17 10-K.

18 But we had him in place in August.
19 August, September, October, November, December,
20 January, February -- six months goes on and he
21 hasn't gone to visit anybody who has -- connected
22 our big activities that are taking place, which are
23 doing exceedingly in Australia and New Zealand. And
24 we had a lot of great opportunities.

25 All of those things. No -- making no

1 progress. Inability to work with executives.

2 Does that include Ellen and Margaret?

3 Absolutely it includes Ellen and Margaret, but as
4 executives. And I had concluded, Rob, that I did
5 not think that in my judgment Jim Cotter, Jr., was
6 C.E.O. capable. Some of the emails I recall
7 receiving from Tim Storey alluded to that, that we
8 have somebody who was very weak as a C.E.O. or as a
9 manager.

10 Tim at one point said that Jim wants to
11 go to U.C.L.A. to learn how to manage -- get an
12 M.B.A. -- I think it was U.C.R. Get an M.B.A. and
13 learn how to manage people.

14 The comet was waiting. You're 45 or 46
15 years old and you're going to go to school to learn
16 how to manage people?

17 You're not going to change somebody at
18 that point in time. Maybe people are going to alter
19 their behavior five or ten percent, but you're not
20 going to have an entire mind meld to try and get
21 somebody to change their basic DNA in how they
22 relate to people.

23 And you add all these things up -- the
24 Linda Pham, as I said earlier, that was maybe five
25 percent. It wasn't a major component. But it was

1 an inability to operate as a manager, an inability
2 to create trust, an inability to communicate with
3 people. That lack of experience that he had all
4 painted a picture that we're not making progress
5 that our shareholders expect us to make in this
6 organization, and we got to get somebody in here who
7 can help us move the company forward. And I voted
8 to terminate him. So --

9 Q. Just to put this one on a time line, the
10 point in time by which you had reached your
11 conclusion based upon the factors you just described
12 was sometime in late April or May of 2015; is that
13 right?

14 A. I'd say it's probably mostly in the May
15 time frame, I think.

16 I mean I had discussions with -- as I
17 said, with Bill Gould about our options that we had
18 to do something. I discounted one that Bill wanted
19 to pursue as just -- the whole company would have
20 imploded if we had gone down that past.

21 Q. Okay.

22 MR. SEARCY: Let me just -- before you
23 ask another question, Robert, I just want to put on
24 the record that Mr. Rhow left, and when he left it
25 caused the door to make that startling sound that we

1 THE WITNESS: Analyzing the theater
2 operations, absolutely nothing was wrong with doing
3 that. Nothing.

4 I didn't believe -- I thought it was
5 inappropriate that Jim was wasting -- inappropriate
6 in that Jim was wasting his individual C.E.O. time
7 doing it and that his time was better spent in other
8 activities to move the company forward.

9 I felt we could hire a consultant to go
10 do that, to work with Ellen to figure out how do we
11 make it better.

12 BY MR. NATION:

13 Q. And also on that topic, I believe you
14 also mentioned going to Bob -- directly to Bob
15 Smer- -- Smerling rather than going to Ellen, right?

16 A. Yes. And to Andrzej Matyczynski.

17 Q. All right. So, I realize I haven't
18 summarized this, but in the time that we've been
19 asking and discussing this, is there anything else
20 that you would add to the list?

21 A. One thing that came to mind, Jim felt
22 that we should change the food and beverage
23 activities going on at the cinemas.

24 I don't know if you've been to the
25 cinema lately. Popcorn seems to be -- and a Coke

1 seems to be the old passe thing. Now it's gourmet
2 hot dogs and beer and wine and alcohol and all kinds
3 of other things being served, which I think was an
4 appropriate thing.

5 He wanted and was endeavoring to go hire
6 a food and beverage manager around Ellen Cotter,
7 who's in charge of the operations.

8 It's like, well, now, wait a minute. We
9 decide we need to go do this, the individual running
10 that operation is the person that we -- should be in
11 charge of going and figuring out where to go; not
12 the C.E.O. going and undercutting an individual
13 running that operation.

14 Q. Anything else you can think of?

15 A. Probably as I leave tonight a couple
16 things will hit me.

17 Q. We've hit the high spots, I take it.

18 A. I think so.

19 Q. Did you become aware from any source
20 that Tim Storey disagreed with that assessment? In
21 other words, that Tim Storey was giving reports,
22 portraying James Cotter, Jr.'s, performance in a
23 more favorable light?

24 MR. SEARCY: Objection. Assumes facts,
25 lacks foundation, it's vague.

EXHIBIT 8

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF MARGARET COTTER
TAKEN ON MAY 12, 2016
VOLUME I

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 MR. SEARCY: So, Mark, if you're close
2 to finishing, it's about 6:22 right now.

3 MR. KRUM: Yeah. We should finish up by
4 6:30 if not before.

5 BY MR. KRUM:

6 Q. Ms. Cotter, directing your attention to
7 your testimony of a moment ago to the effect that
8 your brother already had been told by the board that
9 he would be terminated, do you have that in mind?

10 A. Do I have my statement in mind?

11 Q. Yeah. I just want to direct your
12 attention to that.

13 A. Yes.

14 Q. And what was it you understood your
15 brother needed to do, if anything, as of June 4,
16 2015, to avoid being terminated?

17 A. I believe at that point there was a --
18 we had collectively agreed that we would resolve
19 this dispute and the lawyers put together a
20 settlement.

21 We told the board that we resolved it
22 and that we're going to put it in the hands of the
23 lawyers. And we revised the settlement.

24 I don't know if it was -- I don't know
25 if we revised it because my brother asked for

1 additional things or if we just decided to throw in,
2 you know, additional elements of the settlement, but
3 that's where we were on June 4th.

4 Q. When you refer to "this dispute," you're
5 referring to the trust disputes?

6 MR. SEARCY: Objection. Vague.

7 BY MR. KRUM:

8 Q. Well, let me ask an open-ended question.

9 In your last response you referred to
10 resolving this dispute.

11 To what were you referring when you said
12 "this dispute"?

13 A. There were elements of the trust dispute
14 and there were also some terms regarding going
15 forward in the company in the settlement.

16 Q. So what had transpired is that at a
17 reconvened -- a supposed reconvened telephonic board
18 meeting, Ellen reported that you and Ellen had
19 reached a resolution with your brother and that the
20 lawyers were going to prepare the paperwork; is that
21 correct?

22 MR. SEARCY: Objection. Vague.

23 THE WITNESS: Which -- when are you
24 referring to?

25 ///

1 BY MR. KRUM:

2 Q. Okay. Do you recall that there was a
3 Friday where there was a board meeting that convened
4 in the morning or early afternoon and that that
5 supposed board meeting adjourned and supposedly
6 reconvened in a telephonic meeting at about
7 6 o'clock in the evening?

8 A. That's correct.

9 Q. And do you recall that on the
10 telephonic -- or on the telephone call, Ellen
11 reported that a tentative agreement had been struck
12 by you and her on one hand and by your brother on
13 the other?

14 A. I don't know if she said "tentative."

15 Q. Okay. Do you recall that she reported
16 that an agreement had been reached?

17 A. Yes.

18 Q. And the agreement was between you and
19 her on one hand and your brother on the other hand?

20 A. Yes.

21 Q. And that in Exhibit 156, when you asked
22 your brother, quote, "What is the status of the
23 paperwork we sent you yesterday," close quote,
24 you're referring to the paperwork that Sussman sent
25 to Streisand about the agreement that Ellen had

1 reported during the 6:00 P.M. telephone call we just
2 discussed, right?

3 MR. SEARCY: Objection. Vague, lacks
4 foundation.

5 THE WITNESS: No.

6 BY MR. KRUM:

7 Q. Okay. To what are you referring, then?

8 A. This is the revised settlement. This
9 was not -- this settlement offer that I'm referring
10 to in this email was not the settlement that my
11 sister was referring to on that telephonic board
12 meeting.

13 Q. Okay.

14 MR. SEARCY: So, Mr. Krum, I can tell by
15 the way my witness is slouching in her seat that
16 we're reaching the end here.

17 MR. KRUM: We'll be there in a minute.

18 BY MR. KRUM:

19 Q. So, that settlement -- that
20 documentation was not accepted by your brother,
21 correct?

22 MR. SEARCY: Objection. Vague.

23 MR. FERRARIO: Obviously. We're here.

24 THE WITNESS: That's correct.

25 ///

EXHIBIT 9

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF MARGARET COTTER
TAKEN ON MAY 13, 2016
VOLUME II

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 as follows:

2 "Question: Well, independent of
3 what you meant on that particular
4 day, in or about the end of March
5 2015 or early April, 2015, did you
6 have a view or an opinion that
7 your brother had some strategy or
8 some particular purpose that was
9 why he had not then acted to make
10 you an employee of RDI?")

11 BY MR. KRUM:

12 Q. Can you answer that?

13 A. I can speculate as to what I meant on
14 this day. I mean I just felt from the start that my
15 brother was trying to push me off to the side and
16 not be part of this company.

17 Q. Well, there came a time in May of 2015
18 when he sent you a draft of an employment agreement,
19 right?

20 A. I -- I don't know if that was the date,
21 but he sent me a draft, yes.

22 Q. Okay. Did that change your view of
23 whether he was willing to make you an employee of
24 RDI?

25 A. No.

1 Q. Why not?

2 A. I believe that the email had 23 reasons
3 why he shouldn't be giving me this employment
4 agreement. And the employment agreement was very
5 restricted, where if I didn't hand in a report at
6 some particular time, I could be terminated.

7 Q. At any point in time from the time in
8 August of 2014 when your brother became C.E.O. until
9 he was terminated on June 12, 2015, did you develop
10 a view that he wanted or was looking for excuses or
11 reasons to terminate your consulting arrangement?

12 A. You're asking me if I knew of reasons?

13 Q. No. I'm asking you if you had that
14 thought in that time frame.

15 So let me ask the court reporter to read
16 the question back.

17 (Whereupon the question was read
18 as follows:

19 "Question: At any point in time
20 from the time in August of 2014
21 when your brother became C.E.O.
22 until he was terminated on
23 June 12, 2015, did you develop a
24 view that he wanted or was looking
25 for excuses or reasons to

1 you talking about when you received the Stomp
2 producer's letter purporting to terminate the
3 agreement and then sent that along to your brother?

4 A. That's correct.

5 Q. What is it you recall happened
6 between -- if anything that happened between when
7 you sent that letter to your brother and the board
8 meeting with respect to the Stomp matter?

9 A. Just my brother would call, and he
10 wanted all these particulars about this February
11 letter.

12 And at that point we were putting
13 together a preliminary injunction motion to go into
14 the Supreme Court. And he wasn't listening to
15 the -- to me on this injunction saying that we have
16 to get this filed. He was more concerned about why
17 he wasn't notified back in February.

18 And I told him, "Jim, you're missing the
19 point."

20 And he just wanted to find all the fault
21 in what I had done rather than deal with the
22 situation at hand and getting this motion filed to
23 prevent the show from leaving the theater.

24 Q. Ms. Cotter, when you say he wanted to
25 find fault, why do you say that?

1 A. I don't recall.

2 Q. Did you ever have a communication with
3 Guy Adams about him serving as interim C.E.O. of
4 RDI?

5 A. I don't recall that.

6 Q. Did you ever have a conversation with
7 any non-Cotter director about an interim C.E.O. of
8 RDI?

9 A. Prior to June 16th --

10 Q. Prior to June --

11 A. Or 12th?

12 Q. Prior to June 12, 2015, yes.

13 A. I don't recall.

14 Q. What's your best recollection as to how
15 many board meetings, which I'll call supposed board
16 meetings, occurred at which a subject or the subject
17 was the possible termination of your brother as
18 president and C.E.O.?

19 A. I recall three.

20 Q. And if you would, please, whether by
21 date or such other reference as you see fit,
22 describe or identify each of the three.

23 A. There was the first one at some point in
24 May that termination of my brother was discussed.
25 And I believe at that board meeting there was a

1 suggestion by one of the directors, Bill Gould might
2 have said, "Jim, how about we keep you as president
3 and we get a new C.E.O.?"

4 And I then said, "Jim, and then you can
5 get your training over the next five years and gain
6 more experience and possibly you become C.E.O. in
7 another five years."

8 And I remember my brother thanked
9 everyone and said he'll think about it.

10 Q. That's your recollection as to how that
11 meeting ended?

12 A. Yes.

13 Q. And then the next meeting occurred how
14 much later?

15 A. I don't recall the date or how far it
16 was. But I believe at that meeting that there was
17 more discussion on his termination and the reasons
18 why.

19 And there came a time when there was
20 a -- a discussion about possibly ending it all,
21 meaning we would end the trust litigation, we would
22 end, you know, our disputes within the company.

23 And we dismissed the non-Cotters at some
24 point, and my brother, I and my sister sat in a room
25 and we talked about the company, working together.

1 We talked about the -- the trust dispute that we
2 had.

3 And we -- I mean I think this was going
4 on for like three or four hours.

5 And we reached a settlement that we all
6 agreed upon. We called the board back -- or the
7 board told us that we would reconvene at 6:00. And
8 at 6 o'clock we told the board that we all reached
9 an agreement.

10 And the board congratulated us and said
11 let's move forward.

12 Q. And then what happened?

13 A. I think that our -- my lawyer, my
14 sister's lawyer and I -- mine, our trust attorney
15 put together a settlement offer that -- that we had
16 given him in writing saying this is what we all
17 decided.

18 He put it -- he put together an
19 agreement, and he forwarded it over to my brother's
20 attorney, to his trust attorney.

21 Q. Sussman to Streisand, yours to his?

22 A. Sussman to Streisand, correct.

23 Q. I'm sorry. Please continue.

24 A. And I don't -- I don't know what
25 happened with that settlement, but then there was a

1 revised settlement where we, meaning my sister and
2 I, provided things to my brother, additional
3 benefits for my brother. I think we forgave --
4 agreed to forgive a \$1.5 million note, and we
5 allowed him to continue receiving his \$200,000 a
6 year director's fee from Cecelia in that settlement.

7 Q. Then what happened?

8 A. And then I don't know if I had a
9 conversation with my brother, and he said, "Let's
10 mediate."

11 Q. You think that was a conversation?

12 A. It might have been a conversation, yeah.

13 Q. What was your response?

14 A. "Jim, we've given you everything we can.
15 Take this. We've done mediation."

16 Q. Who else said what, if anything, during
17 that conversation?

18 A. I don't recall anything else.

19 Q. So, what happened next?

20 A. I just -- I remember my sister being in
21 New York with me. And there was a board meeting
22 that was -- that was put on the calendar.

23 Q. An RDI board meeting?

24 A. Yes.

25 Q. Then what happened?

1 A. And at that board meeting all the
2 directors spoke, and my brother was terminated.

3 Q. So how did it come to pass that the --
4 that supposed board meeting was put on the calendar?

5 A. I don't recall.

6 Q. Who put it on the calendar?

7 A. My sister as chairman.

8 Q. Was the purpose of calling that meeting
9 to vote on the termination of your brother?

10 A. That's correct.

11 Q. What's your understanding as to why your
12 sister put that on the calendar at that time?

13 A. I don't think that the settlement was
14 agreed to after we had all agreed.

15 Q. In other words, your brother didn't
16 agree to the settlement proposal that -- the revised
17 settlement proposal that you had had your lawyer
18 Sussman provide to Streisand? Is that what you're
19 saying?

20 A. That's correct.

21 Q. Directing your attention, Ms. Cotter,
22 back to what you've described as the second meeting,
23 do you have in mind your testimony about you and
24 Ellen spending three or four hours with Jim talking
25 about the trust and estate disputes and the disputes

EXHIBIT 10

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

Case No.

MARGARET COTTER, ELLEN COTTER, A-15-719860-B
GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTONIAK, and DOES 1
through 100, inclusive,
Defendants.

and

READING INTERNATIONAL, INC.,
a Nevada corporation,
Nominal Defendant.

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
Los Angeles, California
Monday, May 16, 2016
Volume I

Reported by:

JANICE SCHUTZMAN, CSR No. 9509

Job No. 2312188

Pages 1 - 297

1 T2 PARTNERS MANAGEMENT, LP, a
2 Delaware limited partnership,
3 doing business as KASE CAPITAL
4 MANAGEMENT, et al.,
5 Plaintiffs,
6 vs.
7 MARGARET COTTER, ELLEN COTTER,
8 GUY ADAMS, EDWARD KANE, DOUGLAS
9 McEACHERN, WILLIAM GOULD, JUDY
10 CODDING, MICHAEL WROTONIAK, CRAIG
11 TOMPKINS, and DOES 1 through 100,
12 inclusive,
13 Defendants.
14 and
15 READING INTERNATIONAL, INC., a
16 Nevada corporation,
17 Nominal Defendant.

18 Videotaped Deposition of JAMES COTTER, JR.,
19 Volume I, taken at 865 South Figueroa Street,
20 10th Floor, Los Angeles, California, commencing
21 at 10:09 a.m. and ending at 5:40 p.m., Monday,
22 May 16, 2016, before Janice Schutzman, CSR No. 9509.

23
24
25 PAGES 1 - 297

1 Q. Is that fair to say?

2 MR. KRUM: Same objections.

3 Go ahead.

4 THE WITNESS: Yes.

5 BY MR. TAYBACK: 10:30:57

6 Q. Any other form of redress that you are
7 seeking related to your termination --

8 MR. KRUM: Same objections.

9 BY MR. TAYBACK:

10 Q. -- through this lawsuit? 10:31:04

11 MR. KRUM: Sorry.

12 MR. TAYBACK: That's all right.

13 MR. KRUM: Same objections, same
14 admonition.

15 Go ahead. 10:31:09

16 THE WITNESS: At this point in time, I do
17 not recall any, no.

18 BY MR. TAYBACK:

19 Q. When you were CEO, it was pursuant to a
20 written contract? 10:31:20

21 A. No.

22 Q. So you had no written employment contract
23 with respect to your position as CEO?

24 A. That's a legal question, Mr. Tayback.

25 I had an employment agreement as president 10:31:35

1 that was signed on June -- in June of 2014. I was
2 promoted to president -- to CEO on August 7th, 2014.
3 And whether my position as CEO was subsumed in the
4 employment agreement, I can't tell you.

5 Q. What was your understanding -- when you 10:31:59
6 became CEO, what was your understanding of the terms
7 that governed your employment?

8 A. That governed my employment as CEO?

9 Q. Yes.

10 A. Well, at a minimum, the terms of my 10:32:15
11 employment agreement would continue, and there was
12 an expectation that it might be -- the terms might
13 be amended to reflect the new status as CEO. The
14 terms and compensation might be amended to reflect
15 the status of CEO as well. But that had never been 10:32:34
16 done.

17 Q. So that never did get done; correct?

18 A. That's right.

19 Q. So your compensation as CEO was the same as
20 that which is laid out -- was laid out in the 10:32:46
21 written agreement with respect to you being
22 president; correct?

23 A. Correct.

24 Q. And the other terms that are set forth in
25 that written agreement that governed your position 10:33:00

1 as president so, you believe, stayed in effect while
2 you were CEO; correct?

3 MR. KRUM: Objection, calls for a legal
4 conclusion.

5 THE WITNESS: Could you repeat the 10:33:11
6 question.

7 BY MR. TAYBACK:

8 Q. Sure.

9 The written agreement that you had as
10 president, you believe that that stayed in effect 10:33:16
11 while you were CEO?

12 MR. KRUM: Same objection.

13 THE WITNESS: Yes.

14 BY MR. TAYBACK:

15 Q. And you didn't have some separate written 10:33:22
16 agreement with respect to being CEO?

17 A. No, I did not.

18 Q. And your understanding is that as CEO, you
19 reported to the board; correct?

20 A. Correct. 10:33:33

21 Q. And you had no written guarantee of a
22 specific minimum term for which you would be CEO; is
23 that correct?

24 MR. KRUM: Same objection.

25 THE WITNESS: Well, the expectation that I 10:33:51

1 had was that the employment agreement would at least
2 provide me a certain term as CEO and president.

3 BY MR. TAYBACK:

4 Q. So you believed that the written agreement
5 did govern your term as CEO? 10:34:07

6 MR. KRUM: Same objection.

7 THE WITNESS: I don't know if I can say
8 that I specifically thought that at the time.

9 BY MR. TAYBACK:

10 Q. You know what an employment -- employment 10:34:20
11 at will is?

12 A. I do.

13 Q. And what's your understanding of that?

14 A. A company can terminate an executive at any
15 point in time. 10:34:35

16 Q. Did you believe that you were an employee
17 at will as CEO?

18 MR. KRUM: Same objection.

19 THE WITNESS: Again, I thought that at
20 least my employment agreement as president would 10:34:47
21 cover -- would be subsumed and would deal with my
22 new title as CEO at a minimum.

23 Now, when you discuss being an employee at
24 will, I never thought that the board -- I always
25 assumed that if I was going to be terminated, even 10:35:05

Page 33

1 if I were an employee at will, that the board would
2 engage in some modicum of process before making a
3 decision to terminate the CEO of a company.

4 BY MR. TAYBACK:

5 Q. Put aside the process -- 10:35:19

6 A. Okay.

7 Q. -- for a minute. I want to understand what
8 your basis is for whether you believed that you
9 could be terminated at will or whether you couldn't
10 be terminated at will. 10:35:29

11 Did you believe you could be?

12 A. I believed that, at a minimum, the company
13 would provide me notice, 12 months' notice under my
14 employment agreement, before terminating me as
15 president and CEO. 10:35:42

16 Q. So you believe the notice provision and the
17 12 months -- the 12-month notice provision --
18 withdraw that.

19 So you believe that certain aspects, at
20 least, of that written agreement also governed your 10:35:59
21 relationship with the company as CEO; is that
22 correct?

23 MR. KRUM: Objection, calls for a legal
24 conclusion, the document speaks for itself.

25 You can answer. 10:36:10

1 THE WITNESS: Could you repeat the
2 question?

3 BY MR. TAYBACK:

4 Q. I'll just ask a different question.

5 It's your understanding that as CEO, if you 10:36:19
6 were terminated for any reason, that you would be
7 entitled to -- withdraw that.

8 It was your understanding as CEO that if
9 you were terminated without cause, that you would be
10 entitled to some compensation, 12 months? 10:36:34

11 MR. KRUM: Same objections.

12 THE WITNESS: With respect to my employment
13 agreement, I expected that, at a minimum, the
14 company would provide me 12 months' notice -- if
15 they wanted to end the relationship, that they would 10:36:55
16 give me 12 months and my status as president and CEO
17 would continue. But that's simply my understanding
18 under the employment agreement.

19 BY MR. TAYBACK:

20 Q. And you believe that that employment 10:37:08
21 agreement governed your tenure as CEO, that written
22 employment agreement?

23 MR. KRUM: Same objections.

24 THE WITNESS: Did I believe my employment
25 agreement governed my status as CEO? 10:37:24

1 BY MR. TAYBACK:

2 Q. Yes.

3 MR. KRUM: Same objections.

4 THE WITNESS: At a minimum, I agree that if
5 I were terminated as president and as CEO, that I 10:37:37
6 would have relief under that employment agreement.

7 BY MR. TAYBACK:

8 Q. And I guess you can't answer the question
9 yes or no as to whether or not you believe that the
10 employment agreement that you had as president 10:37:52
11 governed your relationship with the company as CEO?

12 A. You know --

13 MR. KRUM: Wait.

14 THE WITNESS: -- I'm --

15 MR. KRUM: Wait. Let me interpose my 10:37:57
16 objections.

17 Objection, vague and ambiguous, calls for a
18 legal conclusion.

19 You can answer.

20 THE WITNESS: I'm not a lawyer. I'm not a 10:38:03
21 practicing lawyer.

22 BY MR. TAYBACK:

23 Q. You are a lawyer; correct?

24 A. I am a lawyer. I'm not a practicing
25 lawyer. I'm not qualified in California. 10:38:10

1 I had an employment agreement as president.
2 I became CEO. The employment agreement was not
3 amended to reflect my new status as president and
4 CEO.

5 So did the employment agreement govern now 10:38:24
6 my status as CEO? I don't know. I mean, I can't
7 tell you that as a nonpracticing lawyer. I mean,
8 that's a legal conclusion.

9 Q. So when you became CEO, your compensation
10 stayed the same as it was when you were president? 10:38:43

11 A. It did.

12 Q. And did you do anything to seek to amend
13 your written employment agreement? Did you do
14 anything to do that?

15 A. At the time that I became CEO, in August of 10:38:57
16 2014, there were a lot of more pressing matters
17 confronting the company and confronting myself with
18 my father's death that I was addressing and thought
19 that these items were more important.

20 And so in the fullness of time, I'm sure 10:39:20
21 that would have been addressed, but it wasn't a
22 priority for me at that point in my life and with
23 the matters confronting the company.

24 Q. So the answer to my question is no?

25 A. Okay. 10:39:34

1 moved to California and started becoming involved in
2 attending certain meetings, and 2000 --
3 September 2007 when you became vice chairman --

4 A. Right.

5 Q. -- between 2005 and 2007, did you actually 12:56:47
6 have a position with Reading?

7 A. No. No. Not to my knowledge.

8 Q. You would occasionally attend meetings on a
9 periodic basis.

10 Were they always with your father? 12:56:57

11 A. I mean, it was a long time ago.

12 I can't say definitively. Probably.

13 Q. And did you have actual responsibilities at
14 any of these meetings?

15 A. From 2005 until I was appointed vice 12:57:10
16 chairman in September of 2007, no, I don't believe I
17 did.

18 Q. So you weren't -- actually, you weren't on
19 the board and you weren't on a particular executive
20 committee? 12:57:24

21 A. Oh, no, I was on the board. I was on the
22 board of directors of Reading since March of 2002.

23 Q. Okay. So your first position at Reading
24 was being on the board?

25 A. Yes. 12:57:36

1 Q. And back in 2002, you were living in
2 New York?

3 A. Yes.

4 Q. Did you attend meetings?

5 A. Of course. 12:57:41

6 Q. Had you ever been on the board of a public
7 company prior to being on the board at Reading?

8 A. No.

9 Q. Was -- in 2002, was Reading a public
10 company at that point in time? 12:58:01

11 A. Yes.

12 Q. And the board -- who else was on the board
13 in 2002 when you first joined?

14 A. My father, I believe Bill Gould, Ed Kane,
15 possibly Al Villaseñor. Those are the only names 12:58:38
16 that I can recall.

17 Q. Do you recall how big the board was? That
18 is to say, do you recall whether there were more
19 people but you're not remembering their names or
20 whether that might have been all of them? 12:58:54

21 A. There were certainly more people.

22 Q. Did you attend the board meetings in
23 person?

24 A. Some of them.

25 Q. And did you attend some by telephone? 12:59:00

1 A. Yes.

2 Q. Okay. And did you also miss some board
3 meetings in the early days of being on the board?

4 A. I don't recall why I would have missed
5 meetings.

12:59:13

6 Q. And did you get materials in advance for
7 consideration?

8 A. Absolutely.

9 Q. When would you get them in New York?

10 A. In 2002?

12:59:22

11 Q. Yeah.

12 A. That's a long time. I don't --

13 Q. You don't remember?

14 A. I don't remember.

15 Q. Okay. Did -- do you know -- do you have

12:59:28

16 a --

17 Do you remember having a routine where you
18 would get, in advance of a board meeting, an agenda
19 and what you'd have to understand you would be
20 voting on?

12:59:37

21 A. Again, it's been a long time. I would be
22 surprised if we didn't.

23 Q. Okay. This was your first time being on a
24 board of a public company; correct?

25 A. Yes.

12:59:47

1 Q. And what did you do to understand what your
2 responsibilities were?

3 A. Well, I was also a corporate lawyer at the
4 time, so I had familiarity with the responsibilities
5 of directors of public companies. 12:59:59

6 Q. Okay. So you had kind of your own
7 understanding. You didn't need to do anything in
8 particular to learn what you should -- what your
9 obligations would be as a board member for Reading?

10 A. I mean, I would often, you know, read 01:00:16
11 articles and cases, and aside from that and learning
12 as a corporate lawyer, I don't recall.

13 Q. Do you believe you were qualified to be on
14 the board of Reading at the time you were appointed?

15 A. Yes. 01:00:35

16 Q. Okay. Why? What made you qualified?

17 A. Well, I had stock in the company, I
18 believe, at the time. And I had an interest as a
19 large or potentially a very large stockholder with
20 my dad's interest. So I thought that it was 01:01:07
21 appropriate that I be on the board.

22 Q. How much stock did you own at the time?

23 A. I might not have owned a lot at the time,
24 but I'm -- the expectation was that the stock that
25 my dad owned would ultimately, you know -- or some 01:01:24

1 of the stock would be owned by his three children.

2 Q. And were your -- either of your sisters on
3 the board at the same time?

4 A. I don't believe my sisters were on the
5 board at that time. I think possibly Margaret might 01:01:37
6 have joined afterwards, and I don't think Ellen
7 joined until 2013.

8 Q. And do you agree that at the time they
9 joined, respectively, that they were both equally
10 qualified to be board members of Reading? 01:01:50

11 A. For the same reasons that I listed for
12 myself, as far as having an ownership interest or a
13 potential ownership interest in the company, that --

14 Q. At least for those reasons.

15 A. Yeah, at least for those reasons that it 01:02:04
16 would be appropriate that they be -- that they have
17 a seat on the board, yes.

18 Q. And did you have -- what was the
19 business --

20 How would you describe the business of 01:02:15
21 Reading in 2002 at the time you became on the board?

22 A. I mean, it's -- this goes back.

23 Q. Generally.

24 A. It owned real estate at the time. This was
25 before it had acquired an interest in U.S. cinemas, 01:02:48

1 I believe. But again, this goes back 14 years, so I
2 can't tell you.

3 Q. Had you had any professional experience in
4 real estate acquisition development prior to 2002?

5 A. I certainly had done real estate and other 01:03:14
6 acquisitions and financings as a corporate lawyer at
7 Whitman Breed prior to 2002.

8 Q. Other -- so as the corporate lawyer
9 documenting a real estate transaction --

10 A. Right. 01:03:40

11 Q. -- have you made any -- had you been
12 engaged in any business where the business decisions
13 were acquisitions, real estate development, things
14 like that?

15 A. Prior to 2002, no. 01:03:52

16 Q. Correct.

17 Did you feel that was an impediment to your
18 being an effective board member of Reading when you
19 first joined the board?

20 A. Well, it certainly wasn't preferred. But I 01:04:05
21 felt that while I didn't have the real estate
22 experience that would have been preferred for the
23 board and I didn't have the public company
24 experience that would have been preferred for the
25 board, that my interest as a possibly very large 01:04:19

1 stockholder of Reading outweighed not having the
2 real estate experience and not having the public
3 company experience. So I thought on balance, it was
4 appropriate.

5 Q. So you would agree that in, at least in 01:04:37
6 that instance, the Reading board could properly
7 weigh certain factors against other factors and make
8 a business decision that would -- came -- that
9 concluded that you were suitable for the board even
10 if you didn't have all of the preferred 01:04:54
11 characteristics of a board member; correct?

12 MR. KRUM: Objection, vague and ambiguous.

13 THE WITNESS: Okay.

14 BY MR. TAYBACK:

15 Q. Yes? 01:05:09

16 A. Yes.

17 Q. Once you came on the board, did you
18 participate in the meetings? That is to say, were
19 you an active participant in the meetings?

20 A. Early on? 01:05:20

21 Q. Yes.

22 A. Again, this takes me back many years.
23 Initially, without having the experience, I might
24 not have been as active as I had come to be over the
25 years. 01:05:42

1 Q. And did you feel like you learned on the
2 job as a board member of Reading?

3 A. As a director?

4 Q. As a director.

5 A. Of course.

01:05:53

6 Q. What's the first big decision that you can
7 remember participating in as a director?

8 A. I don't recall.

9 Q. As -- up to present, are there any other
10 publicly -- public company boards that you've served
11 on? 01:06:33

12 A. I served on Gish Biomedical at one point.

13 Q. Any others?

14 A. Not that I recall.

15 Q. How long -- what time period were you on
16 the board of Gish Biomedical? 01:07:03

17 A. I really can't pinpoint how long I served
18 on the board of Gish.

19 Q. Give me an estimate of what years, roughly,
20 it covered? 01:07:28

21 A. 2004/2005.

22 Q. So approximately a year or two?

23 A. Possibly.

24 Q. How did you come to be on the board of Gish
25 Biomedical? 01:07:47

1 A. I think I was appointed by the Reading
2 board because Reading had an interest in that
3 entity.

4 Q. What was the business of Gish Biomedical?

5 A. Biomedical. 01:07:59

6 Q. Was there some specific field, some
7 specific subspecialty or device that it was involved
8 in?

9 A. I can't recall. I mean, it's been many
10 years. But it was in medical products. 01:08:12

11 Q. And did you attend board meetings for Gish
12 Biomedical?

13 A. I did.

14 Q. Can you remember any of the other board
15 members? 01:08:22

16 A. I can't.

17 Q. And did you attend those meetings in
18 person?

19 A. Some of them.

20 Q. And some by telephone? 01:08:29

21 A. Perhaps, yes.

22 Q. Did you miss any?

23 A. I don't recall. I don't see why I would
24 have.

25 Q. Can you describe for me any major decisions 01:08:37

1 that were made while you were on the board of Gish
2 Biomedical?

3 MR. KRUM: Objection, vague.

4 THE WITNESS: Again, it was so many years
5 ago, I can't recall. 01:08:56

6 BY MR. TAYBACK:

7 Q. Did you have any experience in the
8 biomedical industry at the time that you served on
9 the Gish Biomedical board?

10 A. No. 01:09:04

11 Q. What were you -- what were your
12 qualifications for serving on that board?

13 A. I guess my sole qualification was that the
14 board of Reading appointed me, if I remember
15 correctly. 01:09:18

16 Q. Did you believe that that was an adequate
17 basis for you to undertake your fiduciary duties as
18 a board member of Gish Biomedical?

19 MR. KRUM: Objection insofar as it calls
20 for a legal conclusion. 01:09:30

21 THE WITNESS: Could you repeat the
22 question?

23 BY MR. TAYBACK:

24 Q. Sure.

25 Did you feel at the time that you were 01:09:36

1 appointed to that board that you were qualified to
2 discharge your fiduciary duties as a board member of
3 Gish Biomedical?

4 MR. KRUM: Same objection.

5 THE WITNESS: It's been so many years. I 01:09:47
6 can't recall whether I thought that at the time.

7 BY MR. TAYBACK:

8 Q. Well, as you sit here now, do you remember
9 thinking, wow, I'm on a board and I can't do my
10 fiduciary -- I can't live up to my fiduciary duties? 01:09:58
11 You probably would remember that, I think?

12 A. I mean, look- --

13 MR. KRUM: Same objection.

14 THE WITNESS: Looking back on it, I might
15 not have been the best candidate. 01:10:09

16 BY MR. TAYBACK:

17 Q. And did you say anything to anybody about
18 that?

19 A. Not that I recall, no.

20 Q. But that's a view that you look -- that you 01:10:16
21 have now, looking back on it.

22 You can't recall that you actually had that
23 view at the time?

24 MR. KRUM: Asked and answered.

25 THE WITNESS: I can't recall the view that 01:10:24

1 I had at that time.

2 MR. KRUM: Chris, it's 1:10, so whenever
3 it's convenient, why don't we break for lunch.

4 MR. TAYBACK: Now's good.

5 MR. KRUM: Now's good?

6 MR. TAYBACK: That's fine, yeah.

7 MR. KRUM: Okay.

8 THE VIDEOGRAPHER: This marks the end of
9 media No. 2. Going off the record at 1:10 p.m.

10 (The luncheon recess was taken
11 at 1:10 p.m.)
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1 A. In 2007, the position really was to support
2 my father as chairman. And in 2007, I commenced
3 holding executive management meetings with the
4 executives in Australia and New Zealand, both for
5 the property and cinema operations there, and also 02:11:31
6 executive management meetings at -- with the U.S.
7 cinema team.

8 Met with them twice a week, put together
9 agendas for both meetings. Spoke with executives to
10 figure out what should be put on the agenda in order 02:11:55
11 to move the company forward under the direction of
12 the chairman and CEO of the company.

13 Q. And had you had any experience at all in
14 the cinema or theater business of any sort?

15 A. Well, I had been a director of Reading 02:12:27
16 since 2002.

17 Q. Other than your tenure as a director of
18 Reading, had you had any experience with the --

19 A. No.

20 Q. -- business? 02:12:35

21 Is that also true with respect to your
22 experience at that point in time in -- with respect
23 to real estate, your time as a lawyer and then also
24 your time on the board of Reading? Is that your
25 only experience in the real estate business? 02:12:50

1 A. Well, I had worked on a number of real
2 estate transactions as a corporate lawyer, and I
3 also worked on cinema transaction with Reading as a
4 lawyer. But outside of that, that was predominantly
5 the extent of my experience. 02:13:06

6 Q. How about your experience internationally,
7 that is to say, international business? You were
8 working -- I think you said New Zealand?

9 A. No.

10 Q. I'm sorry. Where did you say that your -- 02:13:17
11 so your responsibilities in 2007 as vice chairman
12 involved some international work; correct?

13 A. Well, starting in 2007, I started
14 conducting weekly meetings with the management team
15 in Australia -- 02:13:31

16 Q. Australia.

17 A. -- and New Zealand.

18 Q. And had you had any experience with
19 business in Australia or New Zealand?

20 A. Outside of my experience as a director, 02:13:41
21 since 2002, no.

22 Q. As vice chairman, were you separately
23 compensated? In other words, were you compensated
24 in addition to the amounts that you were paid for
25 being a board member? 02:13:58