

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

4

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

10

11 IN WITNESS WHEREOF, I have subscribed my  
12 name this 23rd day of May, 2016.

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PATRICIA L. HUBBARD, CSR #3400

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1                                   3.     ***Plaintiff Has Failed to Demonstrate any Lack of Independence of***  
2                                   ***Michael Wrotniak.***

3             Cotter, Jr.'s "evidence" concerning Mr. Wrotniak's purported lack of independence  
4 consists primarily of Cotter, Jr.'s own testimony concerning his sister Margaret's friendship with  
5 Mr. Wrotniak's wife, and Cotter, Jr.'s own suppositions regarding the importance of the  
6 friendship to Margaret. Opposition, p. 6. He further opines that because the Wrotniaks live near  
7 NYC, this makes them "close to" Margaret Cotter. His testimony further discusses his beliefs  
8 about the habits of the Wrotniaks' children. Opposition, p. 7. Even assuming Mr. Cotter's  
9 beliefs and speculations are accurate, none would support a finding of a lack of independence.

10            Cotter, Jr. also presents exhibits in an attempt to show a close relationship. **Cotter, Jr.'s**  
11 **Opposition Appendix, Exhibits 9 - 13.** Once again, the exhibits offer no support to Cotter,  
12 Jr.'s claims.

13                               a.     Plaintiff's Exhibit 9 consists of an email exchange between  
14 Patricia Wrotniak and Margaret Cotter in November 2014, nearly a year prior to Mr. Wrotniak's  
15 joining the board. While Cotter, Jr. contends that the email shows that Margaret provided show  
16 tickets to the Wrotniaks, in fact, it merely shows that she would see if she could get them. There  
17 is no indication that Margaret would pay for the tickets.

18                               b.     Plaintiff's Exhibit 10 shows that in February 2014 (prior to Cotter,  
19 Sr.'s death) Mrs. Wrotniak asked Margaret Cotter for tickets to Stomp for "GSP kids." Further  
20 details in the email indicate that these "kids" were apparently visiting New York for a week, and  
21 were benefiting from Mrs. Wrotniak's efforts to "get other alums involved." Thus, the Stomp  
22 tickets in question were not even for the benefit of the Wrotniaks.

23                               c.     Plaintiff's Exhibits 11 - 13 consist of November and December  
24 2014 email exchanges that apparently indicate that Mr. Wrotniak had asked Margaret to provide  
25 tickets to a show to benefit a charity known as Little Sisters. Despite Cotter, Jr.'s implication to  
26 the contrary, nothing in the emails remotely suggests the tickets were for the Wrotniaks  
27 themselves, or that Mr. Wrotniak and Margaret had anything other than a polite relationship.  
28 Indeed, in each case, the tickets were expressly requested to be held in the name of other people.

1 Cotter, Jr.'s claims that these email exchanges "bear out the compromising relationship"  
2 is nothing short of a blatant falsehood. See Opposition, p. 7.

3 **D. Cotter, Jr. Failed to Show a Lack of Independence in Director Adams.**

4 Cotter Jr.'s contention that RDI or the Independent Defendants have conceded that  
5 Director Adams lacked independence is false. Both the Motion and the Joinder challenged  
6 Cotter, Jr.'s contention, noting that Cotter, Jr. could not show that Mr. Adams materially relied  
7 on any income that was actually within the discretion of Ellen Cotter or Margaret Cotter to give  
8 or withhold. Cotter, Jr. has not presented such evidence in his Opposition. To the contrary,  
9 Cotter, Jr. acknowledges that Adams is entitled to receive 5% of the proceeds of the "four real  
10 estate developments" he manages. Opposition, p. 8. Cotter, Jr. himself acknowledges that the  
11 payments to which Adams will be entitled are substantial. While Plaintiff contends that  
12 Margaret and Ellen "approve" such payments because they are the trustees of his father's estate,  
13 he did not, and cannot, show that they have the discretion to refuse Adams the payments to  
14 which he is entitled.

15 Cotter, Jr.'s attempt to dispute Adams's net worth based on a \$100,000 swing does not  
16 help his position. Opposition, p. 9. Notwithstanding what Plaintiff may determine to be  
17 necessary to meet his own life style needs, \$900,000.00 is a lot of money and there is no  
18 indication it is insufficient to meet Mr. Adams's needs. Further, Cotter, Jr.'s morbid arguments  
19 regarding Mr. Adams's presumed life expectancy actually reveals the *lack* of materiality of the  
20 income Mr. Adams receives from the non-RDI Cotter family entities based on the contracts that  
21 predate Cotter, Sr.'s death. A director cannot be deemed to lack independence or to have a  
22 motive for entrenchment on the basis of the director fees received from the corporation.  
23 *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 891 A.2d 150, 175 (Del. Ch. 2005), *aff'd*, 906 A.2d  
24 114 (Del. 2006). Cotter, Jr.'s arguments simply fail.

25 ///

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CONCLUSION

Cotter, Jr. failed to present evidence sufficient to show that Directors Adams, Coddington, Kane, McEachern, or Wrotniak had or have such material significant personal or financial relationships with the Cotter sisters that they would not exercise independent judgment with respect to decisions involving the Cotter siblings. This Court should not allow this litigation wrought by nothing more than petulance and resentment to continue. RDI is entitled to summary judgment as to any claims premised on the purported lack of independence of its Directors.

DATED: this 21<sup>st</sup> day of October, 2016.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario

MARK E. FERRARIO, ESQ.

(NV Bar No. 1625)

KARA B. HENDRICKS, ESQ.

(NV Bar No. 7743)

TAMI D. COWDEN, ESQ.

(NV Bar No. 8994)

3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169

*Counsel for Reading International, Inc.*



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

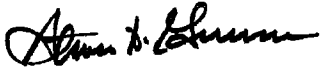
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing *Reading International, Inc.'s Reply to the Individual Defendants' Motion for Summary Judgment No. 2 Re the Issue of Director Independence* to be filed and served via the Court's Wiznet E-Filing system on all registered and active parties. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED: this 21<sup>st</sup> day of October, 2016.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP



CLERK OF THE COURT

**RIS**  
MARK E. FERRARIO, ESQ.  
(NV Bar No. 1625)  
KARA B. HENDRICKS, ESQ.  
(NV Bar No. 7743)  
TAMI D. COWDEN, ESQ.  
(NV Bar No. 8994)  
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
Email: ferrario@gtlaw.com  
hendricksk@gtlaw.com  
cowdent@gtlaw.com

*Counsel for Reading International, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL, INC., a  
Nevada Corporation,

Nominal Defendant.

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

**Coordinated with:**

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

Case No. A-16-735305-B  
Dept. XI

**READING INTERNATIONAL, INC.'S  
REPLY IN SUPPORT OF  
DEFENDANT WILLIAM GOULD'S  
MOTION FOR SUMMARY  
JUDGMENT**

**Date of Hearing: October 27, 2016**  
**Time: 1:00 p.m.**

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

1 READING INTERNATIONAL, INC. ("RDI" or "Company") hereby submits this *Reply*  
2 *in Support of William Gould's Motion for Summary Judgment and RDI's Joinder thereto*. In  
3 addition to joining the arguments advanced on behalf of Gould in his Motion, RDI requests  
4 judgment in its favor for the reasons set forth in the attached memorandum of points and  
5 authorities, and based on the pleadings and papers filed in this action, and any oral argument of  
6 counsel made at the time of the hearing.

7 DATED: this 21<sup>st</sup> day of October, 2016.

8 GREENBERG TRAURIG, LLP

9  
10 /s/ Mark E. Ferrario  
11 MARK E. FERRARIO, ESQ.  
12 (NV Bar No. 1625)  
13 KARA B. HENDRICKS, ESQ.  
14 (NV Bar No. 7743)  
15 TAMI D. COWDEN, ESQ.  
16 (NV Bar No. 8994)  
17 *Counsel for Reading International, Inc.*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 The introductory section of Plaintiff's Opposition to Gould's Motion for Summary  
20 Judgment reads much like his Oppositions to the summary judgment motions filed by Directors  
21 Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Coddington  
22 and Michael Wrotniak (collectively "Individual Defendants"). Plaintiff's strategy appears to be  
23 to avoid the specific allegations in his own complaint and the specific issues in which summary  
24 judgment is sought and throw random facts and law at the Court in hopes of manufacturing an  
25 issue that may defeat summary judgment. However, to move forward against Director Gould,  
26 Plaintiff must present evidence in support of his claims and meet the requisite legal standard.  
27 Here, there are no facts that support any breach of fiduciary duty claim against Gould.

28 Because Plaintiff is unable to meet the standard, the Opposition sets forth unsupported  
theories that Gould collaborated in an ongoing entrenchment scheme. Glaringly absent from the  
Opposition, however, are allegations that you would typically see in an entrenchment case.

1 Cotter, Jr. has provided no evidence (and none exists) of any of the measures normally  
2 associated with improper entrenchment, such as sudden amendments to the bylaws or articles,  
3 adoption of poison pill measures, modification of annual meeting procedures, rejection of board  
4 nominees who were willing to serve, or rejection of proposed board nominees by stockholders to  
5 replace board candidates. What is more, there is no evidence of any adoption of golden  
6 parachute measures for any directors. The discreet issues raised by Plaintiff certainly do not rise  
7 to a level of entrenchment.

8 Plaintiff has not come forward with facts or law to support his claims against Gould and  
9 thus summary judgment is warranted.

#### 10 LEGAL ARGUMENT

11 The summary judgment motion filed by Gould lacks evidence to support Plaintiff's  
12 claims against Gould in the Second Amended Complaint ("SAC"). After the filing of Gould's  
13 Motion, Cotter, Jr. was obligated to present admissible evidence to show that there are material  
14 issues of fact preventing summary judgment, or summary judgment must be granted. *Cuzze v.*  
15 *Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007).  
16 Additionally, because a plaintiff is required to prove each element of his cause of action, if any  
17 element cannot be proven by admissible evidence, then summary judgment is proper. *Bulbman,*  
18 *Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). Plaintiff did not meet his  
19 burden.

20 In an attempt to side-step the summary judgment requirements, Plaintiff argues that the  
21 allegations in the SAC do not stand alone and "must be viewed and assessed collectively."  
22 Opposition, p. 11. However, Rule 56 itself makes clear that partial summary judgments are  
23 entirely proper to limit and define the issues to be decided by a jury. Specifically, NRCP 56  
24 states, in pertinent part:

25 A party against whom a claim, counterclaim, or cross-claim is asserted or a  
26 declaratory judgment is sought may, at any time, move with or without  
27 supporting affidavits for a summary judgment in the party's favor *as to all or*  
28 *any part thereof.*

1 NRCP 56(b) (emphasis added). Furthermore, the rule provides that where judgment is not  
2 granted in its entirety, the District Court should "make an order specifying the facts that appear  
3 without substantial controversy." NRCP 56(d).

4 Here, there is ample basis to narrow (if not eliminate) the issues that go to trial relating to  
5 Director Gould. Specifically the Court can make findings and issue summary judgment on the  
6 following: 1) Gould did not breach his fiduciary duty relating to the termination of Cotter, Jr.; 2)  
7 RDI's use of the Executive Committee is supported by law; 3) the appointment of Coddington and  
8 Wrotniak to RDI's Board was proper; 4) the search for a new CEO of RDI and Ellen Cotter's  
9 appointment to the CEO position was appropriate; and 5) compensation of RDI's executives and  
10 Board members warranted. As there are minimal arguments in the Opposition that were not  
11 argued by Plaintiff in relation to the summary judgment motions filed by the Individual  
12 Defendants (which RDI joined), RDI adopts by reference the motions and replies thereto.<sup>1</sup>

13 In an attempt to create a claim, Plaintiff's statement of facts refers to purported "untimely  
14 emails" and Gould's correspondence with other directors prior to Cotter, Jr.'s termination. Such  
15 references do not support a breach of fiduciary duty claim. Similarly, Cotter Jr.'s twisting of the  
16 evidence relating to RDI's disclosures and accusations that Gould was "collaborator" in wrong  
17 doing are not supported by the record and do not support a breach of fiduciary duty claim.

18 Cotter, Jr., bears the burden of proof that there was in fact a breach of fiduciary duty. In  
19 proving this, the burden is on the plaintiff to overcome the Nevada business judgment rule  
20 presumption set forth in NRS 78.138(1). Nevada does not recognize any shifting of this burden  
21 of proof, other than in the case of NRS 78.140(2)(d). However, NRS 78.140 does not establish  
22

23 <sup>1</sup> Specifically, RDI adopts and incorporates by reference: 1) the arguments set forth in the Individual Defendants'  
24 Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims and RDI's Joinder  
25 thereto; 2) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 2) Re:  
26 Director Independence and RDI's Joinder thereto; 3) the arguments set forth in the Individual Defendants' Motion  
27 for Summary Judgment (No. 3) Re: the Unsolicited Expression of Interest and RDI's Joinder thereto; 4) the  
28 arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 4) Re: RDI's Executive  
Committee and RDI's Joinder thereto; 5) the arguments set forth in the Individual Defendants' Motion for Summary  
Judgment (No. 5) Re: the CEO Search and Ellen Cotter's appointment to CEO and RDI's Joinder thereto; and 6) the  
arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 6) Re: the Estate's Option  
Exercise and other issues and RDI's Joinder thereto.

1 any grounds for liability on the part of directors, only for the avoidance under certain  
2 circumstances of the contract or transaction under review. On the other hand, NRS 78.138(7)  
3 provides that there is no director liability unless **it is proven that**, the breach of the directors  
4 fiduciary duties “involved intentional misconduct, fraud or a knowing violation of law.” Even  
5 taking Cotter, Jr.’s accusations in the Opposition at face value, Gould cannot be said to have  
6 acted fraudulently, knowingly violating the law or being involved in intentional misconduct.

7 It is unfortunately that Plaintiff is using this case to pursue a personal vendetta against the  
8 Directors that voted to terminate his employment with RDI. Gould did not vote to terminate  
9 Plaintiff and has demonstrated his independence as a Director of the Company. Nothing in the  
10 Opposition provides a basis for the Court to conclude otherwise.

11 WHEREFORE, RDI respectfully requests that Gould’s summary judgment be granted  
12 and that to the extent that allegations against Gould in the SAC are imputed against RDI, that  
13 summary judgment be entered in RDI’s favor.

14 DATED: this 21<sup>st</sup> day of October, 2016.

15 GREENBERG TRAURIG, LLP

16  
17 /s/ Mark E. Ferrario  
18 MARK E. FERRARIO, ESQ.  
19 (NV Bar No. 1625)  
20 KARA B. HENDRICKS, ESQ.  
21 (NV Bar No. 7743)  
22 TAMI D. COWDEN, ESQ.  
23 (NV Bar No. 8994)  
24 Counsel for Reading International, Inc.  
25  
26  
27  
28

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

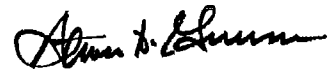
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of *Reading International, Inc.'s Reply in Support of Defendant William Gould's Motion for Summary Judgment* to be filed and served via the Court's Wiznet E-Filing system on all registered and active parties. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 21<sup>st</sup> day of October, 2016.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP



CLERK OF THE COURT

1 Donald A. Lattin (NV SBN. 693)  
dlattin@mclrenolaw.com  
2 Carolyn K. Renner (NV SBN. 9164)  
crenner@mclrenolaw.com  
3 MAUPIN, COX & LEGOY  
4 4785 Caughlin Parkway  
Reno, Nevada 89519  
Telephone: (775) 827-2000  
5 Facsimile: (775) 827-2185  
6 Ekwan E. Rhow (*admitted pro hac vice*)  
eer@birdmarella.com  
7 Hernán D. Vera (*admitted pro hac vice*)  
hvera@birdmarella.com  
8 Shoshana E. Bennett (*admitted pro hac vice*)  
sbennett@birdmarella.com  
9 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,  
DROOKS, LINCENBERG & RHOW, P.C.  
10 1875 Century Park East, 23rd Floor  
Los Angeles, California 90067-2561  
11 Telephone: (310) 201-2100  
Facsimile: (310) 201-2110

12 Attorneys for Defendant William Gould  
13

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**  
16

17 JAMES J. COTTER, JR.,  
18 Plaintiff,  
19 vs.  
20 MARGARET COTTER, et al.,  
21 Defendant.

22 READING INTERNATIONAL, INC.,  
23  
24 Nominal Defendant.  
25  
26

CASE NO. A-15-719860-B

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

*[Filed concurrently with Declaration of  
Shoshana E. Bennett]*

Hearing Date: October 27, 2016  
Hearing Time: 1:00 P.M.

Assigned to Hon. Elizabeth Gonzalez,  
Dept. XI

Trial Date: November 14, 2016



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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Relying on more than 700 pages of documents and testimony, Defendant William Gould's  
4 Motion for Summary Judgment ("Opening Brief") walked through the evidence in this case and  
5 showed that there are no genuine issues of material fact that would allow a factfinder to reasonably  
6 conclude that Gould breached any fiduciary duties, let alone acted with the requisite mindset of  
7 intentional misconduct, fraud, or knowing violation of law. The undisputed evidence shows that  
8 Gould, the only defendant-director who voted against the termination of Plaintiff James J. Cotter,  
9 Jr. ("Plaintiff" or "Cotter, Jr.")—and whom everyone agrees is independent and disinterested—  
10 made his decisions based on what Gould thought was best for Reading and its stockholders,  
11 regardless of how that decision impacted the long-running battle between Plaintiff and his sisters  
12 over control of Reading.

13 In response, Plaintiff filed a brief that closely resembles an opposition to a motion to  
14 dismiss. Almost across the board, Plaintiff simply repeats the unsubstantiated allegations of his  
15 Second Amended Complaint. But Plaintiff can no longer rely on the allegations in his complaint.  
16 To defeat summary judgment, Plaintiff must verify his allegations with admissible evidence  
17 demonstrating that there is a genuine issue of material fact. Plaintiff has utterly failed to do that  
18 here.

19 Indeed, even the scant 70 pages of evidence Plaintiff relies on reflect grossly  
20 mischaracterized testimony and/or fail to support the few propositions for which Plaintiff provides  
21 evidentiary citations. Plaintiff has essentially abandoned contesting the evidence. Instead, he  
22 focuses most of his efforts on a few overarching legal arguments that he contends undermine  
23 Gould's Motion for Summary Judgment. But Plaintiff's legal arguments have already been  
24 soundly refuted by courts.

25 *First*, because he cannot show that Gould acted with intentional misconduct, fraud, or  
26 a knowing violation of law, Plaintiff claims he does not have to. Based on Delaware law, Plaintiff  
27 argues that Nevada's exculpatory provision (which requires Plaintiff show Gould acted with  
28 intentional misconduct, fraud, or a knowing violation of law) is not applicable here because it does

1 not apply to breach of duty of loyalty claims or claims for non-monetary damages. But the  
2 Nevada Supreme Court has already applied the exculpatory provision to both types of claims.  
3 Plaintiff therefore cannot avoid the exculpatory provision, and as discussed in Gould's Opening  
4 Brief, he cannot meet its strictures as to Gould, who always tried to make the best possible  
5 decision for Reading and its stockholders.

6 *Second*, in a misguided attempt to survive summary judgment just by muddying the waters,  
7 Plaintiff argues that the Court cannot separately consider each of the alleged breach of duty claims  
8 because Plaintiff alleges that all of the actions were part of a continuing course of conduct taken  
9 for entrenchment purposes. But the very cases he relies on make clear that even where  
10 a continuing course of conduct taken for entrenchment purposes is alleged, courts still separately  
11 analyze each separate allegedly wrongful act. As discussed in Gould's Opening Brief, none of  
12 Plaintiff's claims can survive such separate analysis because the actual facts demonstrate that  
13 Gould acted consistently with his fiduciary obligations.

14 Moreover, Plaintiff's argument that Gould participated in a continuing course of wrongful  
15 conduct for entrenchment purposes that *began with Plaintiff's termination* is wholly illogical. As  
16 noted, unlike the other director-defendants, Gould voted *against* Plaintiff's termination. Plaintiff  
17 appears to be upset that Gould subsequently, when in Gould's view appropriate and in the best  
18 interest of Reading, sometimes voted the same way as Plaintiff's sisters. But voting in a different  
19 manner than Plaintiff does not mean that Gould is participating in his sisters' alleged scheme.  
20 Plaintiff's case is not based on any facts about Gould's decision making; it is based on what  
21 Plaintiff views as effective strategy in his war with his sisters. Indeed, Plaintiff himself cannot  
22 decide when Gould supposedly joined this alleged conspiracy. On one page of his brief, he claims  
23 that Gould joined the conspiracy in April 2015. Opp. at 2. On the very next page, he alleges that  
24 "Gould's sad role as collaborator" did not begin until June 18, 2015. Opp. at 3. In the very next  
25 sentence, Plaintiff contends that "Gould's role as collaborator . . . began soon thereafter." *Id.* Of  
26 course, even though he does not know whether or when Gould joined this alleged conspiracy,  
27 Plaintiff still sues Gould for various breaches of fiduciary duty throughout this period. Plaintiff's  
28 inconsistency cuts to the heart of the matter. Plaintiff does not know when Gould joined this

1 purported conspiracy, because Gould never did. To the contrary, every independent person who  
2 has looked at Gould's actions, including Plaintiff's own expert, minority shareholders, and  
3 Reading's contact from the CEO search firm, has concluded that Gould made decisions based on  
4 the merits of the issue at hand and that he did his best to make the best decisions for Reading  
5 under challenging circumstances. Plaintiff has presented no admissible evidence to the contrary  
6 and as such, summary judgment should be granted.

## 7 **II. ARGUMENT**

### 8 **A. Plaintiff's Overarching Legal Arguments Are Specious.**

#### 9 **1. The Court Must Analyze Each Alleged Breach Of Duty Separately,** 10 **Regardless Of Whether Plaintiff Has Alleged "Entrenchment" Motives.**

11 In his Opening Brief, Gould separately analyzed each of Plaintiff's allegations that Gould  
12 breached his fiduciary duty and demonstrated that the undisputed material facts relevant to each  
13 alleged breach establish that Plaintiff cannot prevail on any of his claims. Rather than take this on,  
14 Plaintiff pivots in an effort to escape the analysis altogether. He now argues that the motion for  
15 summary judgment should be denied because Plaintiff does not allege a series of unrelated  
16 fiduciary breaches, but an ongoing course of self-dealing undertaken for entrenchment purposes  
17 and all of the actions must be assessed collectively. Opp. at 1, 10-11. This is both legally and  
18 factually wrong.

19 *First*, there is no legal basis for Plaintiff's argument. The cases he relies upon actually  
20 *refute* his argument. For example, Plaintiff relies on *In re Ebix, Inc. Stockholder Litigation*, 2016  
21 WL 208402, at \*1, 5 (Del. Ch., Jan. 15, 2016) and claims that the court there rejected the  
22 contention that bylaw amendments should be viewed individually, rather than collectively. Opp.  
23 at 11. But in *Ebix*, the plaintiffs alleged that the director-defendants took a whole series of  
24 wrongful corporate actions, including the execution of a credit agreement containing a proxy put,  
25 entry into a director nomination agreement, and the unilateral adoption of "a bundle of bylaws."  
26 *Id.* Despite similar allegations that it was a course of conduct undertaken for entrenchment  
27 purposes, the court looked separately at each of the actions that the plaintiffs contended were  
28 undertaken for entrenchment purposes. *Id.* at 16-21. And the court reached different results for

1 the different transactions—despite an entrenchment argument made to the whole series of  
2 transactions. Specifically, the court held that plaintiffs failed to state a claim with respect to the  
3 director nomination agreement, but did state a claim with respect to the bylaw agreements. *Id.*  
4 Contrary to Plaintiff's suggestion, the only reason the various bylaw amendments were considered  
5 together is because they were all enacted on the same day. *Id.* Plaintiff's entrenchment argument  
6 cannot be squared with *Ebix*.<sup>1</sup>

7 Moreover, Plaintiff clearly knows that his argument is invalid and that breaches of duty  
8 can and must be individually analyzed, because Plaintiff himself filed a motion for partial  
9 summary judgment against Gould based on breach of duty with respect to Plaintiff's termination  
10 (even though Gould voted against his termination). If, as Plaintiff now suggests when he is  
11 struggling to respond to Gould's motion, it is not possible to parse out each of the claims  
12 separately whenever there is an entrenchment motive alleged, there would be no basis for Plaintiff  
13 to file his motion for partial summary judgment. Plaintiff's theory is legally unsound. As in  
14 *Ebix*, this Court should separately analyze each claim for breach of fiduciary duty and determine  
15 whether Gould made a decision based on rational business purposes. See *Sinclair Oil Corp v.*  
16 *Levien*, 280 A.2d 717, 720 (Del. 1971) (A director's "decisions should not be disturbed if they can  
17 be attributed to any rational business purpose.").<sup>2</sup>

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18  
19 <sup>1</sup> Plaintiff also relies on a case stating that allegations about independence can be considered  
20 together, even if the various factors on their own would not show a lack of independence. *Cal.*  
21 *Pub. Emps. Ret. Sys. v. Coulter*, 2002 WL 31888343, at \*9 (Del. Ch., Dec. 18, 2002). This does  
22 not show that breaches of fiduciary duty claims should not be separately analyzed as distinct  
23 claims. Plaintiff relies on *Chrysogelos, v. London*, where, unlike here, the plaintiffs alleged a  
24 separate count for entrenchment. *Chrysogelos v. London*, 1992 WL 58516, at \*4 (Del. Ch., Mar.  
25 25, 1992). Unlike with Gould, the defendants there were in essence *controlling* shareholders. *Id.*  
26 at \*1. And the entrenchment motives were focused on maintaining control of the company with  
27 the ability to appoint board members, not merely hanging on to one's own board seat. *Id.* at \*1, 9.  
28 The only transactions analyzed together directly impacted the ability of an outside party to take  
over the company. *Id.* That says nothing about whether a court must collectively analyze a year  
of ordinary corporate matters such as making SEC filings, forming committees, appointing  
directors and approving executive compensation in a situation where control of the company is not  
at stake for the defendant. And Plaintiff's sole remaining case on this point deals only with a  
single transaction and is also inapposite. *Carmody v. Toll Brothers, Inc.*, 723 A.2d 1180 (Del. Ch.  
1992).

<sup>2</sup> Plaintiff also argues generally that the business judgment rule is not the correct standard to  
apply, because Adams and Kane were not independent and disinterested. Under Nevada law,

1        *Second*, even if there were any legal significance to Plaintiff's claim of entrenchment  
2 motives (and there is not), there is no factual basis for Plaintiff's claims as to Gould. While  
3 Plaintiff *alleges* in his brief that Gould acted under entrenchment motives, he does not cite any  
4 actual *evidence* that Gould had entrenchment motives. And, as Gould explained in his opening  
5 brief, there were legitimate business reasons for each action Gould took, and in each case, he  
6 believed he was acting in the best interests of the Company. Plaintiff does not provide any  
7 evidence that could explain why Gould—who both spoke out against and voted against Plaintiff's  
8 termination—would suddenly, the very same day of the termination vote—start acting out of  
9 entrenchment motives in approving the reconstitution of the Executive Committee. Indeed, the  
10 evidence in the case (as opposed to Plaintiff's allegations) shows that Gould had no particular  
11 desire to remain on the Board such that he would abandon his fiduciary duties. After all, Gould  
12 had already stepped down from the RDI Board once before, and he had to be recruited to come  
13 back. Mot. at 1; Ex. 49 at 15:1-8. And Plaintiff does not and cannot show that Gould had any  
14 financial reasons that he needed to stay on the Board. See Opp. at 10-11. This is not a motion to  
15 dismiss, and it is no longer sufficient to just say that Gould acted for entrenchment purposes.  
16 Because Plaintiff cannot point to any *evidence* that Gould acted for entrenchment purposes, for  
17 factual reasons, as well as legal reasons, his entrenchment argument cannot save his breach of  
18 fiduciary duty claims against Gould.  
19  
20  
21  
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23

24        there is a presumption that the business judgment rule applies. See Mot. at 14-15. As discussed  
25 below, Plaintiff provides no *evidence* that Adams and Kane were not independent and  
26 disinterested, and therefore, he has not rebutted the presumption that the business judgment rule  
27 applies. See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134  
28 (2007) (“[I]n order to defeat summary judgment, the nonmoving party must transcend the  
pleadings and, by affidavit or other admissible evidence, introduce specific fact that show a  
genuine issue of material fact.”). In any event, as discussed in the Opening Brief, the evidence  
shows that Kane is independent and disinterested. Mot. at 19, n.11.



1                   **2. Nevada's Exculpatory Statute Applies To All Breach Of Fiduciary**  
2                   **Duty Claims, Including Breaches Of The Duty Of Loyalty.**

3           Gould's Opening Brief made it very clear that there is simply *no* evidence that he acted  
4 with intentional misconduct, fraud, or a knowing violation of law—a necessary element to  
5 establish individual liability. So Plaintiff tries to argue that Nevada's exculpatory statute does not  
6 apply to breach of duty of loyalty claims in order to avoid to avoid the issue altogether. The  
7 Nevada Supreme Court, however, has explicitly rejected Plaintiff's argument. The Nevada  
8 Supreme Court held that to hold "a director or officer individually liable, the shareholder must  
9 prove that the director's breach of his or her fiduciary duty of loyalty involved intentional  
10 misconduct, fraud or a knowing violation of law." *In re Amerco Derivative Litig.*, 252 P.3d 681,  
11 701 (Nev. 2011) (dismissing claim that directors knowingly signed misleading and incomplete  
12 public filings because Plaintiffs did not demonstrate that respondents "engaged in intentional  
13 misconduct or fraud").

14           Plaintiff ignores this binding precedent cited in Gould's Opening Brief in favor of several  
15 Delaware cases. Opp. at 27. These Delaware cases have no precedential or persuasive value  
16 where, as here, they contradict a Nevada Supreme Court decision. Moreover, the Delaware case  
17 law is all based on the Delaware exculpatory statute. Unlike the Nevada exculpatory statute,  
18 however, the Delaware statute explicitly states that it does not apply to the duty of loyalty.

19           Specifically, Delaware's exculpatory provision, provides

20                   A provision eliminating or limiting the personal liability of  
21                   a director to the corporation or its stockholders for monetary  
22                   damages for breach of fiduciary duty as a director, provided that  
23                   such provision shall not eliminate or limit the liability of a director:  
24                   (i) *For any breach of the director's duty of loyalty* to the corporation  
25                   or its stockholders.

26           8 Del. Code § 102(b)(7) (emphasis added). Nevada's statute, by contrast does not contain such  
27 a limitation:

28                   Except as otherwise provided in NRS 35.230, 90.660, 91.250,  
                      452.200, 452.270, 668.045 and 694A.030, or unless the articles of  
                      incorporation or an amendment thereto, in each case filed on or after  
                      October 1, 2003, provide for greater individual liability, a director or  
                      officer is not individually liable to the corporation or its

1 stockholders or creditors for any damages as a result of any act or  
2 failure to act in his or her capacity as a director or officer unless it is  
3 proven that:

4 (a) The director's or officer's act or failure to act constituted  
5 a breach of his or her fiduciary duties as a director or officer; and

6 (b) The breach of those duties involved intentional misconduct,  
7 fraud or a knowing violation of law.

8 Nev. Rev. Stat. § 78.138(7). Section 78.138(7) has specifically enumerated exceptions. None of  
9 these exceptions is a breach of the duty of loyalty. The Delaware cases are simply inapplicable  
10 here.

11 Plaintiff's argument is especially disingenuous given that his own expert in this case  
12 confirmed that Nevada law differs from Delaware law in allowing its exculpatory provisions to be  
13 used in breach of duty of loyalty cases: "Nevada allows exculpation for a breach of the duty of  
14 loyalty. Delaware does not." Ex. 52 at 8:9-11.

15 In short, Nevada's exculpatory statute applies to Plaintiff's claims based on an alleged  
16 breach of the duty of loyalty. As discussed in Gould's Opening Brief and below, Plaintiff cannot  
17 establish any of his claims for breach of fiduciary duty because there is no evidence that Gould  
18 acted with intentional misconduct, fraud, or a knowing violation of the law.

19 **3. Nevada's Exculpatory Statute Applies To All Breach Of Fiduciary**  
20 **Duty Claims, Even Those Not Seeking Monetary Damages.**

21 Plaintiff also relies on yet another strained and misguided argument about Nevada's  
22 exculpatory statute in his efforts to avoid the "intentional misconduct, fraud, or knowing violation  
23 of law" standard. But again, his argument is based exclusively on the narrower Delaware  
24 exculpatory provision. In particular, Plaintiff contends that the Nev. Rev. Stat. § 78.138(7) applies  
25 only to monetary damages and not other types of harm to the company.<sup>3</sup> But the Delaware case  
26 that he relies on is based on a Delaware provision, which specifies that it applies only to  
27 "monetary damages." 8 Del. Code § 102(b)(7) ("A provision eliminating or limiting the personal  
28 liability of a director to the corporation or its stockholders for *monetary damages* for breach of

<sup>3</sup> This is also a strange argument because Plaintiff is seeking monetary damages.

1 fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of  
2 a director . . . for acts or omissions not in good faith or which involve intentional misconduct or  
3 a knowing violation of law.”). By contrast, the Nevada statute states that directors are not  
4 individually liable for “any damages.” Nev. Rev. Stat. § 78.138(7).

5 And of course, damages are a required element of a claim for breach of fiduciary duty  
6 under Nevada law. *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D.  
7 Nev. 2009). Because damages are a necessary element of a breach of fiduciary duty claim, and  
8 Nevada’s exculpatory provision applies to “any damages,” the exculpatory provision necessarily  
9 applies to all kinds of damages, not just monetary damages. *See Amerco*, 252 P.3d at 701  
10 (applying Nev. Rev. Stat. § 78.138(7)’s exculpatory provision to claims which requested  
11 injunctive relief). Plaintiff cannot escape the Nevada exculpatory statute here.

12 Moreover, the fact that Plaintiff has so contorted himself trying to avoid the exculpatory  
13 provision—ignoring both Nevada Supreme Court authority cited in Gould’s Opening Brief and his  
14 own expert—demonstrates that he has no ability to *show* that Gould acted with intentional  
15 misconduct, fraud, or a knowing violation of law. As discussed in Gould’s Opening Brief,  
16 Plaintiff’s inability to do so entitles Gould to summary judgment on each one of Plaintiff’s claims.

17 **B. Plaintiff Does Not And Cannot Point To Any Genuine Issues Of Material Fact.**

18 Plaintiff makes a half-hearted attempt to discuss the merits of some of the claims discussed  
19 in Gould’s Opening Brief. As discussed below, he simply cannot show a genuine issue of material  
20 fact with respect to any alleged breach of fiduciary duty, and this is yet another basis to grant  
21 Gould’s Motion for Summary Judgment.

22 **1. Plaintiff Does Not Explain How Gould Could Have Breached Any**  
23 **Fiduciary Duties In Connection With His Termination When Gould**  
24 **Voted Against Plaintiff’s Termination.**

25 It is truly bizarre that Plaintiff continues to pursue claims against Gould related to his  
26 termination when Plaintiff concedes that Gould voted against Plaintiff’s termination. Plaintiff’s  
27 Opposition to Individual Defendant’s Motion for Partial Summary Judgment No. 1 (Plaintiff’s  
28 Termination) at 6. The law is clear: Plaintiff cannot show that Gould breached any fiduciary

1 duties with respect to Plaintiff's termination when Gould did not vote for termination. See *In*  
2 *re Tri-Star Pictures, Inc., Litig.*, 1995 WL 106520, at \*2 (Del. Ch. Mar. 9, 1995) (refusing to hold  
3 directors liable for board decisions, where they abstained from the voting process related to a  
4 challenged board action); *In Re Wheelabrator Technologies, Inc., Shareholders Litigation*, 1992  
5 WL 212595, at \*10 (Del. Ch. Sept. 1, 1992) (same); *Citron v. E.I. du Pont de Nemours & Co.*, 584  
6 A.2d 490, 499 (Del.Ch. 1990) (same). See also Gould's Opposition to Plaintiff's Motion for  
7 Partial Summary Judgment.

8 Plaintiff now argues that Gould had advance warning from Adams "of what was afoot"  
9 and failed to take action to preserve the ombudsman process "as part of a scheme to threaten  
10 Plaintiff with termination, and if the threats failed, to terminate him." Opp. at 21.<sup>4</sup> This makes no  
11 sense. Plaintiff concedes that Gould wanted the ombudsman process to continue, spoke out  
12 against termination, and voted against termination. Plaintiff's Opposition to Individual  
13 Defendants MPSJ No. 1 (Plaintiff's Termination) at 7, 17, & n.2. Speaking out and voting against  
14 termination *were* actions to preserve the ombudsman process. And if Gould was truly "part of  
15 a scheme to threaten Plaintiff with termination and if the threats failed, to terminate him," Gould  
16 would have just voted to terminate him. There is absolutely no factual basis for Plaintiff's  
17 convoluted conspiracy theory to try and hold Gould liable for Plaintiff's termination. This is  
18 a straightforward matter. Gould voted against termination, and, as a result, he cannot be held  
19 liable for it.<sup>5</sup>

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21 <sup>4</sup> Plaintiff's claim that Gould had advance notice of a "scheme to seize control [of] RDI" is not  
22 supported by the *evidence*. Gould did not know that the Board was considering terminating Cotter  
23 as CEO, until Ellen Cotter circulated an agenda for the May 21, 2015 Board Meeting that read  
24 "Status of President and C.E.O." Ex. 6 at 30; Ex. 35 at 171:22-172:25. Plaintiff relies exclusively  
25 on a purported conversation in which Adams stated only that Adams himself had given up on  
26 Plaintiff—Adams did not say anything about what anyone else was thinking or doing. At that  
time, Gould told Adams that he disagreed and thought Plaintiff should be given more time.  
Appendix to Plaintiff's Opposition to Gould's MSJ at Ex. 1, 83:12-90:10. Knowing that Adams  
had given up on Plaintiff did not give Gould any notice of what anyone else on the Board thought  
or planned to do.

27 <sup>5</sup> Plaintiff argues in a fact section that Gould knowingly approved misleading minutes from the  
28 meetings discussing his termination. Opp. at 5. The relevance of this discussion (which appears  
in a section on the CEO search) is unclear. Moreover, Plaintiff's assertion is not supported by the  
evidence. Plaintiff argues that Plaintiff objected to the minutes and said that they were a dishonest

1                   2.     **The Undisputed Facts Establish That Gould Did Not Breach Any**  
2                               **Fiduciary Duty With Respect To The Reconstitution Of The Executive**  
3                               **Committee.**

4             Plaintiff argues that the reconstitution of the Executive Committee was a breach of duty  
5 because it excluded directors from decision making. Opp. at 25-26. Although his Opposition  
6 does not specify which directors were excluded, Plaintiff's complaint alleges that the purpose of  
7 reconstituting the executive committee was to limit the participation of Gould, Storey, and  
8 Plaintiff in Reading's corporate governance. SAC ¶¶ 99, 183(c). Plaintiff does not cite to even  
9 a single piece of *evidence* to prove that this was the purpose for reconstituting the Executive  
10 Committee—he just relies on unsupported assertions of his litigation position. Opp at 3, 25-26  
11 (fact and argument section discussing Executive Committee). As Gould pointed out in his  
12 Opening Brief, Plaintiff's theory is controverted by the evidence that Gould was, in fact, asked to  
13 serve on the Executive Committee. He turned it down because he did not have enough time. Mot.  
14 at 16.<sup>6</sup> Plaintiff does not dispute this fact. Opp at 3, 25-26. Because Gould was asked to serve on

15 \_\_\_\_\_  
16 fiction. Opp. at 5. He contends that *Storey* abstained from approving the minutes, and that *Storey*  
17 testified that he viewed the minutes as "materially inaccurate," and that it "would have taken him  
18 hours to correct them." *Id.* First, the evidence Plaintiff relies on actually demonstrates that *Storey*  
19 never said that he viewed the minutes as materially inaccurate nor stated that it would take hours  
20 to correct them. Appendix of Exhibit in Support of Plaintiff's Opposition to Gould's Motion for  
21 Summary Judgment, Ex. 5. Rather, he stated that the minutes were circulated months later and  
22 were quite long, and it would have been difficult to make any kind of meaningful comment around  
23 changing them. *Id.* He did not say that any changes would have been material. *Id.* Nor did he  
24 say that he communicated these thoughts to anyone. *Id.* *Storey* did not vote *against* approving the  
25 minutes, as one would expect, if he viewed them to be materially inaccurate. *Id.* He merely  
26 abstained. *Id.* From *Storey's* view and Plaintiff's own view, Plaintiff somehow concludes that  
27 *Gould* understood that the minutes were false and purposefully so, but voted to approve them  
28 anyway. But *Gould* testified that while he was aware that Plaintiff had taken issue with the  
accuracy of the minutes, he did not recall some of the things that *Cotter, Jr.* referred to. While he  
did recall some of the other specifics that *Cotter, Jr.* referred to, he felt that the minutes, as drafted,  
substantially reflected what had occurred. Ex. 50 at 474:14-475:13. Corporate governance expert  
Dr. Albert Osborne opined that Board Minutes are not a word-for-word recitation of what was  
stated, but rather intended to generally reflect the discussion and decisions that occurred. As  
a result, Osborne concluded that *Gould's* approval of the Board Minutes here was consistent with  
the care and diligence one would expect from a director. Ex. 30 at 448-449 ¶ C(a). There is no  
contrary expert opinion on custom and practice with respect to Board Minutes.

<sup>6</sup> Citations to "Mot." refer to *Gould's* Motion for Summary Judgment. Citations to "Opp." refer  
to Plaintiff's Opposition to *Gould's* Motion for Summary Judgment. Citations to "Ex." refer to  
the Exhibits to the Appendix In Support of *Gould's* Motion for Summary Judgment or to the  
attached Declaration of Shoshana E. Barnett in Support of *Gould's* Reply In Support of Motion

1 the Executive Committee, it is clear that the purpose was not to exclude Gould, Storey, and Cotter,  
2 Jr., and summary judgment is therefore appropriate.<sup>7</sup>

3                   **3. The Undisputed Facts Establish That Gould Did Not Breach Any**  
4                   **Fiduciary Duty With Respect To The Approval Of Payments To Ellen**  
5                   **Cotter, Margaret Cotter, Or Guy Adams.**

6           In Gould's Opening Brief, he demonstrated that his approval of (1) Ellen and Margaret  
7 Cotter's executive pay, (2) Margaret Cotter's one-time \$200,000 payment, and (3) Guy Adams'  
8 bonus were not breaches of fiduciary duty, let alone breaches of duty involving intentional  
9 misconduct, fraud, or a knowing violation of law. Mot. at 25-27. Plaintiff does not respond to  
10 Gould's arguments or evidence on these topics whatsoever, and, as a result, summary judgment  
11 should be granted for the reasons stated in Gould's Opening Brief.

12                   **4. The Undisputed Facts Establish That Gould Did Not Breach Any**  
13                   **Fiduciary Duty With Respect To Gould's Failure To Take Action To**  
14                   **Remove Adams From The Compensation Committee Before May 2016.**

15           Gould's Opening Brief also demonstrated that his failure to take action to remove Guy  
16 Adams from the Compensation Committee before May 2016 was not a breach of fiduciary duty,  
17 let alone a breach of duty involving intentional misconduct, fraud, or a knowing violation of law.  
18 Mot. at 27-28. Plaintiff also fails to respond to Gould's argument and evidence on this issue, and  
19 as a result, summary judgment should be granted for the reasons stated in Gould's Opening Brief.

20                   **5. The Undisputed Facts Establish That Gould Did Not Breach Any**  
21                   **Fiduciary Duty With Respect To SEC Filings.**

22           Plaintiff argues that Gould allowed RDI to disseminate misleading information in SEC  
23 filings and "chose to allow RDI SEC filings and press release [sic] that contained materially

24 \_\_\_\_\_  
25 for Summary Judgment. The exhibits from both of Gould's briefs are sequentially numbered and  
paginated.

26 <sup>7</sup> Like Gould, Storey voted in favor of reconstituting the Executive Committee. It defies belief  
27 to think that he voted in favor of excluding himself. Ex. 7 at 34. James Cotter, Jr. was on the  
previous Executive Committee when he was CEO. It is not unusual to replace the former CEO  
28 with the current CEO on committees, because the CEO is typically a member of a board's  
executive committee. Ex. 47 at 722-723 ¶ 42.

1 misleading if not inaccurate information to remain uncorrected.” Opp. at 6.

2 Moreover, Plaintiff does not cite any evidence (as opposed to unsubstantiated allegations)  
3 to prove that any RDI SEC filings were *materially misleading*. In fact, Plaintiff does not even  
4 provide evidence that the supposed SEC filings even happened. He does not attach *any* of the  
5 purported SEC filings. He merely cut and pasted the allegations from his brief. Opp. at 6-8. As  
6 Gould explained in his Opening Brief, many of the alleged “misleading” SEC filings were neither  
7 inaccurate nor misleading, but were merely accurate portrayals of management positions. Mot. at  
8 28-30 (citing *Michelson v. Duncan*, 407 A.2d 211, 222 (Del. 1979) (not erroneous to fail to inform  
9 shareholders of statements which were inconsistent with management positions)).<sup>8</sup>

10 Plaintiff also does not address or provide evidence to refute Gould’s argument that Plaintiff  
11 alleges only that the remaining allegedly misleading SEC filings should have contained additional  
12 information, but under Nevada law, one cannot state a claim for breach of fiduciary duty merely  
13 by alleging that public filings do not contain enough information. Mot. at 29.

14 In addition, Plaintiff does not address or provide evidence to refute Gould’s evidence that  
15 with respect to his own facts and any important parts of the filings that he had knowledge of,  
16 Gould reviewed and verified, and provided comments or corrections when he had them, which  
17 was reasonable and consistent with the obligations of a director.<sup>9</sup> See Mot. at 30.<sup>10</sup>

18  
19 <sup>8</sup> Plaintiff argues that the duty of disclosure applies here, and under the duty of disclosure,  
20 there is a duty to update disclosures to stockholders and communicate with complete candor. Opp.  
21 at 13. But the duty of disclosure typically applies to requests for shareholder action. *Zirn v. VLI*  
*Corp.*, 681 A.2d 1050, 1056 (Del. 1996) (citing *Stroud v. Grace*, Del. Supr., 606 A.2d 75, 84  
(1992)). None of the Forms 8-K or press releases mentioned in Plaintiff’s Opposition request  
shareholder action. Opp. at 6-8.

22 <sup>9</sup> Plaintiff did not designate an expert witness to rebut this custom and practice evidence.

23 <sup>10</sup> Plaintiff appears to be claiming that Gould knew that the statement in the June 18, 2015  
24 Form 8-K that Plaintiff was required to resign as a director upon termination of his employment as  
25 an executive officer was inaccurate, but that he did not take any action. Plaintiff does not cite any  
26 evidence to demonstrate that Gould took no action with respect to the SEC filing. Opp. at 6. And  
27 the actual evidence is to the contrary. As Plaintiff concedes, Gould testified that he told Ellen  
28 Cotter and Craig Tompkins at the June 12, 2015 Board Meeting that he did not believe that  
Plaintiff was required to resign as a director. Opp. at 6. And Gould also testified that he provided  
comments or corrections to SEC filings when he had them. Mot. at 30. Management apparently  
had a different interpretation than Gould and filed the 8-K that reflected Management’s position.  
But Gould did not breach his fiduciary duty by speaking out and informing Ellen Cotter and Craig  
Tompkins of Gould’s own view.

1 Finally, Plaintiff does not dispute that Gould was entitled to and did rely on Reading's  
2 counsel and the directors and executives most directly involved in the matters addressed in SEC  
3 filings for matters that he was not involved with. *See* Opp. at 24-25. Plaintiff argues only that  
4 Gould is relying on advice of counsel without producing the advice. *Id.* But as Gould explained  
5 in his Opposition to Plaintiff's Motion in Limine, Plaintiff never asked Gould to provide any  
6 further information or documents regarding such "advice of counsel." And even if he had, there is  
7 no further information or documents to provide. Gould already explained that he relied upon  
8 counsel to vet the information in the SEC filings. There are no documents or additional  
9 communications. Because it is undisputed that Gould was permitted to, and reasonably relied  
10 upon counsel to, vet the SEC filings at issue, and that his practice with respect to matters that he  
11 had knowledge about was reasonable, the claims related to the SEC filings should be summarily  
12 adjudicated.

13 **6. The Undisputed Facts Establish That Gould Did Not Breach Any**  
14 **Fiduciary Duty With Respect To The Appointment Of Coddling And**  
15 **Wrotniak.**

16 Plaintiff does not respond, discuss, or provide any evidence to contradict Gould's  
17 argument that he did not breach his fiduciary duties with respect to the appointment of Michael  
18 Wrotniak. Opp. at 4, 21-22. In fact, the only thing that he says about Wrotniak at all is that  
19 Wrotniak was "a long-time personal friend of Margaret [Cotter]." Opp. at 4. Of course, Plaintiff  
20 does not cite *any evidence* to support that statement. *Id.* Plaintiff therefore does not controvert the  
21 *evidence* cited in Gould's Opening Brief that Margaret Cotter did not have an independent  
22 friendship with Wrotniak, but only knew him through a mutual friend. Mot. at 7. Nor does  
23 Plaintiff respond to Gould's case law establishing that it is not disqualifying that a director have  
24 a connection to another director or officer, especially as tangential a relationship between Coddling  
25 and Wrotniak. Mot. at 17-18.

26 In addition, Plaintiff does not dispute that the only requirements to be a director under  
27 Nevada law and Reading's Bylaws is that a director must be 18 and a natural person, and Plaintiff  
28 does not dispute that Wrotniak satisfies those requirements. Plaintiff does not identify any issues



1 with the process in appointing Wrotniak. As a result, for all of the undisputed reasons stated in  
2 Gould's Opening Brief,<sup>11</sup> summary adjudication should be granted with respect to the appointment  
3 of Wrotniak.

4 Plaintiff fares no better with respect to the appointment of Coddington. He summarily states  
5 without support that in Gould's motion for summary judgment, Gould "effectively admits that he  
6 did not . . . fulfill his duty of care," but that is not true. Opp. at 21. Gould's Opening Brief  
7 discussed in detail the lack of any admissible evidence from which a fact-finder could infer that  
8 Gould breached any of his fiduciary duties. Mot. at 16-20. Plaintiff does not explain what he  
9 means by that, but perhaps it is a reference to the argument in Plaintiff's "fact section" that Gould  
10 was advised of Coddington's nomination only days before it happened, and "he objected to having  
11 inadequate time to perform his duties as a director," but agreed to add Coddington to the Board  
12 anyway. Opp. at 4. But the testimony that Plaintiff relies on does not say that Gould felt he had  
13 *inadequate* time to perform his duties as a director. What the testimony actually reveals is that  
14 *counsel asked him* if he ever expressed the notion that the time afforded him to consider the  
15 director nominations were inadequate. And Gould rejected counsel's characterization, "Not  
16 exactly in those terms." Ex. 41 at 174:16-23. Instead, Gould noted that he expressed unhappiness  
17 that he was brought the information on short notice. *Id.* at 174:21-23. Gould never stated that he  
18 had inadequate time.

19 Moreover, Plaintiff does not dispute that there was a legitimate business reason for Gould  
20 to proceed with a decision on short notice—an impending proxy deadline. Mot. at 18; *see* Opp at  
21 4, 21-22 (failing to discuss). And Plaintiff does not dispute that making a decision on an  
22 expedited basis under these circumstances is consistent with good governance practice because  
23 there is value to the stockholders in being able to vote on a full slate of directors. *Id.* Nor does  
24 Plaintiff dispute that under Nevada law, Gould was entitled to and did rely on the Special  
25 Nominating Committee here. Mot. at 18-19; *see* Opp at 4, 21-22 (failing to discuss).<sup>12</sup>

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27 <sup>11</sup> Mot. at 16-20.

28 <sup>12</sup> Plaintiff does acknowledge the existence of the Special Nominating Committee, although he

1 Plaintiff's only remaining argument on Coddington's appointment is his erroneous contention  
2 that Nevada's exculpatory statute does not apply to breaches of the duty of loyalty, debunked  
3 above. As such, for the many reasons stated in Gould's Opening Brief, the claims against Gould  
4 relating to the appointment of Coddington must also be summarily adjudicated. Mot. at 5-18;  
5 18-20.<sup>13</sup>

6 **7. The Undisputed Facts Demonstrate That Gould Did Not Breach Any**  
7 **Fiduciary Duties With Respect To The CEO Search.**

8 Gould's Opening Brief walked through the CEO Search Process and selection of Ellen  
9 Cotter as permanent CEO in detail. Mot. at 8-11. Gould's Opening Brief also explained how and  
10 why the CEO search was conducted appropriately, how and why it was clear that Ellen Cotter did  
11 not direct the CEO search, the many rational business reasons for selecting Ellen Cotter as CEO,  
12 and the rational business reasons for asking Korn Ferry to stand down after the Search Committee,  
13 and the evidence that Gould did his best to select the best CEO for Reading. Mot. at 21-25.  
14 Plaintiff almost completely ignores Gould's evidence and arguments. Instead, based on his  
15 mischaracterizations of testimony, funny math, and the application of the wrong legal standard, he  
16 tells a fictionalized account of what transpired.

17 To begin with, Gould's Opening Brief cited evidence that Gould and McEachern are both  
18 independent. Mot. at 21. Plaintiff does not dispute that Gould and McEachern are independent,  
19 contends without evidence that it consisted of McEachern and Adams. Opp. at 4. As discussed in  
20 the Opening Brief, RDI's public filings state that the Nominating Committee consisted of Kane,  
21 Adams, and McEachern. In other sections of his Opposition brief, Plaintiff asserts with out any  
22 evidence that Kane and Adams are not independent. Opp. at 16. Nor does he provide any  
23 evidence that Kane or Adams are not independent in any of the motions that he incorporated by  
24 reference. As a result, he has not controverted the *evidence* cited in Gould's Motion, which  
25 established that Kane is independent. Mot. at 18, n.11. Plaintiff does not dispute that McEachern  
26 was independent. Because Kane and McEachern are both independent, the unanimous decisions  
27 of the Special Nominating Committee were made by a majority of independent and disinterested  
28 directors.

<sup>13</sup> Plaintiff argues that "the suggestion in Gould's motion . . . that a controlling shareholder's  
rights under NASDAQ Listing Rules somehow limits or eliminates Gould's fiduciary duties as  
a director is both nonsensical and, as shown herein wrong as a matter of law." Opp. at 2. This is  
a red herring. Gould's Motion noted only that the NASDAQ Listing Rules take into account the  
ability of the controlling shareholder has the right to select directors and therefore does not require  
a nominating committee. The point Gould was making was that the NASDAQ rules take into  
account a controlling shareholder's ability to select directors, so there was nothing wrong with  
Gould taking that information into account as one piece of the puzzle. Mot. at 16-20.

1 and he provides no *evidence* that they are not independent. Indeed, Plaintiff's own expert has  
2 testified that, based on the allegations in the Second Amended Complaint and deposition  
3 testimony, he could find insufficient facts to suggest to him that there was reasonable doubt about  
4 the independence or disinterestedness of Gould and McEachern. Ex. 52 at 127:14-128:3; 142:23-  
5 143:6.

6 Plaintiff's expert, the former Chief Justice of the Delaware Supreme Court, also testified  
7 that if a decision of the CEO Search Committee could be carried by two votes, as it could here,  
8 then the work of McEachern and Gould on the CEO Search Committee would be protected by the  
9 business judgment rule. Ex. 52 at 155:6-156:4. And Plaintiff's expert further testified that where,  
10 as here, you have two independent directors both deciding it is time to present a candidate, that  
11 would be perfectly fine. Steele Dep. at 156:9-16. In short, contrary to Plaintiff's claims in his  
12 Opposition Brief, the business judgment rule does operate to protect the work of the CEO Search  
13 Committee here. *See* Nev. Rev. Stat. § 78.138(7) ("Directors and officers, in deciding upon  
14 matters of business are presumed to act in good faith, on an informed basis and with a view to the  
15 interests of the corporation."); *In re AgFeed USA, LLC*, 546 B.R. 318, 330 (Bankr. D. Del. 2016)  
16 (applying Nevada law and stating that under the business judgment rule, the complaint must allege  
17 facts establishing a decision that it seems essentially inexplicable on any grounds other than bad  
18 faith).<sup>14</sup> Plaintiff believes that it would have been better to have conducted the search differently.  
19 He would have had Korn Ferry run its proprietary assessment on all of the finalist candidates, and  
20 he would have selected a candidate that more closely matched the original Position Specification  
21 (even though he agreed that the position specification focused on the wrong experience). Mot. at  
22

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23 <sup>14</sup> The full Board's decision to accept the recommendation and appoint Ellen Cotter as permanent  
24 CEO is also protected by the business judgment rule, because he has not provided any *evidence* (as  
25 opposed to allegations), that calls into question the independence and disinterestedness of  
26 a majority of directors that voted. There were eight votes cast. Mot. at 11. Plaintiff's failure to  
27 introduce admissible evidence regarding the independence and disinterestedness of McEachern,  
28 Gould, and Kane in order to controvert Gould's evidence that McEachern, Gould, and Kane were  
independent is discussed above. Similarly, Plaintiff does not introduce any evidence in his  
opposition to Gould's motion to dispute the evidence offered by Gould that Coddington and Wrotniak  
are independent. Mot. at 16-17. Because there were five independent and interested directors on  
the full Board that voted to appoint Ellen Cotter as permanent CEO, the decision was made by  
a majority of independent and disinterested directors and is entitled to the business judgment rule.

23. But, as discussed in Gould's Opening Brief, the CEO Search Committee was not required to conduct a perfect search. Rather, they need only show that there were rational business reasons for their work and decision making. Mot. at 21-25.

Here, Plaintiff *does not and cannot dispute* that the reasons that the CEO Search Committee selected Ellen Cotter—that she had done a good job as interim CEO, was intelligent, had a great reputation, was well-liked at Reading, had the kind of personality that could help Reading get through the difficulties they had been having, and had experience in operations and theater, and would represent stability—are rational business reasons to select a CEO. Mot. at 21-25. His entire Opposition depends on his incorrect assumption that the entire fairness standard will be applied to the work of the CEO Search Committee.

Moreover, many of the alleged facts that Plaintiff relies on for his claim that there is evidence that the work of the CEO Search Committee would not pass muster on an entire fairness review, are not supported by the record. For example, Plaintiff contends that Ellen Cotter “obviously” only met 20% of the qualifications in the position specification, without analysis. Opp. to Individual Defendants’ MPSJ No. 5 (Appointment of Ellen Cotter as CEO) at 8. But a comparison of the position specification, with the reasons given by the Board and Ellen Cotter’s experience, actually show that she met nearly 80% of the qualifications, which, as Robert Mayes testified, is typical. Ex. 44 at 59:12-16.

Position Specification	Ellen Cotter
Minimum of 20 years of relevant experience within the real estate industry, with at least five years in an executive leadership position within dynamic public or private company environments	
Proven track record in the full cycle management of development investments, from planning and entitlement through infrastructure development, land sales, joint ventures, and vertical construction with a proven record of value creation	
A track record of raising debt and equity capital, with additional exposure to joint ventures, M&A, and institutional/investor relations	Ellen Cotter worked on M&A transactions as a lawyer. Ex. 53 at 16:5-11. Ellen Cotter’s experience and involvement in the Company’s public reporting activities and working in a public company environment. Ex. 4.
Proven management and leadership skills with a track record of successfully recruiting, motivating, mentoring, and retaining high performance talent within a multi-disciplinary organizational environment	Ellen Cotter’s experience and performance as a senior executive of the Company, and her performance since June 12, 2015, as the Company’s interim President and Chief Executive Officer. Ex. 4.
Strategic thinking capability to assess macro trends that will impact RDI’s business, and ability to anticipate and act ahead of the markets, and make complex decisions to protect and	Ellen Cotter’s experience and performance as a senior executive of the Company, and her performance since June 12, 2015, as the Company’s interim President and

1	<b>Position Specification</b>	<b>Ellen Cotter</b>
2	optimize the company's portfolio and performance	Chief Executive Officer and the scope and extent of Ellen Cotter's knowledge of the Company, its assets, personnel and operations, including its overseas and real estate assets, personnel, and operations. Ex. 4..
3	A hands on "player I coach" orientation with the ability to lead by example and via consensus building	The performance of Ellen Cotter in uniting the current senior management team behind her leadership under the unusual and stressful circumstances of recent months. Ex. 4.
4	Results orientation and fiduciary mindset	Ellen Cotter's experience and performance as a senior executive of the Company, and her performance since June 12, 2015, as the Company's interim President and Chief Executive Officer. Ex. 4.
5	Exceptional communication skills and ability to inspire	"She had the kind of personality that could help get through some of these difficulties dealing with other people." Ex. 42 at 368:8-24.
6	Unquestioned integrity	"She had a great reputation . . . we all thought highly of her, every one of us." Ex. 42 at 368:8-24.
7	Ideally, in possession of substantive relationships among domestic and global debt and equity sources	
8	Ideally, an executive who has been involved in a multi-faceted, highly complex entity level "disruption" and has the energy and emotional resilience to lead, deal with, and make decisions on difficult issues	The performance of Ellen Cotter in uniting the current senior management team behind her leadership under the unusual and stressful circumstances of recent months. Ex. 4.
9	Ideally, experience in brand development	Ellen M. Cotter has been with our Company for more than 17 years, focusing principally on the cinema operations aspects of our business. During this time period, we have grown our Domestic Cinema Operations from 42 to 248 screens, and our cinema revenues have grown from US\$15.5 million to US\$125.7 million. Ex. 28 at 324. For more than the past ten years, Ms. Cotter has served as the Chief Operating Officer (COO) of our domestic cinema operations, in which capacity she has, among other things, been responsible for the acquisition and development, marketing and operation of our cinemas. <i>Id.</i> at 328.
10	Ideally, C-suite-level experience within a public company	Ellen Cotter's experience and performance as a senior executive of the Company, and her performance since June 12, 2015, as the Company's interim President and Chief Executive Officer. Ex. 4.
11	A significant depth of international experience, and the ability to work with diverse cultures in diverse places	The scope and extent of Ellen Cotter's knowledge of the Company, its assets, personnel, and operations, including its <i>overseas</i> and real estate assets, personnel, and operations. Ex 4. Prior to her appointment as COO Domestic Cinemas, she spent one year in Australia and New Zealand, working to develop our cinema and real estate assets in those countries. Ex. 28 at 328.

23 Additionally, Plaintiff contends that in an effort to fabricate evidence suggesting Korn  
24 Ferry had vetted Ellen Cotter, Reading counsel and CEO Search Committee Recording Secretary  
25 *Craig Tompkins* instructed Korn Ferry to create an Ellen Cotter resume in the Korn Ferry format  
26 *after Ellen Cotter had been selected.* Opp. at 23. Further, he claims that Korn Ferry  
27 representative Robert Mayes was *unequivocal* that Tompkins had requested the resume in January  
28 after Ellen Cotter had been selected. Opp. to Individual Defendant's MPSJ No. 5 (Appointment of

1 Ellen Cotter as CEO) at 9. Far from being unequivocal, Mayes did not testify at all about when  
2 Tompkins *requested* that he put a candidate report together. He was asked only about when the  
3 report was *prepared* and he testified only that “he *thinks* it was just after the New Year.” Ex. 51  
4 at 64:15-17 (emphasis added). And even if he is correct that he prepared the report just after the  
5 New Year, that is still before Ellen Cotter was presented to the full board on January 11, 2016.  
6 Moreover, Mayes did not testify that “he created a resume in the Korn Ferry format,” as Plaintiff  
7 contends, but rather that he “formulated a resume from the internet,” *also* “did some basic internet  
8 research,” *and* then “wrote a brief overview of her candidacy based on [his] interaction with her as  
9 a search committee member.” Mayes Dep. at 64:5-10. The inferences that Plaintiff relies upon  
10 are drawn from evidence that simply does not exist.<sup>15</sup>

11 Plaintiff also argues that although Gould stated that one of the reasons for asking Korn  
12 Ferry not to undertake its proprietary assessment was to save some money, Reading did not  
13 actually save any money because Mayes testified he was paid for the proprietary assessment.  
14 Opp. to Individual Defendant’s MPSJ No. 5 (Appointment of Ellen Cotter as CEO) at 9. But that  
15 ignores the evidence cited in Gould’s motion that Reading did save \$35,000 by avoiding the  
16 proprietary assessment. Mot. at 10.<sup>16</sup> And it ignores the evidence cited in Gould’s motion that  
17 even Korn Ferry did not think that the proprietary assessment would be a useful evaluation tool for  
18 Ellen Cotter and suggested that it be used only as an onboarding tool. Mot. at 10. Plaintiff also  
19 belittles the idea of saving \$35,000. Opp. to Individual Defendant’s MPSJ No. 5 (Appointment of  
20 Ellen Cotter as CEO) at 9. But spending an additional \$35,000 on an assessment the CEO Search  
21 Committee knew it would not need would be a waste of corporate assets.

22 The above examples are just a few of Plaintiff’s blatant mischaracterizations of the  
23 evidence on the CEO Search. The fact that Plaintiff has to engage in this kind of fictionalization  
24 of the evidence demonstrates that he cannot defeat summary judgment based on the actual  
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26 <sup>15</sup> It is also unclear why anything Tompkins did or did not do is relevant to whether Gould acted  
27 with intentional misconduct, fraud, or a knowing violation of law.

28 <sup>16</sup> The Mayes testimony and the invoices showing Reading saved \$35,000 are not in conflict  
because Korn Ferry did receive \$35,000 out of the \$70,000 fee.

1 evidence.

2 Finally, Plaintiff does not respond to Gould's argument that there is no evidence that he  
3 acted with intentional misconduct, fraud, or a knowing violation of law. Plaintiff ignores the  
4 evidence that even Mayes testified that Gould took the CEO Search process seriously, attended all  
5 Search Committee calls, that he was not absent and that he never did anything that made him think  
6 that Gould was doing anything other than trying to find the right person for the job. Mot. at 25.  
7 That is confirmed by Plaintiff's expert, who as discussed above, testified that there is no evidence  
8 to cause reasonable doubt that Gould was not independent. Plaintiff's expert defines an  
9 independent director as one whose "decision is based on the merits of the matter at hand." Steele  
10 Rep. at 24. If Gould made his CEO Search recommendation and appointment based on the merits  
11 of the matter at hand, then he did not act with intentional misconduct, fraud, or a knowing  
12 violation of law. Based on actual facts, as opposed to allegations and mischaracterizations of the  
13 record, Plaintiff cannot show that Gould breached his fiduciary duty with respect to the  
14 appointment of Ellen Cotter as permanent CEO, let alone that he did so with intentional  
15 misconduct, fraud, or a knowing violation of law, and, as a result, summary judgment must be  
16 granted.

17 **8. The Undisputed Facts Demonstrate That Gould Did Not Breach Any**  
18 **Fiduciary Duties With Respect To The Unsolicited Expression of**  
19 **Interest.**

20 Gould's Opening Brief did not separately analyze Plaintiff's claims regarding the  
21 unsolicited expression of interest, but rather incorporated the Individual Defendants' Motion for  
22 Partial Summary Judgment on this topic, which Gould joined. Plaintiff devotes a single paragraph  
23 to addressing these claims and does not cite to any evidence. Gould responds by incorporating by  
24 reference Section II.C of the Individual Defendants' Consolidated Reply in Support of their  
25 Motions for Partial Summary Judgment Nos. 3-6.

26 **III. CONCLUSION**

27 For the foregoing reasons, and the reasons stated in the Defendant William Gould's  
28 Motion for Summary Judgment, Individual Defendants' Motion for Partial Summary Judgment

1 No. 3, and Section II.C of the Individual Defendants' Consolidated Reply in Support of their  
2 Motions for Partial Summary Judgment Nos. 3-6, all of Plaintiff's claims against Defendant Gould  
3 should be summarily adjudicated in favor of Gould.

4

5 October 21, 2016

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

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By 

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Ekwon E. Rhow (*admitted pro hac vice*)  
Hernán D. Vera (*admitted pro hac vice*)  
Shoshana E. Barnett (*admitted pro hac vice*)  
1875 Century Park East, 23rd Floor  
Los Angeles, California 90067-2561

10

11

12

13

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

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*Attorneys for Defendant William Gould*

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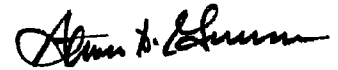


**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Cir. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing **Defendant William Gould's Reply in Support of Motion for Summary Judgment** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 21 day of October, 2016.

Kaitlin Arnold  
EMPLOYEE



CLERK OF THE COURT

1 Donald A. Lattin (NV SBN. 693)  
dlattin@mclrenolaw.com  
2 Carolyn K. Renner (NV SBN. 9164)  
crenner@mclrenolaw.com  
3 MAUPIN, COX & LEGOY  
4 4785 Caughlin Parkway  
Reno, Nevada 89519  
Telephone: (775) 827-2000  
5 Facsimile: (775) 827-2185

6 Ekwan E. Rhow (*admitted pro hac vice*)  
eer@birdmarella.com  
7 Hernán D. Vera (*admitted pro hac vice*)  
hver@birdmarella.com  
8 Shoshana E. Bennett (*admitted pro hac vice*)  
sbennett@birdmarella.com  
9 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,  
DROOKS, LINCENBERG & RHOW, P.C.  
10 1875 Century Park East, 23rd Floor  
Los Angeles, California 90067-2561  
11 Telephone: (310) 201-2100  
Facsimile: (310) 201-2110

12 Attorneys for Defendant William Gould

13  
14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**  
16

17 JAMES J. COTTER, JR.,

18 Plaintiff,

19 vs.

20 MARGARET COTTER, et al.,

21 Defendant.

22 READING INTERNATIONAL, INC.,

23 Nominal Defendant.  
24  
25  
26  
27  
28

CASE NO. A-15-719860-B

**DECLARATION OF SHOSHANA E.  
BANNETT IN SUPPORT OF  
DEFENDANT WILLIAM GOULD'S  
REPLY IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

*[Filed concurrently with Defendant William  
Gould's Reply in Support of Motion for  
Summary Judgment]*

Hearing Date: November 1, 2016  
Hearing Time: 8:30 A.M.

Assigned to Hon. Elizabeth Gonzalez,  
Dept. XI

Trial Date: November 14, 2016

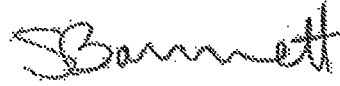
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DECLARATION OF SHOSHANA E. BANNETT IN SUPPORT OF DEFENDANT  
WILLIAM GOULD'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

JA4696



1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
2 is true and correct, and that I executed this declaration on October 21, 2016, at Los Angeles,  
3 California.

4 

5 \_\_\_\_\_  
6 Shoshana E. Barnett  
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Cir. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing **Declaration of Shoshana E. Bannett in Support of Defendant William Gould's Reply in Support of Motion for Summary Judgment** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 21 day of October, 2016.

Kaitlin Arnold  
EMPLOYEE

# **EXHIBIT 47**

**DR. ALFRED E. OSBORNE, JR.'S REBUTTAL TO  
THE EXPERT REPORT OF MYRON STEELE**

Executive Committee Meetings were accepted by the full Board.

JCOTTER 11389-11393.

41. Steele does not opine that the Executive Committee acted beyond its charter or took actions that were improper under Nevada law or RDI's Bylaws. Instead, Steele contends that the Executive Committee was problematic, because the purpose of the Executive Committee was to minimize the involvement of JJC and the other directors who voted against his termination. Steele Rep. at 33. But WDG, who voted against terminating JJC, was asked by EC to join the Executive Committee. Gould Dep. at p. 25. WDG declined because he could not allocate the time that such a commitment might require. Gould Dep. at p. 25. That fact alone suggests to me that the purpose of the Executive Committee was not to exclude JJC, Storey, and WDG.
42. And I find no other real evidence of any effort by the Executive Committee to minimize the involvement of JJC, Storey, and WDG in the business affairs of the company. On the contrary, there is evidence that Board members not on the Executive Committee had access to the Executive Committee members. In addition, there are rational business reasons to not include a director, like Storey, on an executive committee because he lives in New Zealand, which could impede quick decision-making—one of the primary purposes of an executive committee. Finally, replacing the former CEO (JJC) with the current CEO (EC) is sensible and also



commonplace. The CEO is typically a member of a board's executive committee.

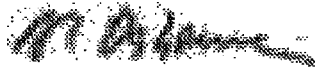
43. In sum, it is my opinion that an executive committee is an appropriate forum to make time-sensitive and/or routine decisions in between full board meetings and also for deeper, more focused examinations, analyses, and discussions of complex issues to later present to the full board for action. As such, in my opinion, WDG's, EC's, MC's, EK's, DM's, and GA's actions in voting to reactivate and populate the Executive Committee were appropriate and consistent with good governance practice and their obligations as directors.

**VIII. THE BOARD'S RESPONSE TO THE UNSOLICITED EXPRESSION OF INTEREST**

44. Justice Steele opines that “[i]f a finder of fact finds that the Board's rejection of the Offer was not the product of an independent and disinterested majority, and [i]f it was born out of the desire to keep EC and MC ... in office, then the rejection out of hand intentionally breached the duty of loyalty.” Steele Rep. at 34 (emphasis added). This reasoning is flawed. As an initial matter, the first IF premise is wrong. Whatever assessment led to the Board's rejection was the product of an independent and disinterested majority. The second IF presumes that the rejected Offer was a result of some desire to keep EC and MC in their jobs. I have seen no evidence to support the second IF.

and internal candidates. The Spitz contentions are without merit and are not supported by the conduct of the RDI Board and its CEOSC.

Executed on September 28, 2016



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ALFRED E. OSBORNE, JR.

# **EXHIBIT 48**

## **I. Qualifications and Experience**

I am a partner at Potter Anderson & Corroon LLP ("Potter Anderson"), one of the largest and most-recognized Delaware law firms with expertise in litigation and transactional matters involving Delaware corporations, Delaware limited liability companies, and other Delaware business entities. I am the former Chief Justice of the Delaware Supreme Court, serving in that capacity from 2004 until my retirement on November 30, 2013. Before serving as the Chief Justice, I served as a Justice on the Supreme Court, a Vice Chancellor of the Delaware Court of Chancery (Delaware's court of equity), and a Judge on the Delaware Superior Court (Delaware's general jurisdiction law court). I have presided over litigation involving major corporate, limited liability company and limited partnership governance disputes. I have written frequently on issues of corporate document interpretation and corporate governance, and I have published more than 300 opinions resolving disputes among members of limited liability companies, partners of limited partnerships, and between shareholders and management of both publicly traded and close corporations. Before my time as a judicial officer, I spent 18 years in private practice litigating before the Delaware courts.

I have served as an Adjunct Professor of Law at the University of Pennsylvania Law School and Pepperdine University Law School. I continue to serve as an Adjunct Professor at the University of Virginia Law School. I received my B.A. from the University of Virginia and my J.D. and LLM degrees from the University of Virginia School of Law. I also received an Honorary Doctor of Laws degree from the University of Delaware. A copy of my curriculum vitae is attached as Exhibit A to this report. Potter Anderson is being compensated at its standard rates for the work performed in connection with this report. My hourly rate for the matter is \$1,075.00, and the hourly rate of Diva Bole, an associate who assisted me on the matter, is \$310.00. Potter Anderson's

settlement of the litigation relating to the Trust.<sup>175</sup> If a finder of fact finds that they removed JJC as CEO, limited the ability of JJC, Storey, and Gould to participate in Board discussions, acted to ensure that they were appointed to their respective management positions, and used their positions as controlling stockholders to control the direction and actions of the Board in order to retain their positions in the Company and benefit financially, they were interested in the challenged actions from a Delaware law perspective.

#### **Certain of the Directors May Not Be Independent**

Independence, on the other hand, does not ask whether a corporate fiduciary “derives a benefit *from the transaction* that is not generally shared with the other shareholders. Rather, it involves an inquiry into whether the [corporate fiduciary]’s decision resulted from that director being *controlled* by another.”<sup>176</sup> Control may exist where a corporate fiduciary has close personal or financial ties or is beholden to another.<sup>177</sup>

A director is independent if his decision is based on the merits of the matter at hand, rather than extraneous influences.<sup>178</sup> In determining whether a personal or financial interest compromises the independence of a director, the court must determine whether the conflict is material.<sup>179</sup> A friendship must rise to the level in which “the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director.”<sup>180</sup> A close personal friendship in which the director and the person with whom he or she has the questioned relationship

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<sup>175</sup> MC, 275-76.

<sup>176</sup> *Orman v. Cullman*, 794 A.2d at 25 n.50.

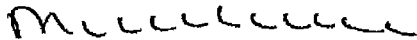
<sup>177</sup> *Id.*

<sup>178</sup> *Frank v. Elgamal*, 2014 WL 957550, at \*22 (Del. Ch. Mar. 10, 2014).

<sup>179</sup> *In re Orchard Enter. S'Holder Litig.*, 88 A.3d 1, 25 (Del. Ch. 2014).

<sup>180</sup> *Frank*, 2014 WL 957550 at \*22.

- (iii) If a finder of fact finds that the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given was not approved by an independent and disinterested majority, then entire fairness would apply and the Defendants, as controlling stockholders or those who acquiesced to the wishes of controlling stockholders, would be liable for a breach of loyalty if the finder of fact finds that the process used to grant the compensation and bonuses was not entirely fair; and
- (iv) If a finder of fact finds that the Board's rejection of the Offer was not the product of an independent and disinterested majority, and was born out of the desire to keep EC and MC, the controlling stockholders, in office, then the rejection out of hand intentionally breached the duty of loyalty.



Myron T. Steele

Dated this 25th day of August 2016.

# **EXHIBIT 49**

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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 )

VIDEOTAPED DEPOSITION OF WILLIAM GOULD  
TAKEN ON JUNE 8, 2016  
VOLUME 1

JOB NUMBER 315485  
REPORTED BY:  
PATRICIA L. HUBBARD, CSR #3400



1           **Q.   How long have you been a member of the**  
2           **RDI board of directors?**

3           A.   Well, I haven't -- it's been about, I  
4           would say, 15 years. But it wasn't a continuous  
5           time. There was a period of two or three years when  
6           I was not on the board. I was on the board and then  
7           I was off for two or three years and then was asked  
8           to come back.

9           **Q.   How did it come to pass that you left**  
10          **the RDI board?**

11          A.   At the time there was a question of  
12          needing independent directors to fulfill the  
13          requirements of the S.E.C.

14                 And since our law firm at that time had  
15          done work for Reading, they felt it would be better  
16          that they get somebody totally independent.

17          **Q.   And do you -- do you now or have you**  
18          **ever served on a board of directors of any public**  
19          **company other than RDI?**

20          A.   No.

21          **Q.   Have you ever been a member of the board**  
22          **of directors of any other company?**

23          A.   Yes.

24          **Q.   How many?**

25          A.   Five.

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

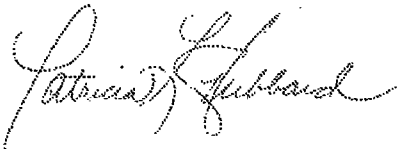
That prior to being examined, WILLIAM  
GOULD was duly sworn or affirmed by me to testify the  
truth, the whole truth, and nothing but the truth;

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

1 That the foregoing pages contain a full,  
2 true and accurate record of the proceedings and  
3 testimony to the best of my skill and ability;  
4

5 I further certify that I am not a relative  
6 or employee or attorney or counsel of any of the  
7 parties, nor am I a relative or employee of such  
8 attorney or counsel, nor am I financially interested  
9 in the outcome of this action.  
10

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

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15 PATRICIA L. HUBBARD, CSR #3400  
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# **EXHIBIT 50**

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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 WILLIAM GOULD  
TAKEN ON JUNE 29, 2016  
VOLUME 2

Job No.: 319129  
REPORTED BY:  
PATRICIA L. HUBBARD, CSR #3400

1 MR. FERRARIO: I know.

2 MR. RHOW: Look for Marshall Wizelman at  
3 the top.

4 MR. KRUM: I have it. It was previously  
5 marked as Exhibit 349.

6 MR. FERRARIO: Here it is, 349.

7 THE WITNESS: I'm prepared.

8 BY MR. KRUM:

9 Q. Do you recognize Exhibit 349?

10 A. I do.

11 Q. What is it?

12 A. These are drafts of minutes of four  
13 board meetings.

14 Q. Do you recall that these minutes were  
15 consistent with Mr. Ellis's email raised for  
16 approval at the August 4, 2015 RDI board of  
17 directors meeting?

18 A. Yes.

19 Q. Do you recall that at that meeting  
20 and/or in advance of the meeting Jim Cotter, Jr.,  
21 had taken issue with the accuracy of the minutes?

22 A. Yes, I do.

23 Q. You voted to approve the minutes,  
24 correct?

25 A. Yes.

1 Q. Did you do so because you remembered  
2 that -- everything that is recited in the minutes  
3 and determined them to be accurate on a  
4 word-for-word basis because you viewed the  
5 recitation of the conclusion as accurate or on some  
6 other basis?

7 A. My feeling was I did not remember all  
8 the discussions that had gone on in the meetings and  
9 some of the specifics that Mr. Cotter had referred  
10 to I couldn't recall and some of the things other  
11 had. But I felt, as I look back at these meetings,  
12 they substantially reflected what occurred,  
13 substantially.

14 Q. Did you ever see any other drafts of  
15 meeting minutes for these meetings?

16 A. I don't recall.

17 Q. Do you know who prepared or who  
18 participated in the preparation of these minutes?

19 A. My -- I don't know for certain, but I  
20 know that Bill Ellis and Craig Tompkins did.

21 Q. Did you ever hear or learn or were you  
22 ever told that as to some of all of these minutes  
23 that are part of this exhibit, Akin Gump  
24 participated in preparation of them?

25 A. Yes, I did.

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

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

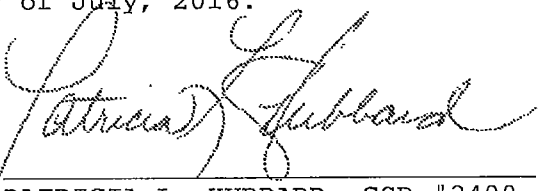
That the testimony of the witness and all  
objections made at the time of examination were  
recorded stenographically by me and were thereafter  
transcribed by me or under my direction and  
supervision;



1 That the foregoing pages contain a full,  
2 true and accurate record of the proceedings and  
3 testimony to the best of my skill and ability;  
4

5 I further certify that I am not a relative  
6 or employee or attorney or counsel of any of the  
7 parties, nor am I a relative or employee of such  
8 attorney or counsel, nor am I financially interested  
9 in the outcome of this action.  
10

11 IN WITNESS WHEREOF, I have subscribed my  
12 name this 6th day of July, 2016.

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15 PATRICIA L. HUBBARD, CSR #3400

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# **EXHIBIT 51**

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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  
                                  ) Coordinated with:  
                                  )  
                                  ) Case No. P-14-082942-E  
                                  )  
MARGARET COTTER, et al.,    )  
                                  )  
                                  ) Defendants.  
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and                                )  
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READING INTERNATIONAL,       )  
INC., a Nevada                )  
corporation,                    )  
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                                  ) Nominal Defendant)  
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VIDEOTAPED DEPOSITION OF ROBERT MAYES  
TAKEN ON THURSDAY, AUGUST 18, 2016

REPORTED BY:  
PATRICIA L. HUBBARD, CSR #3400  
Job No.: 331292

1 A. Correct.

2 Q. And what did you do to prepare this  
3 candidate report, if you prepared it?

4 A. We did this at the behest of, I believe,  
5 Craig Tomkins and formulated a resume from the  
6 internet, did some basic internet research, and then  
7 I wrote a brief assessment -- well, it's not an  
8 assessment. I wrote a brief overview of her  
9 candidacy based on my interaction with her as a  
10 search committee member.

11 Q. So it was based partially on your  
12 opinion of her?

13 A. Yeah. Starting with the professional  
14 attributes on page three.

15 Q. Do you recall when this candidate report  
16 was prepared?

17 A. I think it was just after the new year.

18 MR. KRUM: Excuse me. Taking Kara's  
19 line here, does this document have a production  
20 number?

21 MS. LINDSAY: It was produced by Korn  
22 Ferry.

23 MR. KRUM: Okay. Thanks.

24 BY MS. LINDSAY:

25 Q. Directing your attention to -- I'm done

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

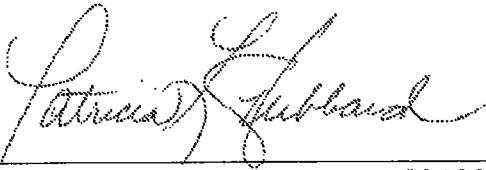
That prior to being examined, ROBERT MAYES  
was duly sworn or affirmed by me to testify the truth,  
the whole truth, and nothing but the truth;

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

1 That the foregoing pages contain a full,  
2 true and accurate record of the proceedings and  
3 testimony to the best of my skill and ability;  
4

5 I further certify that I am not a relative  
6 or employee or attorney or counsel of any of the  
7 parties, nor am I a relative or employee of such  
8 attorney or counsel, nor am I financially interested  
9 in the outcome of this action.  
10

11 IN WITNESS WHEREOF, I have subscribed my  
12 name this 19th day of August, 2016.  
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16 PATRICIA L. HUBBARD, CSR #3400  
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# **EXHIBIT 52**

- - -  
R O U G H     D R A F T  
- - -

CASE:            Cotter, et al., vs. Reading  
                 International, et al.  
DATE:            October 19, 2016  
WITNESS:        MYRON STEELE

- - -  
This transcript draft is uncertified and may contain untranslated stenographic symbols, an occasional reporter's note, a misspelled proper name, and/or nonsensical word combinations. All such entries will be corrected in the final certified transcript.

Due to the need to correct entries prior to certification, you agree to use this realtime draft only for the purpose of augmenting counsel's notes and not to use or cite it in any court proceeding.

Please keep in mind that the final certified transcript's page and line numbers will not match the rough draft due to the addition of title pages, indices, appearances of counsel, paragraphing and other changes.



10 assets adoption of exculpation for breach of duty of  
11 loyalty as opposed to Delaware's 102B7, which would  
12 not allow that to occur.

13 Q. All right. And so you in that  
14 presentation -- or I guess panel discussion is the  
15 way you described it.

16 A. Yes.

17 Q. -- that was a discussion between was  
18 it lawyers -- I'm sorry -- lawyers or judges from  
19 Nevada and yourself?

20 A. All I remember are two attorneys  
21 practicing in the area from Nevada. I don't  
22 remember a Nevada judge being part of the panel.

23 Q. And you recall that there was a  
24 discussion on the panel of the differences between  
25 the Nevada exculpation statute and the Delaware

8

1 exculpation statute?

2 A. That's the only part of it that I  
3 recall discussing.

4 Q. And do you remember that there was a  
5 discussion during that time that the Nevada  
6 exculpation statute -- that's a mouthful, I'll get  
7 it out -- that the Nevada exculpation statute was  
8 broader than the Delaware statute?

9 A. Well, the distinction as I understood  
10 it at the time was that Nevada allows exculpation  
11 for a breach of duty of loyalty. Delaware does not.

14 In terms of Mr. Gould's service on  
15 the CEO search committee --  
16 A. Right.  
17 Q. -- did you see anything that  
18 indicated that he was acting in a way that was not  
19 independent?  
20 MR. KRUM: Same objection.  
21 THE WITNESS: No.  
22 BY MR. SEARCY:  
23 Q. In respect to Mr. McEachern's  
24 independence on the search committee, did you see  
25 anything that indicated that he was acted in an  
128

1 interested fashion?

2 MR. KRUM: Same objection.

3 THE WITNESS: No.

4 BY MR. SEARCY:

5 Q. If you'll turn to Page 31 of your  
6 expert report.

7 A. (Witness complies.)

8 Q. On the second paragraph, the -- the  
9 last sentence, it's actually the first full  
10 paragraph but second paragraph on the page, where it  
11 starts out: "Moreover, a finder of fact" --

12 A. Yes.

13 Q. -- "could find that these actions  
14 constituted intentional misconduct..."?

15 A. Yes.

15 A. I skimmed the entire deposition.

16 Q. Okay. So there were no parts of  
17 Mr. Gould's deposition that you read carefully?

18 A. That's correct.

19 Q. And I take it the fact that you  
20 skimmed through it meant that for purposes of your  
21 opinions, you didn't view his testimony to be  
22 important.

23 A. Well, I think his testimony is  
24 important. I think all of the directors' testimony  
25 is important. I looked at the pleading. Having<sup>143</sup>

1 looked at the pleading and then skimming his  
2 deposition, I reached the conclusion that I could  
3 find insufficient facts to suggest to me there was a  
4 reasonable doubt about his independence or his  
5 disinterestedness. So his deposition as a result  
6 became less important to me.

7 Q. But separate and apart from  
8 disinterestedness or a lack of independence, were  
9 you or are you offering any opinion as to whether  
10 Mr. Gould might have breached a fiduciary duty?

11 A. I am not.

12 Q. All right. And so that -- that's  
13 what I wanted to get to next.

14 In terms of your report -- and I  
15 first thought it was an oversight, but now from your  
16 testimony, I'm beginning to think it was

9 always is.

10 Q. I take it that it would be reasonable  
11 for two directors to disagree as to how much  
12 discussion might be necessary on a particular issue.

13 A. Oh, I agree with that.

14 Q. Two directors might disagree as to  
15 the proper process that should be followed leading  
16 up to a final decision.

17 A. They could. Even two independent,  
18 objective directors could disagree on that.

19 Q. And there's nothing wrong --

20 A. But that's the question.

21 Q. Whether --

22 A. Whether they're independent and  
23 disinterested.

24 Q. The mere fact that people have voted  
25 a certain way certainly is not dispositive on this  
155

±

1 issue of breach of fiduciary duty?

2 A. Correct.

3 MR. KRUM: Objection; incomplete  
4 hypothetical.

5 BY MR. RHOW:

6 Q. For example, on the CEO search  
7 process -- we've talked about this a little bit --

8 A. Right.

9 Q. -- you agree that at least on that  
10 committee there were two independent, noninterested

11 directors; right?

12 A. That's my recollection, yes.

13 Q. And to be clear, the business  
14 judgment rule would then apply to that committee's  
15 work?

16 MR. KRUM: Objection; incomplete  
17 hypothetical.

18 THE WITNESS: Well, there's not a  
19 majority of independent, disinterested  
20 directors voting.

21 BY MR. RHOW:

22 Q. If both vote a certain way, there is  
23 a majority.

24 A. If it can be carried by only two  
25 votes; yeah, that's right.

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1 Q. And so the work of those two  
2 directors, assuming they vote the same way, is  
3 protected by the business judgment rule.

4 A. It would be.

5 MR. KRUM: Same objection.

6 BY MR. RHOW:

7 Q. It would be.

8 A. Yeah. Yes. Sorry.

9 Q. And so in that situation I just  
10 posited where you have two independent directors,  
11 both deciding that it's time to present a candidate,  
12 that would be perfectly fine.

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MYRON STEELE

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing; that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this

DAY      day of MONTH      2016.

<%signature%>

Susan Marie Migatz  
Notary Public

Job No. 2463323

♀

# **EXHIBIT 53**

1

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DISTRICT COURT

3

CLARK COUNTY, NEVADA

4

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

7

Plaintiff, )

Case No. A-15-719860-B

8

vs. )

Coordinated with:

9

MARGARET COTTER, et al., )

Case No. P-14-082942-E

10

Defendants. )

11

and )

12

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

13

14

Nominal Defendant )

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16

VIDEOTAPED DEPOSITION OF ELLEN COTTER

17

TAKEN ON MAY 18, 2016

18

VOLUME 1

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REPORTED BY:

25

PATRICIA L. HUBBARD, CSR #3400



1 and how long were you a corporate associate?

2 A. I don't -- I don't remember. But I did  
3 not spend a lot of time in the litigation  
4 department.

5 Q. Okay. What did you do in terms of the  
6 nature of your work when you were a corporate  
7 associate at White and Case?

8 A. I worked on M and A transactions.

9 Q. M and A meaning mergers and  
10 acquisitions?

11 A. Yes.

12 Q. So these were transactions in which the  
13 White and Case client was either acquiring another  
14 company or was being acquired typically?

15 A. Correct.

16 Q. What kind of work did you do personally  
17 on those -- those M and A matters?

18 A. Reviewed contracts, marked them up,  
19 compared them to send out to our clients.

20 Q. Are you done?

21 A. Yes.

22 Q. Okay. So, what did you do after you  
23 left White and Case?

24 A. I moved to Los Angeles and worked for  
25 Craig Corporation at the time.

1 REPORTER'S CERTIFICATE

2  
3 I, PATRICIA L. HUBBARD, do hereby certify:

4  
5 That I am a duly qualified Certified  
6 Shorthand Reporter in and for the State of California,  
7 holder of Certificate Number 3400, which is in full  
8 force and effect, and that I am authorized to  
9 administer oaths and affirmations;

10  
11 That the foregoing deposition testimony of  
12 the herein named witness, to wit, ELLEN M. COTTER, was  
13 taken before me at the time and place herein set  
14 forth;

15  
16 That prior to being examined, ELLEN M.  
17 COTTER was duly sworn or affirmed by me to testify the  
18 truth, the whole truth, and nothing but the truth;

19  
20 That the testimony of the witness and all  
21 objections made at the time of examination were  
22 recorded stenographically by me and were thereafter  
23 transcribed by me or under my direction and  
24 supervision;

25

5/4/2016

8K Press release Ellen CEO

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

---

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

**ITEM 9.01****FINANCIAL STATEMENTS AND EXHIBITS**

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

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press release of Reading International, Inc. of June 15, 2015

**SIGNATURES**

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

Dated: June 18, 2015      READING INTERNATIONAL, INC.

By: /s/ William D.  
Ellis

William D. Ellis

General Counsel and Secretary

## Exhibit 99.1

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

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

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

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

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

### **About Ellen Cotter**

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

### **About Reading International, Inc.**

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

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

Reading manages its worldwide business under various different brands:

5/4/2016

BK Press release Ellen CEO Exhibit 991

## Exhibit 99.1

## \*in the United States, under the

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

## \*In Australia, under the

- o Reading brand (<http://www.readingcinemas.com.au>); and
- o Newmarket brand (<http://readingnewmarket.com.au>)
- o Red Yard Entertainment Centre (<http://www.redyard.com.au>)

## \*in New Zealand, under the

- o Reading brand (<http://www.readingcinemas.co.nz>);
- o Rialto brand (<http://www.rialto.co.nz>);
- o Reading Properties brand (<http://readingproperties.co.nz>);
- o Courtenay Central brand (<http://www.readingcourtenay.co.nz>);
- o Steer n' Beer restaurant brand (<http://steernbeer.co.nz>);

## Media Contact:

Andrzej Matczynski

Tel: 213-235-2240

## **Exhibit 11**

## **Exhibit 11**

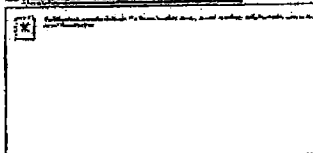


**From:** Susan Villeda  
**Sent:** Monday, January 11, 2016 2:06 PM  
**To:** US Cinema General Managers; US Projectionists; MarketingGroup; Rod Tengan; Jennifer Deering; ccm@readingcinemas.com.au; ccm@readingcinemas.co.nz; cinemas@readingcinemas.com.au; cinemas@readingcinemas.co.nz; Ellen Cotter; Margaret Cotter; James Cotter (jcotterprivate@gmail.com); Guy Adams; Kane; M.Wrotniak@Aminco.biz; judycodding@gmail.com; 'McEachern, Doug (US - Retired)'; Andrzej Matyczynski; Craig Tompkins; Crystal Huang; Dey Ghose; Doug Hawkins; Erin Shult; Gabriela Sanchez; Gilbert Avanes; John Goeddel; John Sittig; Jorge E. Alvarez; Josie M. Castilho; Ken Gillich; Ken Lee; Kenneth Tucker; Kristine Ngo; Laura Batista; Marcelo Axarlian; Mike Conroy; Robert Carnatz; Susan Villeda; Tara King; Terri Moore; Toni Camacho; Victor Albizures; William Boggan; William Ellis; Andrew Smoker; Denise Hughes; Kate Bost; Kelley Anderson; Linda Hogarty; Rita Samlalsingh; Robert Smerling; Scott Rosemann; Woody Brunson; Ben Deighton; David Orbach; Dominica Walsh; Grace Donald; Jason Griffiths; John Cerrone; Kevin Rispin; Kim Olney; Mark Douglas; Martin Appleby; Matthew Bourke; Ryan Fox; Shane McLaren (Cinema); Wayne Smith; Ajay Ranchord; Anita Parsot; Chris Owen; Colin Urquhart; David O'Hagan; Dawn Logan; Freeman Tong; Ginny Seo; Hadyn Bell-Norris; Jennifer Acabado; Joanne Robinson; Jonathan Rowe; Jonathan Tay; Katie Park; Lindsey Tang; Maria Florendo; Mark Kendrick; Michelle Lai; Paul Mansfield; Ricky Pillai; Robert Provoost; Ryan Santosq; Sarah Carpenter; Sonia Smith; Steve Lucas  
**Cc:** 'wgould@troygould.com'  
**Subject:** Appointment of President and Chief Executive Officer  
**Attachments:** image001.jpg; Letter from Bill Gould to Employees re Appointment of President and CEO dtd 1-11-2016.pdf

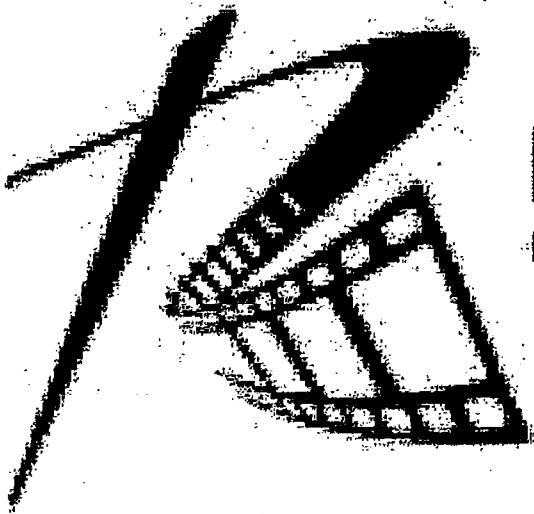
Reading Directors, Management and Employees,

Sent on behalf of William D. Gould, the Company's Lead Independent Director, please see the attached letter regarding the Appointment of Ellen M. Cotter as the Company's President and Chief Executive Officer.

Regards,  
Susan Villeda  
Executive Assistant to CFO  
6100 Center Drive, Suite 900, Los Angeles, CA. 90045  
O: (213) 235-2245 | F: (213) 235-2229  
E: [susan.villeda@readingrd.com](mailto:susan.villeda@readingrd.com)



EXH 390  
DATE 6-29-16  
WIT Gould  
PATRICIA HUBBARD



**READING**  
**INTERNATIONAL**





January 11, 2016

Re: Appointment of President & CEO

Ladies & Gentlemen:

I am very happy to announce, on behalf of the Board of Directors of Reading International, that Ellen Cotter has been appointed as our Company's permanent President and Chief Executive Officer.

Ellen has been a part of our Company for 18 years, and has served as the senior operating officer of our Company's domestic cinema operations for more than a decade. She spent a year on our behalf in Australia helping us acquire what are now some of our key assets in that country. And, since June 12, 2015, she has served as our Company's interim Chief Executive Officer.

Ellen is well known and respected in the cinema business. In 2015, Ellen was awarded a Gotham Award at the Independent Filmmaker Project Gotham Awards for her contributions to the independent film industry. She was also inducted into the ShowEast Hall of Fame.

Additionally, while serving as COO of our domestic cinemas, Ellen gained substantial hands-on real estate experience, dealing with landlords and developers while expanding our domestic cinema chain.

Over the past six months, she has effectively managed the disparate elements of our multi-national company, displaying her leadership and commitment to Reading. Furthermore, as a result of her sizable equity interest in our Company, her interests and those of our stockholders are well-aligned. Reading is her passion and her life. She is, in the view of the Board, clearly the best person to take on the duties and responsibilities of our Company's President and Chief Executive Officer.

Please join me in congratulating Ellen on her appointment.

Best,

Bill Gould  
Lead Director

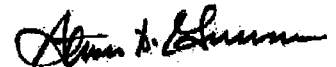
Reading International, Inc.  
4100 Center Drive, Suite 900  
Los Angeles, California 90045  
t: 213.235.2240 f: 213.235.2229

  
[www.readingintl.com](http://www.readingintl.com)  


JA4580

# **EXHIBIT 12**

**(Filed Separately Under Seal)**



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

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

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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada  
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

**BUSINESS COURT**

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

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

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

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

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

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

1 evaluating the “fairness” of the process of the decision to terminate, the undisputed evidence  
2 compels a conclusion it was fair—to RDI foremost (the actual “derivative plaintiff”), *cf.* NRS  
3 78.140(2)(d) (Nevada’s only “fairness” test, which analyzes whether an interested director  
4 transaction was “fair to the corporation” before potentially voiding it), but also to Plaintiff. After  
5 a period of difficult and abrasive management requiring extensive intervention by Board  
6 members (individually and collectively), the Board made a decision after extensive debate and  
7 with Board members (now Defendants) freely voting on each side. In an act of classic fairness  
8 (and consistent with RDI’s Bylaws), the majority ruled—and decided—to terminate Plaintiff.  
9 These same undisputed facts establish that, even if there was a fiduciary breach stemming from  
10 the Board’s decision, the Individual Defendants would not be liable because there is *no evidence*  
11 that the breach involved “intentional misconduct, fraud or a knowing violation of law,” as  
12 required by NRS 78.138(7). Finally, Plaintiff has proffered no evidence of damages to RDI or  
13 proximate causation. Indeed, to the extent his “damages” consist of the fact of termination and  
14 he seeks reinstatement, such a remedy is unavailable.

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

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

## 24 **II. ARGUMENT**

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

26 Despite 50 pages of briefing, Plaintiff has failed to come forward with evidence to  
27 establish disputed facts supporting his claim. Moreover, he cites no law to support a breach of  
28

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

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

17 Under Nevada law—ignored by Plaintiff—corporate officers such as a CEO or President  
18 have no vested right to remain in their position. Rather, officers serve only "for such terms and  
19 have such powers and duties as may be prescribed by the bylaws or determined by the board of  
20 directors," and an officer may be subject to "removal before the expiration of his or her term."  
21 NRS 78.130(3)-(4). RDI's Bylaws mirror NRS 78.130, and expressly provide that Plaintiff  
22 served solely "at the pleasure of the Board of Directors," such that he could "be removed at any  
23 time, with or without cause, by the Board of Directors by a vote of not less than a majority of the  
24

---

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

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

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

---

17 <sup>2</sup> Citations to “HD#1” refer to exhibits attached to the Declaration of Noah S. Helpen in  
18 Support of the Individual Defendants’ Motion for Summary Judgment No. 1; citations to  
19 “HD#2” refer to exhibits attached to the Helpen Declaration in Support of the Individual  
20 Defendants’ Motion for Summary Judgment No. 2; and citations to “HDO” refer to any new  
21 exhibits attached to the Helpen Declaration in Support of the Individual Defendants’ Opposition  
22 to Plaintiff’s Motion for Partial Summary Judgment. Any exhibits cited by Plaintiff in his  
23 opposition but not already included in the Individual Defendants’ previous filings will be  
24 referred to using Plaintiff’s “Appendix.” No new factual evidence is attached to this reply brief.

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

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

16           That Plaintiff's alleged derivative claims fall outside the corners of his Employment  
17 Contract is a far different issue than whether the causes of action he asserts as a stockholder are  
18 actually valid as a matter of law. With respect to his termination claim, they are not—based on  
19 the law of *every* jurisdiction to consider it. *See, e.g., Berman v. Physical Med. Ass'n, Ltd.*, 225  
20 F.3d 429, 433 (4th Cir. 2000) (affirming dismissal of fiduciary duty claim that directors did not  
21 follow fair procedures in deciding to terminate stockholder/doctor's employment because "any  
22 injury caused by the termination decision itself would be an injury to his interests as an  
23 employee, not as a stockholder"); *In re Eagle Corp.*, 484 B.R. at 654 (a stockholder "who is also  
24 an employee cannot recover on a breach of fiduciary duty claim when the claim is grounded  
25 solely in an employment dispute"); *Wall St. Sys., Inc. v. Lemence*, No. 04 Civ. 5299, 2005 WL  
26 2143330, at \*8 (S.D.N.Y. Sept. 2, 2005) (dismissing third-party claims against directors because  
27 "they are essentially employment disputes that cannot sustain a claim of fiduciary breach under  
28 Delaware law"); *Dweck v. Nassar*, No. 1353-N, 2005 WL 5756499, at \*5 (Del. Ch. Nov. 23,

1 2005) (“[the shareholder’s] allegations of wrongdoing in connection with her termination as  
2 President and CEO” by the Board of Directors “are insufficient to support a claim for breach of  
3 fiduciary duty”); *Nahass v. Harrison*, C.A. No. 15-12354, 2016 WL 4771059, at \*6 (D. Mass.  
4 Sept. 13, 2016) (terminated officer could not maintain a breach of fiduciary duty claim where his  
5 termination was authorized under “the Bylaws”); *In re Eagle Corp.*, 484 B.R. 640, 654 (Bankr.  
6 D.N.J. 2012) (removal of officer and director could not be a breach of fiduciary duty where  
7 “Delaware General Corporation Law provides for removal . . . with or without cause”);  
8 *Goldstein v. Lincoln Nat’l Convertible Sec. Fund, Inc.*, 140 F. Supp. 2d 424, 438 (E.D. Pa. 2001)  
9 (plaintiff could not maintain fiduciary duty claim “[g]iven the express statutory authorization for  
10 the Board’s action”), *vacated on other grounds*, 2003 WL 1846095 (3d Cir. Apr. 2, 2003);  
11 *Quadrant Structured Prod. Co., Ltd. v. Vertin*, C.A. No. 6990-VCL, 2014 WL 5465535, at \*3  
12 (Del. Ch. Oct. 28, 2014) (dismissing action where the “governing documents authorized” the  
13 challenged “strategy”); *see also* 2 Fletcher Cyc. Corp. § 363 (2015) (“where a bylaw provided  
14 that any officer might be removed by a majority vote of the entire board whenever the best  
15 interests of the company require it, it was for the directors to determine what was in the best  
16 interests of the company; the courts will not interfere unless for fraud or illegality”).

17 Plaintiff cannot distinguish or avoid this authority. In fact, even “under Delaware law,”  
18 which Plaintiff maintains is the “persuasive authority” on which he relies (Pl.’s Mot. at 22 n.6),  
19 courts are emphatic that “there can be no breach of fiduciary duty stemming from the termination  
20 of [an officer’s] employment.” *Kasper v. LinuxMall.com, Inc.*, No. Civ. A. 00-2019, 2001 WL  
21 230494, at \*3 (D. Minn. Feb. 23, 2001) (applying Delaware law in termination of president); *see*  
22 *also Riblet Prods. Corp. v. Nagy*, 683 A.2d 37, 39-40 (Del. 1996) (no breach of fiduciary duty  
23 where stockholder/plaintiff was “an employee of the corporation under an employment contract  
24 with respect to issues involving that employment”). Simply put, his claim is meritless.

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

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

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

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

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

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

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

28 <sup>5</sup> While Nevada courts may take into consideration Delaware precedents, such consideration  
is unnecessary here where there exists Nevada law.



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

10 The conclusion is simple: the RDI Board’s business decision to remove a CEO was a  
11 purely operational decision that is one of those “matters of business” always entitled to the  
12 Nevada statutory presumption of reasonable business judgment under NRS 78.138(3). *See*  
13 *Nahass*, 2016 WL 4771059, at \*5 (questioning how the “entire fairness” doctrine ever “would  
14 apply to employment decisions,” and rejecting fiduciary duty claim by officer terminated by  
15 company’s directors).<sup>6</sup> This is fully consistent with the wide discretion afforded to corporate  
16 boards under Nevada law on matters that determine the course of the company, *see* NRS 78.120,  
17 78.135, 78.138, whether or not to sell the company, *see* NRS 78.139, and the limitations on  
18 liability, *see* NRS 78.037, 78.751, 78.7502. As Nevada corporate policy, these statutes are  
19 designed to vest decision-making in the board, and to protect directors who are called upon to  
20 make these decisions (usually working on a part-time basis, sometimes with less-than-perfect  
21 knowledge, and typically for not much money). *See also* NRS 78.138(7) (providing additional  
22 legal protections to directors with respect to potential personal liability).<sup>7</sup>

23  
24 <sup>6</sup> In short, in Nevada, there is a marked contrast between “operational decisions,” such as  
25 removing an officer or changing a marketing strategy, and “transactional decisions,” such as  
26 where a director can be on both sides of a particular transaction. It defies logic to imply a more  
27 stringent standard for operational decisions like the termination of an executive (*i.e.*, Delaware’s  
28 “entire fairness” test) than there is under existing Nevada statutes where a director sits on both  
sides of a specific transaction (*i.e.*, the NRS 78.140 “fair as to the corporation” analysis).

<sup>7</sup> The only other basis upon which Plaintiff challenges this Board decision relies on  
allegations of “lack of independence” by certain Board members. Even if the disinterestedness

1                                   2.     **The Board's Termination of Plaintiff Was Fair**

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

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

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

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

<sup>8</sup> Plaintiff, in his opposition, does not deny that Storey gave him this warning. Instead,

1 McEachern testified, Plaintiff “knew that his position as CEO was in jeopardy for a longer period  
2 of time than just May 21,” (HD#1 Ex. 7 at 176:1-9), and Plaintiff conceded at deposition that he  
3 was aware that there was “the possibility of getting an interim CEO . . . as early as October  
4 2014.” (HD#1 Ex. 11 at 528:9-529:20.)

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

20  
21  
22 Plaintiff merely suggests that Storey not only cautioned that a removal could involve Plaintiff, it  
23 could involve Ellen and/or Margaret Cotter as well—a fact that is irrelevant to whether the  
process involving Plaintiff’s removal was fair. (Pl.’s Opp’n at 5.)

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

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

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

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

23  
24 they dared to exercise their fiduciary duties and debate the merits of his continued tenure.  
(HD#1 Ex. 3 at 426:19-427:9; HD#1 Ex. 7 at 78:14-79:2.)

25 <sup>10</sup> Plaintiff does not cite a single case for the proposition that any notice is required. Other  
26 authority is clear that notice is not necessary. *See OptimisCorp. v. Waite*, C.A. No. 8773-VCP,  
27 2015 WL 5147038, at \*66-67 (Del. Ch. Aug. 26, 2015) (rejecting argument that directors  
28 "breached their duty of loyalty by not advising [CEO] in advance of his potential termination");  
2 Fletcher Cyc. Corp. § 357.20 (2015) (a board's failure to give CEO advance notice of a plan to  
remove him as CEO does "not invalidate his termination").

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

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

16 What Plaintiff leaves out is that the RDI Board took Storey’s advice, engaged outside  
17 counsel to assist it in its fiduciary duties,<sup>11</sup> and vigorously debated the merits of Plaintiff’s

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18  
19 <sup>11</sup> Citing no legal precedent in support, Plaintiff asserts that the Individual Defendants’  
20 factual statement that they engaged the services of outside counsel when discussing Plaintiff’s  
21 potential termination (and their related suggestion that such engagement is indicative of a board  
22 acting responsibly) is somehow equivalent to “asserting reliance on counsel” as an affirmative  
23 defense. (Pl.’s Opp’n at 16 n.6.) Plaintiff is wrong as a matter of law. Acknowledging receipt  
24 of advice from an attorney is different and distinct from asserting an advice of counsel  
25 affirmative defense (which the Individual Defendants have not done and are not doing, as they  
26 are not claiming that they cannot be held liable *because* they relied in good faith on the informed  
27 advice of counsel in taking a specific action—*i.e.*, to terminate Plaintiff). *See In re Comyerge,*  
28 *Inc. S’holders Litig.*, Civ. A. No. 7368-VCP, 2013 WL 1455827, at \*1, \*3-4 (Del. Ch. Apr. 10,  
2013) (finding no waiver of privilege and no invocation of advice of counsel defense; holding  
that “it is the existence of legal advice that is material to the question of whether the board acted  
with due care, not the substance of that advice”). Plaintiff cannot have it both ways—he cannot  
proclaim there was a “kangaroo court” and then seek to prevent the Individual Defendants from  
noting steps taken to show that no procedural improprieties occurred. Regardless, had the RDI  
Board not engaged outside counsel, the procedure it employed in deciding whether to terminate  
Plaintiff would still have been procedurally fair.

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

17 **(b) The Decision to Terminate Plaintiff Was Fair on the Merits**

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

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

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

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

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

19 • Plaintiff Could Not Work With Key RDI Executives: Plaintiff does not dispute that  
20 his sisters, Ellen and Margaret Cotter, were key executives within RDI. Nor does he dispute that  
21 he could not work well with them, as established by the Individual Defendants. (*See* Defs.’ MSJ  
22 No. 1 at 6-7; Defs.’ Opp’n at 7-9.) And he does not contest that, due to this inability, Director  
23 Gould and others determined that RDI was faced with “a dysfunctional management team” in  
24

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

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

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

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18  
19 <sup>13</sup> With respect to the above-deficiencies, Plaintiff’s asserts—with absolutely no support—that  
20 the substantial testimony and documentary evidence collected by the Individual Defendants  
21 is “flimsy”; his one factual response is to claim that Director Kane, at least, did not actually share  
22 these concerns. (Pl.’s Opp’n at 4.) A reference to the evidence collected by the Individual  
23 Defendants belies any suggestion that it is “flimsy,” and such naming-calling, of course, falls  
24 well short of Plaintiff’s obligation to muster contrary evidence at the summary judgment stage.  
25 Moreover, Plaintiff’s single reference to an early June 2015 email chain with Director Kane is  
26 itself “flimsy” and perplexing. If Plaintiff believes that Kane wanted him to remain CEO in  
27 early June 2015, it disproves his theory that there was a conspiracy amongst the Individual  
28 Defendants to remove him from office with no debate in mid-May 2015. In reality, the emails  
cited by Plaintiff regarding Kane, whom Plaintiff had begged to help him “broker” a deal with  
Ellen and Margaret Cotter (*see* Defs.’ Opp’n at 12-13), merely show Kane using flattery in an  
attempt to reason with Plaintiff, forestall his firing, and advocate for a negotiated resolution of  
the myriad of management problems plaguing Plaintiff’s tenure. (*See* Pl.’s Appendix Ex. 2.)  
None of these actions by Kane, which were attempting to avert the prevent, costly corporate  
battle, were in any way improper.



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

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

20           Once that agreement fell through, the Board was left with the same intractable problems  
21 as before—which Plaintiff does not dispute. As *both* Storey (who voted against termination) and  
22 Kane (who voted for termination) testified, the Individual Defendants felt that “things should be  
23 dealt with now,” “[t]hey had come to a head and there was no point in delaying,” “the current  
24 disharmony within the business was untenable going forward,” “[t]here was a polarization in the  
25 office among the employees, and it had to be resolved one way or another.” (HD#1 Ex. 1  
26 at 119:25-120:12, 154:2-14; HD#2 Ex. 5 at 331:11-332:17.) Given that the Board was faced  
27 with a CEO that could not perform adequately, lacked experience and expertise, required close  
28

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

3 **3. RDI Was Not Damaged by Plaintiff's Termination**

4 Even if Plaintiff's termination was somehow "unfair" to RDI (which it was not),  
5 Plaintiff's fiduciary duty claims arising from his removal must fail because he has not shown any  
6 damages to RDI resulting from his firing, nor has he provided evidence that any such damages  
7 were proximately caused by the Board's June 12, 2015 decision. (See Defs.' MSJ No. 1 at 22-  
8 23; Defs.' Opp'n at 19-20.)

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

21  
22 <sup>14</sup> *Kendall v. Henry Mountain Mines, Inc.*, 78 Nev. 408 (1962), the one Nevada case that  
23 Plaintiff cites for the proposition that corporations may void the challenged transactions of  
24 interested directors (Pl.'s Opp'n at 20), says nothing about the elements of a fiduciary duty claim  
25 or whether damages are a required showing. Similarly, *Cinerama, Inc. v. Technicolor, Inc.*, 643  
26 A.2d 345 (Del. 1993), a Delaware case, does not support Plaintiff's argument. While that case  
27 states that "[t]o require proof of injury as a component of proof necessary to rebut the business  
28 judgment presumption would be to convert the burden shifting process from a threshold  
determination of the appropriate standard of a review to a dispositive adjudication on the merits,"  
*id.* at 371, this quote does not stand for the proposition that *no proof* of injury is required at all—  
instead, it merely establishes *the timing as to when* proof of injury is required. In fact, the court  
went on to state that "injury or damages becomes a proper focus only after a transaction is  
determined *not* to be entirely fair." *Id.* (emphasis in original).

1 breach of the fiduciary relationship resulted in damages”); *see also Stalk v. Mushkin*, 125 Nev.  
2 21, 28 (2009) (“a breach of fiduciary duty claim seeks damages for injuries that result from the  
3 tortious conduct of one who owes a duty to another by virtue of the fiduciary relationship”).

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

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

24  
25 <sup>15</sup> Plaintiff also asserts that the Individual Defendants “have wrongfully insisted that  
26 Plaintiff resign as Company director.” (Pl.’s Opp’n at 8.) While this allegation has absolutely  
27 no relevance to whether or not Plaintiff’s termination was a fiduciary breach, Plaintiff in fact did  
28 not resign and instead remains a Board member to this day—meaning that neither he nor RDI  
could have suffered any damages from this purportedly wrongful conduct.

<sup>16</sup> *See* <http://www.nasdaq.com/symbol/rdi/historical>.

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

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

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

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

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

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

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

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

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

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

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

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

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

27  
28 <sup>17</sup> In his opposition, Plaintiff points to purported "substantial evidence of self-dealing"  
conduct by the Individual Defendants with respect to their approval of both a stock option and

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

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

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

25  
26 the nominations of new directors to justify his standing as a derivative plaintiff. (Defs.' Opp'n  
27 at 22.) While the Individual Defendants do not challenge Plaintiff's theoretical ability to  
28 derivatively assert claims relating to those types of corporate actions, that "evidence"—which is,  
in fact, nonexistent—is entirely irrelevant to Plaintiff's derivative standing *with respect to his*  
*separate termination claim and reinstatement demand*—the subject of this motion.

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

8 This resounding “lack of support” for Plaintiff’s termination and reinstatement claims by  
9 relevant “non-defendant shareholders” is fatal to Plaintiff’s standing. *Love v. Wilson*, No. CV  
10 06-06148, 2007 WL 4928035, at \*6 (C.D. Cal. Nov. 15, 2007) (rejecting derivative standing);  
11 see also *Smith v. Ayres*, 977 F.2d 946, 948 (5th Cir. 1992) (lack of “cooperation” or support from  
12 other shareholders undermined attempted derivative action); *Energystec, Inc. v. Proctor*, Nos.  
13 3:06-cv-0871 *et al.*, 2008 WL 4131257, at \*7 (N.D. Tex. Aug. 29, 2008) (applying Nevada law  
14 and rejecting derivative standing of former CEO because other stockholders do not “share” an  
15 interest in his “regain[ing] control” of the company). Because Plaintiff lacks standing to pursue  
16 a derivative action seeking relief on his termination and reinstatement claims, summary  
17 judgment is entirely appropriate.

### 18 **III. CONCLUSION**

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

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Dated: October 21, 2016

**COHEN|JOHNSON|PARKER|EDWARDS**

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

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

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

**CERTIFICATE OF SERVICE**

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

**Bird Marella**

Contact	Email
Bora Lee	blee@birdmarella.com
Docket	Docket@BirdMarella.com
Hernan E. Vera	herv@birdmarella.com
Karen Minutelli	kmmv@birdmarella.com
Shoshana E. Barnett	seh@birdmarella.com

**Chubb**

Contact	Email
Allison Rose	allisonrose@chubb.com

**Cohen | Johnson | Parker | Edwards**

Contact	Email
C.J. Barnabi	cjb@cohenjohnson.com
H. Stan Johnson, Esq.	hstan@cohenjohnson.com
Sarah Gondek	srgondek@cohenjohnson.com

**Fish & Richardson PC**

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

**Greenberg Traurig, LLP**

Contact	Email
6085 Joyce Heilich	heilichj@gtlaw.com
7132 Andrea Rosehill	rosehill@gtlaw.com
IGM Mark Ferrario	mferrario@gtlaw.com
KBD Kara Hendricks	hendricksk@gtlaw.com
LVGT Docketing	lvgt@gtlaw.com
MNQ Megan Sheffield	sheffieldm@gtlaw.com
WTM Tami Cowden	cowdent@gtlaw.com
ZCE Lee Hutcherson	hutcherson@gtlaw.com

**Laxalt & Nomura, Ltd.**

Contact	Email
James E. Murphy, Esq.	jmurphy@laxalt-nomura.com
Mike Bale	mbale@laxalt-nomura.com
Nancy Rozan	nrozan@laxalt-nomura.com

**Lewis Roca Rothgerber****Contact**

Judy Estrada

**Email**[jestrada@lrnc.com](mailto:jestrada@lrnc.com)**Lewis Roca Rothgerber Christie****Contact**

Mark Krum

Stephanie Sodorff

**Email**[mkrum@lrnc.com](mailto:mkrum@lrnc.com)[ssodorff@lrnc.com](mailto:ssodorff@lrnc.com)**Lewis Roca Rothgerber Christie LLP****Contact**

Jessie Helm

Kirsten Story

Luz Horvath

**Email**[jhelm@lrnc.com](mailto:jhelm@lrnc.com)[kstory@lrnc.com](mailto:kstory@lrnc.com)[lhorvath@lrnc.com](mailto:lhorvath@lrnc.com)**Maupin, Cox & LeGoy****Contact**

Carolyn K. Renner

Donald A. Lattin

Jennifer Salisbury

Karen Bernhardt

Katie Arnold

**Email**[crenner@mclawfirm.com](mailto:crenner@mclawfirm.com)[dlattin@mclawfirm.com](mailto:dlattin@mclawfirm.com)[jsalisbury@mclawfirm.com](mailto:jsalisbury@mclawfirm.com)[kbernhardt@mclawfirm.com](mailto:kbernhardt@mclawfirm.com)[karnold@mclawfirm.com](mailto:karnold@mclawfirm.com)**McDonald Carano Wilson****Contact**

Aaron D. Shipley

Leah Jennings

**Email**[ashipley@mcclaw.com](mailto:ashipley@mcclaw.com)[lennings@mcdonaldcarano.com](mailto:lennings@mcdonaldcarano.com)**Patti Sgro Lewis & Roger****Contact**

Andrew D. Sedlock

Nelson Achaval

Stephen Lewis

**Email**[asedlock@pslfirm.com](mailto:asedlock@pslfirm.com)[nachaval@pslfirm.com](mailto:nachaval@pslfirm.com)[slewis@pattisgrolewis.com](mailto:slewis@pattisgrolewis.com)**Quinn Emanuel Urquhart & Sullivan, LLP****Contact**

Christopher Tayback

Lauren Laolo

Mario Gutierrez

Marshall M. Searcy III

Noah Helpert

**Email**[chistayback@quinnemanuel.com](mailto:chistayback@quinnemanuel.com)[laurenlalo@quinnemanuel.com](mailto:laurenlalo@quinnemanuel.com)[mariogutierrez@quinnemanuel.com](mailto:mariogutierrez@quinnemanuel.com)[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)[noahhelpert@quinnemanuel.com](mailto:noahhelpert@quinnemanuel.com)**Reading International****Contact**

Craig Tompkins

Ellen Cotter

Kenneth Tucker

Margaret Cotter

Susan Villeda

**Email**[craig.tompkins@readingrdi.com](mailto:craig.tompkins@readingrdi.com)[Ellen.Cotter@readingrdi.com](mailto:Ellen.Cotter@readingrdi.com)[Kenneth.Tucker@readingrdi.com](mailto:Kenneth.Tucker@readingrdi.com)[margaret.cotter@readingrdi.com](mailto:margaret.cotter@readingrdi.com)[susan.villeda@readingrdi.com](mailto:susan.villeda@readingrdi.com)**Royal & Miles LLP**

<b>Contact</b>	<b>Email</b>
Ashley Andrew	aandrew@royalmilesllaw.com
<b>Santoro Whitmire</b>	
<b>Contact</b>	<b>Email</b>
Asmeen Olla-Stollov	astollov@santoronevada.com
James M. Jimmerson	jimmerson@santoronevada.com
Jason D. Smith	jsmith@santoronevada.com
Kristen Capella	kcapella@santoronevada.com
Nicholas J. Santoro	nsantoro@santoronevada.com
Rachel Jenkins	rjenkins@santoronevada.com
<b>Shepard, Mullin, Richter &amp; Hampton LLP</b>	
<b>Contact</b>	<b>Email</b>
Adam Streisand	astreisand@sheppardmullin.com
<b>Sheppard, Mullin, Richter &amp; Hampton LLP</b>	
<b>Contact</b>	<b>Email</b>
Dolores Gameros	dgameros@sheppardmullin.com
<b>SOLOMON DWIGGINS &amp; FREER, LTD.</b>	
<b>Contact</b>	<b>Email</b>
Alan D. Freer, Esq.	afreer@sdfnvlaw.com
<b>Troy Gould</b>	
<b>Contact</b>	<b>Email</b>
William Gould	wgould@trovgould.com

Dated this 21<sup>st</sup> day of October, 2016.

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



CLERK OF THE COURT

1 **COHEN|JOHNSON|PARKER|EDWARDS**  
2 **H. STAN JOHNSON, ESQ.**

3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 255 East Warm Springs Road, Suite 100  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 823-3500  
8 Facsimile: (702) 823-3400

9 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

10 **CHRISTOPHER TAYBACK, ESQ.**  
11 California Bar No. 145532, *pro hac vice*  
12 christayback@quinnemanuel.com  
13 **MARSHALL M. SEARCY, ESQ.**  
14 California Bar No. 169269, *pro hac vice*  
15 marshallsearcy@quinnemanuel.com  
16 865 South Figueroa Street, 10<sup>th</sup> Floor  
17 Los Angeles, CA 90017  
18 Telephone: (213) 443-3000

19 Attorneys for Defendants Margaret Cotter,  
20 Ellen Cotter, Douglas McEachern, Guy Adams,  
21 Edward Kane, Judy Coddington, and Michael Wrotniak

22 **EIGHTH JUDICIAL DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 **JAMES J. COTTER, JR. individually and**  
25 **derivatively on behalf of Reading**  
26 **International, Inc.,**

27 **Plaintiffs,**

28 **v.**

29 **MARGARET COTTER, ELLEN COTTER,**  
30 **GUY ADAMS, EDWARD KANE, DOUGLAS**  
31 **McEACHERN, WILLIAM GOULD, JUDY**  
32 **CODDINGTON, MICHAEL WROTONIAK, and**  
33 **DOES 1 through 100, inclusive,**

34 **Defendants.**

35 **AND**

36 **READING INTERNATIONAL, INC., a Nevada**  
37 **corporation,**

38 **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**

**REPLY IN SUPPORT OF INDIVIDUAL  
DEFENDANTS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT (NO. 2) RE:  
THE ISSUE OF DIRECTOR  
INDEPENDENCE**

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: Oct. 27, 2016

Time of Hearing: 1:00 P.M.

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1 **I. INTRODUCTION**

2 Plaintiff's arguments against granting summary judgment on the issue of the Individual  
3 Defendants' independence with respect to the litany of Board actions about which Plaintiff  
4 complains misapprehend the law and rely on speculation rather than facts.

5 First, Plaintiff wrongly asserts that the independence of board members with respect to a  
6 specific action is a factual question inappropriate for summary judgment. Not so. Courts  
7 regularly decide the issue of director independence as a matter of law at the summary judgment  
8 stage—and even earlier, on motions to dismiss.

9 Second, Plaintiff attempts to twist and complicate the facts to fit his favored narrative—  
10 without regard to the evidence—of a board willing to do whatever the Cotter sisters might ask.  
11 Plaintiff ignores the dearth of facts supporting this view. Plaintiff refuses to concede that  
12 Douglas McEachern (“McEachern”) is independent but provides nothing to rebut Plaintiff's  
13 admission to the contrary at his deposition. He believes that Edward Kane (“Kane”) favors Ellen  
14 and Margaret Cotter and is biased against him based on Kane's prior friendship with their father;  
15 Judy Coddling (“Coddling”) favors them due to her friendship with their mother; and Michael  
16 Wrotniak (“Wrotniak”) favors Margaret Cotter because of her friendship with his wife. Case  
17 law, however, is starkly to the contrary: mere friendship does not make a director biased—  
18 *especially* when that friendship is with someone else entirely and not the director him- or herself.  
19 Plaintiff points to payments to Guy Adams (“Adams”) by Ellen and Margaret Cotter as reason  
20 for Adams' purported lack of independence. The undisputed facts, however, are that (i) Adams  
21 earned those payments from preexisting business deals with James Cotter, Sr.; (ii) there is no  
22 certainty that his position on the Board or relationship with Reading is assured by “supporting”  
23 the sisters because future control of Cotter, Sr.'s Estate is disputed in a separate lawsuit and may  
24 ultimately rest with Plaintiff; and (iii) the compensation Adams receives is not material to his  
25 overall finances. In short, Plaintiff's allegations of second-hand friendships and nominal  
26 business ties are too remote as a matter of law to show a lack of independence with respect to  
27 any board action.  
28

1 Third, Plaintiff does not present any evidence to show that any specific board action by  
2 any individual director defendant was actually compromised by the bias that he argues exists.  
3 Rather than point to specific self-dealing transactions (which do not exist) as would be typical in  
4 a challenge to director independence on an issue, he relies on the meaningless phrases  
5 “usurpation” and “entrenchment” as the goal. Generalized “usurpation” and “entrenchment” is  
6 insufficient to establish breach-of-fiduciary-duty claims against directors in Nevada; rather,  
7 Plaintiff must have *evidence* that *specific* board actions were affected by *specific* bias or lack of  
8 independence by *specific* directors rising to the level required by NRS 78.138(7)(a) (requiring  
9 intentional misconduct, fraud or knowing violation of the law for liability of individual  
10 directors). He does not, and accordingly his claims based on alleged lack of independence of  
11 individual directors should be summarily adjudicated against him.<sup>1</sup>

## 12 II. ARGUMENT

### 13 A. Summary Judgment is Appropriate on This Record

14 Utterly misreading the authority he cites, Plaintiff argues that because director  
15 independence is a “fact-specific determination,” summary judgment is inappropriate. (Opp. at  
16 11-12.) Plaintiff relies on *Beam ex rel Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845  
17 A.2d 1040, 1049 (Del. 2004), but the court in *Beam* actually granted the director defendants’  
18 motion to dismiss upon holding that the plaintiff’s factual allegations did not show a lack of  
19 independence. *Id.* at 1049-54. If director independence can appropriately be determined on a  
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21 <sup>1</sup> At least the following board actions arguably comprise the claims Plaintiff contends are  
22 tainted by alleged director bias, and are covered by this summary judgment motion: (1)  
23 discussions about terminating Plaintiff (*id.* ¶ 2); (2) terminating Plaintiff (*id.* ¶ 3); (3) reactivating  
24 the Executive Committee (*id.* ¶ 99); (4) electing Coddington to RDI’s board of directors (*id.* ¶ 11);  
25 (5) electing Wrotniak to RDI’s board of directors (*id.* ¶ 12); (6) approving the Estate’s exercise  
26 of an option for 100,000 Class B shares in September 2015 (*id.* ¶ 10); (7) manipulating the CEO  
27 search (*id.* ¶¶ 137-147); (8) selecting Ellen Cotter as RDI’s CEO (*id.* ¶ 146); (9) setting Ellen  
28 Cotter’s salary as CEO (*id.* ¶ 152); (10) selecting Margaret Cotter for her New York real-estate  
position (*id.* ¶ 149); (11) setting Margaret Cotter’s salary in that position (*id.* ¶ 150); (12) making  
a \$200,000 payment to Margaret Cotter when she became an RDI employee (*id.* ¶ 151); (13)  
making a \$50,000 payment to Guy Adams for his board service (*id.* ¶ 153); (14) deciding not to  
pursue a third-party’s indication of interest in purchasing RDI (*id.* ¶¶ 154-162); and (15) making  
purportedly misleading public statements in press releases and SEC filings (*id.* ¶¶ 101, 135, 136).

1 motion to dismiss, it can certainly be determined with the factual record present at summary  
2 judgment. According to Plaintiff, determining director independence as a matter of law would  
3 “ignore[ ] the clear teaching from Delaware’s highest court.” (Opp. at 11-12 (citing *Beam*, 845  
4 A.2d at 1049).) Putting aside that Nevada law applies here, the Delaware Supreme Court has  
5 noted that “Delaware courts have often decided director independence as a matter of law at the  
6 summary judgment stage.” *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635, 649 (Del. 2014)  
7 (citing *In re Transkaryotic Therapies, Inc.*, 954 A.2d 346, 369-70 (Del. Ch. 2008) and *In re*  
8 *Gaylord Container Corp. S’holders Litig.*, 753 A.2d 462, 465 (Del. Ch. 2000)); *see also SEPTA*  
9 *v. Volgenau*, C.A. No. 6354-VCN, 2013 WL 4009193, at \*12-21 (Del. Ch. Aug. 5, 2013)  
10 (holding, on summary judgment, that directors on the special committee were disinterested and  
11 independent).<sup>2</sup>

12 Plaintiff also appears to suggest that summary judgment would be improper because,  
13 under Nevada Rule of Civil Procedure 56(f), the Court may grant a party opposing summary  
14 judgment additional time to conduct further discovery. (Opp. at 10-11.) However, Plaintiff does  
15 not explicitly request such relief and would not be entitled to it even if he did. Plaintiff makes no  
16 effort to identify (by affidavit or otherwise) any further evidence that he needs to collect to  
17 oppose the motion, as is required by the rule. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121  
18 Nev. 113, 118 (2005) (noting that a continuance under NRCP 56(f) is “appropriate only when the  
19 movant expresses how further discovery will lead to the creation of a genuine issue of material

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21 <sup>2</sup> The other out-of-state authorities cited by Plaintiff on this point also do not hold that it is  
22 improper to determine director independence at summary judgment. *See In re Facebook, Inc.,*  
23 *IPO Sec. & Derivative Litig.*, 922 F. Supp. 2d 445, 468 (S.D.N.Y. 2013) (granting motion to  
24 dismiss due to plaintiff’s failure to allege lack of independence or disinterestedness); *In re*  
25 *Finisar Corp. Derivative Litig.*, 542 F. Supp. 2d 980, 988 (N.D. Cal. 2008) (same); *Teamsters*  
26 *Union 25 Health Servs. & Ins. Plan v. Baiera*, 119 A.3d 44, 61 (Del. Ch. 2015) (same); *Gearhart*  
27 *Indus., Inc. v. Smith Int’l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984) (affirming lower court’s  
28 decision to deny injunction where there was no evidence of directors’ self-interest and no  
fiduciary duty was breached); *Drobbin v. Nicolet Instrument Corp.*, 631 F. Supp. 860, 880  
(S.D.N.Y. 1986) (preliminary injunction appropriate where court found that directors were not  
disinterested and had not show that transaction was fair); *Patrick v. Allen*, 355 F. Supp. 2d 704,  
712 (S.D.N.Y. 2005) (denying motion to dismiss where plaintiffs sufficiently alleged that  
defendants were not disinterested directors).

1 fact”); *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 871 (2011) (party opposing summary  
2 judgment is required by NRCP 56(f) to “provide an affidavit stating the reasons why denial or  
3 continuance of the motion for summary judgment is necessary to allow the opposing party to  
4 obtain further affidavits or discovery”). Given that trial is scheduled to start in only a few weeks,  
5 the Court should not grant any further time for discovery.

6 **B. RDI Directors McEachern, Kane, Coddington, Wrotniak, and Adams are**  
7 **Independent as a Matter of Law**

8 *1. Douglas McEachern*

9 Plaintiff inexplicably contends that while he “does not concede that McEachern was  
10 disinterested and/or independent,” he somehow “can prevail on this Motion without showing  
11 McEachern to have lacked disinterestedness or independence” and therefore “chooses not to  
12 address McEachern.” (Opp. at 16 n.3.) As was noted in the Motion, Plaintiff admitted at his  
13 deposition that McEachern is independent. (Mot. at 5, 15, 23.) When asked “Mr. McEachern, is  
14 he independent, in your view?” Plaintiff answered “Yes. I mean, he’s – I mean, again, he’s  
15 independent. He’s got no relationship with Ellen and Margaret or, you know, no business  
16 relationship with Ellen and Margaret.” (HD#2<sup>3</sup> Ex. 7 at 84:21-85:1.) When pressed as to  
17 whether, “in your view, Mr. McEachern is independent and has always been independent,”  
18 Plaintiff responded “Okay. Yes.” (*Id.* at 85:6-86:4.) Given that the Motion seeks summary  
19 judgment on the issue of independence as to each of the Individual Defendants except for Ellen  
20 and Margaret Cotter,<sup>4</sup> Plaintiff has not met his burden of identifying “admissible evidence”  
21 showing “a genuine issue for trial” regarding McEachern’s independence with respect to any  
22 board action. *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993); *Shuck v. Signature Flight*  
23 *Support of Nev., Inc.*, 126 Nev. 434, 436 (2010) (“bald allegations without supporting facts” are  
24 insufficient).

25 \_\_\_\_\_  
26 <sup>3</sup> “HD#2” refers to the Declaration of Noah Helpert filed in support of the Individual  
27 Defendants’ Motion for Partial Summary Judgment (No. 2) Re: the Issue of Director  
Independence.

28 <sup>4</sup> Solely for purposes of this Motion, the Individual Defendants do not contest the  
independence of Ellen and Margaret Cotter. (*See* Mot. at 14 n.2.)

1                                   2.     *Edward Kane*

2             Plaintiff concedes that the “deep friendship” of which he complains was actually between  
3 Kane and James Cotter, Sr.—not between Kane and Ellen or Margaret Cotter. (Opp. at 1-2.)  
4 Plaintiff argues that Kane’s relationship with James Cotter, Sr. rendered him unable to be  
5 independent regarding disputes between Plaintiff, on the one hand, and Ellen and Margaret  
6 Cotter, on the other (Opp. at 2-3), but this defies logic. Plaintiff cites no evidence that Kane’s  
7 friendship with James Cotter, Sr. resulted in Kane having a closer personal relationship with  
8 James Cotter, Sr.’s daughters than with his son. While Ellen and Margaret Cotter have at times  
9 referred to Kane as “Uncle Ed,” so did Plaintiff until he was terminated. (App.<sup>5</sup> Ex. 1 at 37:4-  
10 14.) Indeed, Plaintiff does not dispute the fact that he has also known Kane all his life and even  
11 visited Kane at his home as late as the spring of 2015, just weeks before his termination,  
12 personally imploring him to help Plaintiff resolve his disputes with his sisters and retain his  
13 position as CEO. (Mot. at 16.) Even if Kane were Ellen and Margaret’s uncle by blood (and not  
14 Plaintiff’s), that is considered a “more remote family relationship[ ]” that is “not disqualifying”  
15 to a director’s independence as a matter of law. *See In re Amerco Derivative Litig.*, 127 Nev.  
16 196, 232-33 (2011) (“[A]n uncle/nephew relationship does not establish the parties as members  
17 of one another’s immediate families[.]”); *see also Beam*, 845 A.2d at 1050 (“Allegations of mere  
18 personal friendship or mere outside business relationship, standing alone, are insufficient to raise  
19 a reasonable doubt about a director’s independence.”).

20             Plaintiff also alleges bias because of Kane’s understanding that James Cotter, Sr.  
21 intended for Margaret Cotter to control the Voting Trust and cites Kane’s supposed “actions to  
22 make that happen” as evidence of Kane’s lack of independence. (Opp. at 18.) As a preliminary  
23 matter, Plaintiff does not explain why Kane having an opinion about Cotter, Sr.’s intentions with  
24 respect to his personal estate would impact his independence as a Reading Board Member.  
25 Moreover, contrary to Plaintiff’s claim that Kane attempted to “extort” him into settling his trust  
26 and estate disputes with his sisters (*id.*), the evidence shows that it was actually Plaintiff who  
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                                         <sup>5</sup> “App.” refers to the Appendix of Exhibits filed by Plaintiff in support of his Opposition.

1 involved Kane in the settlement discussions. Plaintiff contacted Kane on May 22, 2015,  
2 acknowledged that Plaintiff had “made mistakes with my sisters,” told Kane that he was the  
3 “most thoughtful director” and asked to “sit down with [Kane] in [San Diego] for breakfast,  
4 lunch or dinner Saturday, Sunday, Monday . . . whatever works” so that he could get Kane’s  
5 “help and thoughts” because Kane was the “only one I have now who can broker peace[.]”  
6 (HDO<sup>6</sup> Ex. 18 at 1.) Plaintiff ended his email with the foreshadowing of his litigation intentions:  
7 “If not, we will have war and our company and family will be forever destroyed over the next  
8 week.” (*Id.*) On May 27, 2015, Plaintiff emailed Kane with a 12-point settlement proposal and  
9 begged: “Is there anything you can do to broker this?” (App., Ex. 4 at 33.)

10 Kane *agreed with Plaintiff* and “strongly advise[d]” Plaintiff to come to a negotiated  
11 resolution. (*Id.* at 32.) But just as Plaintiff sought a negotiated resolution, Kane also sought one.  
12 He was not motivated by a desire that Margaret Cotter remain the sole trustee of the Voting  
13 Trust, as Plaintiff asserts without citation to any facts. (Opp. at 18.) To the contrary, as Kane  
14 explained to Plaintiff at the time, like Plaintiff, he believed that a settlement would end all the  
15 “ill feelings,” “enhance the company, benefit [Plaintiff] and [his] sisters and allow [the Cotters]  
16 to work together going forward.” Further, it would give Plaintiff the time to prove “that [he]  
17 do[es] in fact have the leadership skills to run this company.” (App., Ex. 4 at 32-33.) As of May  
18 28, 2015, although he urged a negotiation resolution, Kane “ha[d] not seen the proposal” for  
19 settlement and “ha[d] not seen or heard the particulars,” including who would control the Voting  
20 Trust (*id.* at 32), did not know that Margaret Cotter would be left as the sole trustee under the  
21 settlement, and “didn’t want to know it.” (HDO Ex. 7 at 597:9-22.) When Kane later learned  
22 that Margaret Cotter would control the trust under the proposed deal, he reemphasized to  
23 Plaintiff on June 11, 2015 that he would “much prefer that [Plaintiff] bend a bit and work it out  
24 between you to build the trust that is necessary so that you don’t lose control of the company, as  
25 you presently have.” (App. Ex. 5 at 35.) Kane knew by mid-June that “there were votes there to  
26 terminatc [Plaintiff]” and that he himself would be “voting against him” if Plaintiff’s leadership

27  
28 <sup>6</sup> “HDO” refers to the Declaration of Noah Helpert filed in support of the Individual Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment.

1 deficiencies were not alleviated by the kind of further oversight and more harmonious  
2 management structure contemplated in the pending settlement (including, for example, oversight  
3 of Plaintiff's management by an Executive Committee). (HDO Ex. 7 at 596:13-25; HDO Ex. 5  
4 at 193:3-195:2.) All the evidence shows Kane engaging Plaintiff on exactly the terms *Plaintiff*  
5 requested prior to his termination; none of it shows the kind of bias in favor of Ellen and  
6 Margaret Cotter and against Plaintiff required by law to challenge Kane's independence with  
7 respect to Plaintiff's termination or any other board action. *See Beam*, 845 A.2d at 1050.

8                   3.     *Judy Coddling*

9           Plaintiff does not deny that he stated at his deposition that Coddling "might" satisfy a  
10 "legal technical definition of independence" (HD#2 Ex. 7 at 70:18-71:6), but nevertheless  
11 continues to question her independence based solely on speculation. Plaintiff insists that  
12 Coddling lacks independence due to her friendship with Mary Cotter (the three Cotter siblings'  
13 mother) because Mary Cotter has purportedly "chosen sides" in the dispute between Plaintiff and  
14 his sisters. (Opp. at 6.) Plaintiff's only support for his belief that Mary Cotter has chosen his  
15 sisters' side is that Ellen Cotter lives at Mary Cotter's home and that Mary Cotter called Kane for  
16 advice after the dispute between Plaintiff and his sisters arose. (*Id.*) The only evidence Plaintiff  
17 proffers on these points is his own declaration and deposition testimony, and even if true, neither  
18 suffice to show that Mary Cotter has chosen sides. But *even if she has chosen sides*, Plaintiff  
19 cites no evidence that Mary Cotter ever relayed her choice to Judy Coddling or that it had any  
20 impact on Coddling's behavior with respect to any Board action. While it is true that Ellen Cotter  
21 suggested Coddling as a board member, Plaintiff offers nothing to rebut the rule discussed in the  
22 Motion that a director's involvement in selecting another board member is insufficient to show a  
23 lack of independence. (Mot. at 19.)

24           Plaintiff also speculates that Coddling "has become close" with Ellen and Margaret Cotter  
25 (*id.* at 7), but provides no factual basis for that statement. In fact, Ellen Cotter testified that  
26 before asking Coddling to consider becoming a director, she had met her only five or ten times  
27 over the course of fifteen years. (App., Ex. 16 at 307:19-308:7.) While Plaintiff cites Coddling's  
28 alleged statement that either Ellen Cotter *or Plaintiff* should be CEO of RDI as if that supports

1 his argument (*see* Opp. at 7; HD#2 Ex. 7 at 73:17-74:11), this actually undermines his claim that  
2 Coddling has shown “unwavering loyalty” to Ellen Cotter. (Opp. at 7.) Plaintiff believes this  
3 loyalty to Ellen Cotter was somehow demonstrated when Coddling asked Plaintiff’s view on Paul  
4 Heth’s indication of interest in purchasing RDI and she indicated that it should not be considered  
5 because, according to Plaintiff, Coddling “clearly ha[d] spoken to EC [Ellen Cotter] about it  
6 before the board meeting.” (Opp. at 8.) Even assuming that Plaintiff’s utter speculation that  
7 Coddling had spoken with Ellen Cotter is correct, if simply speaking to a fellow director about a  
8 topic that was to be addressed at an upcoming board meeting was grounds to find a lack of  
9 independence, it is likely that every director on every board of every company would lack  
10 independence, which cannot be what the law intends.

11 Plaintiff puzzlingly states that “Judy Coddling owes her role as director exclusively to the  
12 fact of her friendship with MC [Margaret Cotter].” (Opp. at 7.) But the only documents Plaintiff  
13 cites to show their purported relationship merely show *Mary* Cotter asking a Reading employee  
14 to FedEx some invoices to Coddling (App. Ex. 14) and a third party, Sherry King, asking  
15 Margaret if she could possibly get tickets to a theatrical show for King and Coddling when they  
16 were scheduled to be in New York, to which Margaret replied that she could “try” (App. Ex. 15).  
17 Coddling’s limited relationships with Ellen and Margaret Cotter are hardly the kind that would  
18 support a finding that Coddling is “so under their influence that [her] discretion would be  
19 sterilized.” *Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993).

20 4. *Michael Wrotniak*

21 Plaintiff argues that Wrotniak has “nothing more to recommend him as an RDI director  
22 than his and his wife’s close, personal relationship” with Margaret Cotter. (Opp. at 6.) Plaintiff  
23 ignores Wrotniak’s undisputed expertise in foreign trade (a very useful expertise RDI, which has  
24 extensive foreign operations). (Mot. at 22.) Moreover, Plaintiff’s cited evidence actually shows  
25 that Margaret Cotter’s close friendship is with Wrotniak’s wife Patricia, not Wrotniak himself.  
26 The only emails Plaintiff identifies between Wrotniak and Margaret concern Wrotniak’s requests  
27 for show tickets, and Plaintiff does not dispute Margaret Cotter’s testimony that prior to  
28 Wrotniak joining the board, she only saw him approximately “once a year if I went to [Patricia



1 Wrotniak's] house for dinner[.]” (HD#2 Ex. 6 at 322:15-21.)<sup>7</sup> Just as with Coddington, the third-  
2 party relationship identified by Plaintiff as the reason for Wrotniak's purported lack of  
3 independence is insufficient to render him biased with respect to any of the transactions at issue  
4 and thereby overcome the “presumption that directors are independent” with respect to any  
5 specific board action. (Mot. at 21); see *In re MFW S'holders Litig.*, 67 A.3d 496, 509 (Del. Ch.  
6 2013).

7                   5.       *Guy Adams*

8           While Plaintiff generally asserts that Adams is not disinterested because he “picked sides  
9 in a family dispute,” (Opp. at 16), he has failed to identify any instance where Adams  
10 “appear[ed] on both sides of a transaction or expect[ed] to derive any personal financial benefit  
11 from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation  
12 or all stockholders generally.” *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984) *overruled on*  
13 *other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); (Mot. at 23). Plaintiff has thus  
14 tacitly conceded that Adams is disinterested in the specific corporate actions at issue here.

15           Plaintiff argues that Adams lacks independence because he is “financially dependent” on  
16 Ellen and Margaret Cotter (Opp. at 8), but this mischaracterizes the record. The evidence shows  
17 that Adams stands to receive additional compensation from James Cotter, Sr.'s Estate due to his  
18 5 percent interest in certain real estate ventures, but Plaintiff ignores the fact that he has the right  
19 to this compensation as part of a pre-existing contract. Ellen and Margaret Cotter will distribute  
20 the funds as executors of the Estate, but they will not be required to “approve these payouts” (*id.*)  
21 in the sense that they would have any discretion to do otherwise. (See HD#2 Ex. 2 at 55:8-  
22 57:24.) Plaintiff also cites Adams' income of [REDACTED] per year from the Cotter Family Farms (a  
23 Cotter business overseen by Plaintiff, ironically) as evidence of his financial dependence. (Opp.  
24 at 8.) However, Plaintiff does not dispute that Adams began earning this money in 2012 (before  
25 he joined the Reading board) as part of a business deal with James Cotter, Sr. and that he is now  
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27       <sup>7</sup> Plaintiff appears to have abandoned his argument that the board should have selected  
28 Plaintiff's preferred candidate over Wrotniak—he does not mention this in his Opposition, and as  
discussed in the Motion, it is irrelevant to Wrotniak's independence in any event. (Mot. at 22.)

1 paid by the Estate. (Mot. at 9, 25.) There is no evidence that Ellen and Margaret Cotter ever  
2 actually threatened Adams' position with the Cotter Family Farms, and the undisputed evidence  
3 is that Adams had not had any communications with the Cotter sisters about continuing or not  
4 continuing his work for the Farms. (HD#2 Ex. 2 at 29:3-7.) Plaintiff also does not dispute that  
5 since the Estate's assets ultimately pour over into the Trust, and control of the Trust as between  
6 Plaintiff and his sisters is currently subject to dispute, *there is no reason for Adams to prefer*  
7 *Ellen and Margaret Cotter over Plaintiff*. (Mot. at 25.) As a result, there is no evidence of bias  
8 or self-dealing by Adams with respect to any specific board action (including Plaintiff's  
9 termination).

10 Moreover, Adams' business with the Cotter Farms is immaterial to his overall economic  
11 picture. Plaintiff acknowledges that Adams is of retirement age and has a net worth of  
12 approximately [REDACTED]. (Opp. at 9.) Plaintiff contends that [REDACTED] will not be enough for  
13 Adams to support himself "for the remainder of his expected lifespan" (*id.*), but that is pure  
14 speculation, and Plaintiff's back-of-the-envelope calculation fails even to include the "potentially  
15 more than [REDACTED]" that Plaintiff admitted—one page earlier—that Adams will receive in the  
16 future from his interest in the real estate ventures. (*Id.* at 8.) Further, notwithstanding what  
17 Plaintiff may determine to be necessary to meet his own lifestyle needs, [REDACTED] is a lot of  
18 money in our country. *See* U.S. Census Bureau, Distribution of Household Wealth in the U.S.:  
19 2000 to 2011, *available at* [http://www.census.gov/people/wealth/files/Wealth%20distribution%](http://www.census.gov/people/wealth/files/Wealth%20distribution%202000%20to%202011.pdf)  
20 [202000%20to%202011.pdf](http://www.census.gov/people/wealth/files/Wealth%20distribution%202000%20to%202011.pdf), at 7 (showing that as of 2011, median household net worth was  
21 \$68,828). There is no rule, as Plaintiff seems to urge, that only the very wealthiest people can  
22 serve on corporate boards. As previously noted (Mot. at 24), Adams' outside "business  
23 agreement" where "both parties could benefit financially" is not enough to show that Adams  
24 "could not form business decisions independently." *La. Mun. Police Emps.' Ret. Sys. v. Wynn*,  
25 No. 2:12-CV-509 JCM GWF, 2014 WL 994616, at \*7 (D. Nev. Mar. 13, 2014). Additionally,  
26 Plaintiff appears to concede (by entirely failing to address the argument) that the fact that Adams  
27 earned fees from his work as a director for RDI does not mean that Adams lacked independence.  
28 (Mot. at 25.)

1 Plaintiff notes Adams' *subsequent* resignation from RDI's Compensation Committee as if  
2 that were evidence of a lack of independence. (Opp. at 9.) However, the undisputed evidence is  
3 that Adams' committee resignation was solely to avoid even the appearance of impropriety given  
4 Plaintiff's inflammatory allegations and litigation positions. In fact, Adams never agreed that he  
5 lacked independence as to Cotter income, or anything else. (Mot. at 26 n.7.) Indeed, the  
6 NASDAQ rules with respect to service on a compensation committee are stricter than those that  
7 apply to board service generally, so Plaintiff's logic does not follow: even if Adams could not  
8 serve on RDI's Compensation Committee, that would not disqualify him from making other  
9 decisions relating to RDI (including Plaintiff's termination). (*See id.*) The Board has thus taken  
10 steps to hold itself to the highest possible standards, even standards that it may not actually be  
11 required to meet due to RDI's status as a controlled company. *See* NASDAQ Rule 5615(c)(2)  
12 (exempting controlled companies from compliance with stricter standard for compensation  
13 committees). Adams has already been found to be "independent" under the NASDAQ standards  
14 that apply to board service generally. (Mot. at 26.)<sup>8</sup>

15 **C. Generalized Allegations of "Entrenchment" Cannot Establish a Lack of**  
16 **Independence**

17 Although he has identified a litany of Board actions supposedly tainted by a lack of  
18 independence, he fails to explain how perceived "bias" of any director actually affected any  
19 *specific* board action. Rather than presenting evidence of any specific board action compromised  
20 by a director's purported bias, Plaintiff instead points to the supposedly "omnipresent specter"  
21 that the Individual Defendants acted for "usurpation" and "entrenchment purposes." (Opp. at  
22 19.) But generalized allegations of "usurpation" and "entrenchment" do not suffice to establish  
23 claims for breach of fiduciary duty by Nevada directors, which require a plaintiff to have  
24 evidence that *specific* board actions were affected by *specific* bias or lack of independence by  
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26 <sup>8</sup> Although Plaintiff argues that independence under the NASDAQ rules does not  
27 necessarily govern director independence under applicable law (Opp. at 10), as was discussed in  
28 the Motion, NASDAQ rules "cover many of the key factors that bear on independence" and "are  
a useful source for [the] court to consider when assessing an argument that a director lacks  
independence." *In re MFW*, 67 A.3d at 510.

1 *specific* directors that rise to the level required by NRS 78.138(7)(a) (requiring intentional  
2 misconduct, fraud or knowing violation of the law for liability of individual directors). “A  
3 successful claim of entrenchment requires plaintiffs to prove that the defendant directors  
4 *engaged in action which had the effect of protecting their tenure* and that the action was  
5 motivated primarily or solely for the purpose of achieving that effect.” *In re Fuqua Indus., Inc.*  
6 *S’holder Litig.*, No. CIV.A. 11974, 1997 WL 257460, at \*10 (Del. Ch. May 13, 1997) (emphasis  
7 added, quotations and citation omitted). Plaintiff fails to cite a single action actually taken by  
8 the directors to protect their tenure and thus cannot establish entrenchment. *See id.* at \*11  
9 (dismissing entrenchment claims where plaintiff’s complaint lacked “any facts to support these  
10 conclusory allegations of ‘onerous’ terms and entrenchment effects” and “fail[ed] to allege how .  
11 . . the retention of Georgia Federal served to protect the tenure of the defendant directors”); *eBay*  
12 *Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 36 (Del. Ch. 2010) (finding no “omnipresent  
13 specter” that “Staggered Board Amendments” were being used for “entrenchment purposes”  
14 because even without the amendments, the director defendants “would control a majority of the  
15 board”).

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25 **III. CONCLUSION**

26 For the foregoing reasons, the Individual Defendants respectfully request that the Court  
27 grant them partial summary judgment as to the First, Second, Third, and Fourth Causes of Action  
28

1 set forth in Plaintiff's SAC, to the extent that they assert or rely upon an argument that any of the  
2 non-Cotter directors of RDI are not "independent."

3 Dated: October 21, 2016

4 **COHEN|JOHNSON|PARKER|EDWARDS**

5

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

10 **QUINN EMANUEL URQUHART &**  
11 **SULLIVAN, LLP**  
12 CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
13 MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
14 865 South Figueroa Street, 10<sup>th</sup> Floor  
15 Los Angeles, CA 90017  
Telephone: (213) 443-3000

16 *Attorneys for Defendants Margaret Cotter, Ellen*  
17 *Cotter, Douglas McEachern, Guy Adams, Edward*  
18 *Kane, Judy Coddington, and Michael Wrotniak*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on October 21, 2016, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 2) RE: THE ISSUE OF DIRECTOR INDEPENDENCE** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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



CLERK OF THE COURT

**RIS**  
MARK E. FERRARIO, ESQ.  
(NV Bar No. 1625)  
KARA B. HENDRICKS, ESQ.  
(NV Bar No. 7743)  
TAMI D. COWDEN, ESQ.  
(NV Bar No. 8994)  
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
Email: ferrariom@gtlaw.com  
hendricksk@gtlaw.com  
cowdent@gtlaw.com

*Counsel for Reading International, Inc.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL, INC., a  
Nevada Corporation,

Nominal Defendant.

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

**Coordinated with:**

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

Case No. A-16-735305-B  
Dept. XI

**READING INTERNATIONAL, INC.'S  
REPLY IN SUPPORT OF THE  
INDIVIDUAL DEFENDANTS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT NO. 1 RE PLAINTIFF'S  
TERMINATION AND  
REINSTATEMENT CLAIMS**

**Date of Hearing: November 1, 2016**

**Time: 8:30 a.m.**

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

1 READING INTERNATIONAL, INC. hereby submits its *Reply in Support of the*  
2 *Individual Defendant's Motion for Partial Summary Judgment No. 1 Re Plaintiff's Termination*  
3 *and Reinstatement Claims and RDI's Joinder Thereto*. Reading International, Inc., ("RDI" or  
4 "Company") joins with the Individual Defendants in seeking summary judgment as to the First,  
5 Second, Third, and Fourth Causes of Action in the Second Amended Complaint ("SAC") filed  
6 by Plaintiff James J. Cotter, Jr. ("Plaintiff" and/or "Cotter, Jr.") to the extent that such claims  
7 relate the termination of Cotter Jr.'s and his request for reinstatement. In addition to joining the  
8 arguments advanced on behalf of the Individual Defendants, RDI requests judgment in its favor  
9 on these claims for the reasons set forth in the attached memorandum of points and authorities,  
10 and based on the pleadings and papers filed in this action, and any oral argument of counsel  
11 made at the time of the hearing.

12 DATED: October 21, 2016.

13 GREENBERG TRAURIG, LLP

14  
15 /s/ Mark E. Ferrario  
16 MARK E. FERRARIO, ESQ.  
17 (NV Bar No. 1625)  
18 KARA B. HENDRICKS, ESQ.  
19 (NV Bar No. 7743)  
20 TAMI D. COWDEN, ESQ.  
21 (NV Bar No. 8994)  
22 *Counsel for Reading International, Inc.*

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 Cotter, Jr.'s termination and reinstatement claims fail because there is no legal basis – in  
25 Nevada or in Delaware – for undoing at the behest of a derivative plaintiff the discretionary and  
26 operating level decision of a board of directors to terminate a corporate executive.

27 Even if every fact that Cotter, Jr. had asserted were true -- i.e., that Directors Guy Adams,  
28 Ed Kane, Ellen Cotter and Margaret Cotter were some way or another not "disinterested" and  
voted in favor of his termination because Cotter, Jr. could not reach agreement with his siblings  
as to the settlement of their various disputes (including with respect to the ongoing management



1 of the Company) and Ellen Cotter and Margaret Cotter wanted him out, no breach of fiduciary  
2 duty to the Company would be shown. The undisputed evidence is that Cotter, Jr.  
3 could *not* work with his sisters despite his sisters each having more than fifteen years of actual  
4 work experience with RDI. As a result, management was dysfunctional and corrective action  
5 had to be taken. However convinced Cotter, Jr. is of his own superiority, it is simply not a  
6 breach of fiduciary duty for directors to determine that executives who actually have experience  
7 in the day to day workings of the company are more valuable to that company than someone who  
8 (a) was appointed to a position because his father had wished it so and (b) had absolutely no  
9 public company management experience, or any hands on experience in either to the Company's  
10 main two lines of business: cinema exhibition and real estate.

11 Additionally, despite the fact that Nevada law governs these proceedings, Cotter, Jr. cites  
12 barely any Nevada authority. Instead, Cotter, Jr. insists on applying Delaware law to his claims,  
13 doggedly ignoring the significant substantive differences from that state's statutes and precedent  
14 that the Nevada legislature *knowingly* adopted when forming Nevada's corporate  
15 statutes. Moreover, despite his reliance on Delaware law, Cotter, Jr. ignores the fact that the  
16 authorities he cites have no application to the facts here. For example, he insists that Delaware's  
17 "entire fairness" analysis must be applied to the decision to terminate him as an officer of the  
18 Company, even though the Delaware "entire fairness" analysis is a test that focuses on the  
19 fairness of the applicable price being paid or received in a corporate transaction.

20 Furthermore, none of the authorities cited by Cotter, Jr. involve derivative attacks on  
21 employment decisions made by a board. This is not surprising given that the management of  
22 such business affairs is entrusted to the board. *See* NRS 78.120 and 78.138.<sup>1</sup> In the case of RDI,  
23 its Bylaws specifically provide that a majority of the entire Board of Directors may remove an  
24

25 <sup>1</sup> NRS 78.120 provides in relevant part as follows: "Subject only to such limitations as may be provided in this  
26 chapter, or the articles of incorporation of the corporation, the board of directors has full control over the affairs of  
27 the corporation." NRS 78.130(3) provides in relevant part as follows: "All officers must be natural persons and  
28 must be chosen in such manner, hold their offices for such terms and have such powers and duties as may be  
prescribed by the bylaws or determined by the board of directors." NRS 78.130(4) provides in relevant part as  
follows: "An officer holds office after the expiration of his or her term until a successor is chosen or until the  
officer's resignation or removal before the expiration of his or her term."

1 officer without cause. Because the Bylaws give the board such authority and require that such  
2 authority be exercised by a majority vote of the entire Board, Cotter, Jr. has no basis for  
3 asserting a breach of either the duty of loyalty or the duty of care. Nor can he contend that the  
4 action taken by the Board was somehow defective or ineffective due to the participation of  
5 Directors Adams, Kane, Ellen Cotter and/or Margaret Cotter.<sup>2</sup>

6 In short, Cotter, Jr. has presented absolutely no authority, whether statutory, case law, or  
7 even secondary sources, that supports his termination and reinstatement claims. This is for good  
8 reason as it is generally recognized that decisions regarding hiring and firing a CEO are best left  
9 with a company's board of directors, to be exercised in real time, and not with the courts to be  
10 applied months or years after the fact. Cotter, Jr.'s claims fail on all fronts and partial summary  
11 judgment is appropriate.

#### 12 LEGAL ARGUMENT

13 RDI is entitled to judgment in its favor on Cotter, Jr.'s termination and reinstatement  
14 claims. Cotter Jr. replied to the Independent Directors' Motion by repeating his own motion for  
15 summary judgment on these issues. However, as shown in the RDI's Opposition to  
16 Cotter, Jr.'s Motion for Partial Summary Judgment, he has failed to demonstrate any basis for  
17 entitlement to relief on his claims. Similarly, in his Opposition to the Individual Defendants'  
18 Motion, he has failed to show that material issues of fact exist to prevent  
19 judgment. Accordingly, the Individual Defendants' Motion for Partial Summary Judgment and  
20 RDI's joinder thereto should be granted.

21 Summary judgment must be granted where there is no genuine issue as to any material  
22 fact, and the movant is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev.  
23 724, 731, 121 P.3d 1026, 1031 (2005). A nonmoving party who bears the burden of proof at trial  
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25 <sup>2</sup> Cotter Jr.'s argument would render it impossible for a corporation like RDI to remove an officer. Nevada law  
26 does not require that any directors be "independent." While public companies, like RDI, are required to have  
27 independent audit committees, there is no requirement that closely held corporations, again like RDI, have more  
28 independent directors than needed to satisfy this audit committee requirement. Specifically, there is no requirement  
that a majority of the Board be independent. Under Cotter Jr.'s interpretation of Nevada law, he could not be  
removed unless a majority of the RDI Board was "independent." There is no such requirement under Nevada law,  
the Federal Securities Laws or the NASDAQ Rules.

1 must respond to a motion for summary judgment with evidence sufficient to establish each  
2 element of his claim by a preponderance of the evidence. *Cuzze v. Univ. and Comm.*  
3 *Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Here, it is statutorily  
4 presumed that the Board of Director's decision to terminate Cotter, Jr. was made "in good faith,  
5 on an informed basis and with a view to the interests of the corporation." NRS  
6 78.138(3). Accordingly, Cotter, Jr. bore the burden of presenting evidence sufficient to show  
7 that his termination was the product of a breach of fiduciary duty and satisfying each and every  
8 element of his breach of fiduciary duty claims under *Nevada* law. He failed to present such  
9 evidence. Most significantly, Cotter, Jr. has failed to present any authority that supports his  
10 contention that a board's discretionary decision to terminate a CEO is subject to review in a  
11 derivative action.

12  
13 **I. A BOARD'S DISCRETIONARY TERMINATION OF A CEO CANNOT BE  
SUBJECTED TO AN ENTIRE FAIRNESS ANALYSIS.**

14 In an attempt to manufacture a theory to sidestep Nevada law and to support his claim for  
15 reinstatement, Cotter, Jr. attempts to invoke Delaware's "entire fairness" analysis, claiming  
16 that the "process" by which he was terminated did not satisfy the test. However, there is no  
17 requirement under Nevada law that any particular process be followed or that the process be fair  
18 to him. Indeed, there is no "entire fairness" test in Nevada. In this State, when a director is on  
19 both sides of a contract or transaction, the residual test is not "entire fairness," but rather whether  
20 the contract or transaction is "fair to the corporation". See NRS 78.140. The "entire fairness"  
21 analysis is a creature of Delaware law, not Nevada Law. It is applicable to the review  
22 of *transactions* between a Delaware corporation and directors determined to be interested in a  
23 transaction under Delaware law. Here we have: 1) a Nevada corporation (RDI); 2) controlling  
24 Nevada statutes (NRS 78.120, 78.130 and 78.140); 3) RDI's Bylaw's directly authorizing the  
25 board to remove an executive without cause by the vote of a majority of the **entire Board**; and 4)  
26 an employment contract directly on point, all of which support the action taken by the entire  
27 Board.  
28

Moreover, there is no practical way to apply Delaware's "entire fairness" analysis to the termination of an officer's employment, because the factors to be considered in evaluating the fairness of a transaction, have no relevance to the termination of an employee. An "entire fairness" analysis necessarily includes an analysis of price. Cotter, Jr. has not cited a single decision interpreting the "entire fairness" doctrine that does not address the issue of the fairness of the price. Here, there is no price to review for fairness.

Additionally, the "entire fairness" doctrine is not even consistent with Nevada law, because Nevada law prevents the avoidance of transactions that might be unfair to the corporation in *at least* three circumstances (*see* NRS 78.140(2)) and unlike the objective standard that prevails in Delaware, under Nevada law, a director is bound only to exercise their duties in *subjective good faith*. *See* NRS 78.138 and 78.140.

**II. COTTER, JR. HAS FAILED TO PRESENT ANY EVIDENCE THAT THE BOARD'S DECISION WAS IN ANY WAY A BREACH OF FIDUCIARY DUTY, LET ALONE A BREACH INVOLVING INTENTIONAL MISCONDUCT, FRAUD OR KNOWING VIOLATION OF LAW.**

The Plaintiff, Cotter, Jr., bears the burden of proof both that there was in fact a breach of fiduciary duty. In proving this, the burden is on the plaintiff to overcome the Nevada business judgment rule presumption set forth in NRS 78.138(1). Nevada does not recognize any shifting of this burden of proof, other than in the case of NRS 78.140(2)(d). However, NRS 78.140 does not establish any grounds for liability on the part of directors, only for the voidance under certain circumstances of the contract or transaction under review. On the other hand, NRS 78.138(7) provides that there is no director liability unless it is **proven that**, the breach of the directors fiduciary duties "involved intentional misconduct, fraud or a knowing violation of law." Again, the Nevada statutory scheme does not recognize any shifting of this burden of proof in determining director misconduct or liability.

In addition to the proof required to overcome the Nevada business judgment presumption, Cotter, Jr. has failed to introduce any evidence that the decision made by the Directors was in any way incorrect or wrong or not in the best interests of the Company. The record reveals that:

- At the time Cotter, Jr. was appointed CEO, he had had no public company management experience, and no hands-on operating experience in any of the Company's principal business segments: cinemas and real estate. He was placed in that position by his father, who at the time of his appointment continued to have control over every material decision with respect to the Company.
- Cotter, Jr. has admitted that, just five weeks after his appointment to the CEO position at RDI, he could not get along with his siblings, who had substantial operating roles at the Company and who had held such roles for many years.
- A majority of the entire Board determined, in light of this admitted management dysfunction, to remove Cotter, Jr. as President and CEO and to continue with the executive leadership of his siblings, Ellen Cotter and Margret Cotter in accordance with Nevada statutes and RDI Bylaws.
- The Directors making this decision were the same individuals who had been nominated and elected to the Board by James Cotter, Sr. Cotter, Jr. had no objection to the decisions made by these Directors until they began to question whether it was in the best interests of the Company for Cotter, Jr. to continue as President and Chief Executive Officer.

Critically, Cotter Jr. has provided no evidence that the Directors' decisions were in any way erroneous or not in the best interests of the Company and certainly has presented no evidence that the decision to terminate him involved "intentional misconduct, fraud or a knowing violation of law."

**III. COTTER, JR. HAS FAILED TO PRESENT ANY AUTHORITY SUPPORTING THE REINSTATEMENT OF A CEO WHOSE TERMINATION WAS DISCRETIONARY WITH THE BOARD OF DIRECTORS.**

Cotter, Jr. has failed to present any authority that supports the relief he requests – reinstatement following a discretionary termination. Instead, as noted above, Cotter, Jr. has cherry picked language from an assortment of cases, nearly all of which are from jurisdictions other than Nevada, and all of which relate to directors who were alleged to have engaged in some

1 sort of self-dealing transaction at the expense of either the corporation itself, or of other  
2 shareholders. None of the cases cited by Cotter, Jr. are remotely analogous to the facts here,  
3 where a CEO with comparatively limited work experience with the company, admittedly  
4 could not work with two persons who both had more than fifteen years of experience with the  
5 company and where the Board determined to go with the more experienced members of the  
6 management team.

7 RDI's Bylaws expressly permit the Board of Directors to remove an officer with  
8 or *without cause* by vote of a majority of the entire Board. See RDI Bylaws, Art. IV, §  
9 10. Accordingly, the decision is entirely discretionary with the Board. The Bylaws do not  
10 mandate any specific process or procedure be followed before an officer is removed; only that it  
11 be by vote of a majority of the entire Board. Cotter, Jr. has cited no authority that holds that a  
12 corporation must comply with a specific process or procedure before terminating a CEO, other  
13 than the procedure set forth in its bylaws.

14 Here, the undisputed evidence shows that *all* of the Directors believed the tension  
15 between the Cotter siblings was having a negative effect on RDI. Cotter, Jr. himself notes that  
16 one Director had opined that there were three solutions to the situation: fire Cotter, Jr.; fire Ellen  
17 and Margaret; or fire all three of them. Opposition, 5. Here, the Directors chose to keep the  
18 two individual who had the longest experience with the Company. Such a balancing of the  
19 respective values of the Cotter siblings does not support a finding of breach of fiduciary duty.

20 **IV. COTTER JR. HAS ADMITTED THAT HE CANNOT PROVE ANY DAMAGE**  
21 **TO THE CORPORATION ARISING FROM HIS TERMINATION.**

22 The Independent Defendants asserted that Cotter, Jr. could present no evidence of any  
23 injury to RDI resulting from his termination. Cotter, Jr. made no effort to rebut that claim by  
24 presenting evidence of damages. Instead, he again cited to Delaware law, contending that  
25 the analysis applicable in that state should govern this tort action. Opposition, p. 19. But Cotter,  
26 Jr. again ignores the fact that his claims are governed by Nevada law. In Nevada, the tort of  
27 breach of fiduciary duty requires proof that the purported breach caused harm. *Foster*  
28 *v. Dingwall*, 126 Nev. 56, 69, 227 P.3d 1042, 1051 (2010), citing *Stalk v. Mushkin*, 125 Nev. 21,

1 28, 199 P.3d 838, 843 (2009) (“fiduciary duty claim seeks damages for injuries that result from  
2 the tortious conduct of one who owes a duty to another by virtue of the fiduciary  
3 relationship”). If the one to whom a fiduciary duty is owed has not been injured, then no fact  
4 finder can determine that each of the elements of a breach of fiduciary duty has been  
5 proven. Because Cotter, Jr. has failed to present evidence of any such injury arising from his  
6 termination, his claims fail.

7 **CONCLUSION**

8 Cotter, Jr. is unable to present evidence sufficient to rebut the statutory presumption that  
9 the decisions of the Board of Directors are made in good faith, or that either RDI or its  
10 shareholders were damaged by the Board of Directors’ decision to terminate his employment  
11 from the Company.

12 This court has given Cotter Jr. ample opportunity to try and make a claim for reinstatement.  
13 It is now time to end this exercise as it finds no support in the law or the facts. RDI has been  
14 operating under the cloud of this strained claim. It is time for this court to remove that cloud  
15 and grant partial summary judgment.

16 DATED: October 21, 2016.

17 GREENBERG TRAURIG, LLP

18  
19 /s/ Mark E. Ferrario  
20 MARK E. FERRARIO, ESQ.  
21 (NV Bar No. 1625)  
22 KARA B. HENDRICKS, ESQ.  
23 (NV Bar No. 7743)  
24 TAMI D. COWDEN, ESQ.  
25 (NV Bar No. 8994)  
26 3773 Howard Hughes Parkway, Suite 400 North  
27 Las Vegas, Nevada 89169

28 *Counsel for Reading International, Inc.*

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

CERTIFICATE OF SERVICE

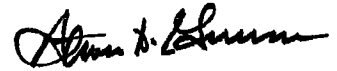
Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing *Reading International, Inc.'s Reply in Support of Joinder to the Individual Defendants' Motion for Partial Summary Judgment No. 1 Re Plaintiff's Termination and Reinstatement Claims* to be filed and served via the Court's Wiznet E-Filing system on all registered and active parties. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 21<sup>st</sup> day of October, 2016.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP





CLERK OF THE COURT

**COHEN|JOHNSON|PARKER|EDWARDS**

**H. STAN JOHNSON, ESQ.**

Nevada Bar No. 00265

[sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)

255 East Warm Springs Road, Suite 100

Las Vegas, Nevada 89119

Telephone: (702) 823-3500

Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

**CHRISTOPHER TAYBACK, ESQ.**

California Bar No. 145532, *pro hac vice*

[christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com)

**MARSHALL M. SEARCY, ESQ.**

California Bar No. 169269, *pro hac vice*

[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)

865 South Figueroa Street, 10<sup>th</sup> Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

MARGARET COTTER, ELLEN COTTER,  
GUY ADAMS, EDWARD KANE, DOUGLAS  
McEACHERN, WILLIAM GOULD, JUDY  
CODDINGTON, MICHAEL WROTHIAK, 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**

**REPLY IN SUPPORT OF INDIVIDUAL  
DEFENDANTS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT (NO. 2) RE:  
THE ISSUE OF DIRECTOR  
INDEPENDENCE**

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: Oct. 27, 2016

Time of Hearing: 1:00 P.M.

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

1 READING INTERNATIONAL, INC. hereby submits its *Reply in Support of the*  
2 *Individual Defendants' Motion for Summary Judgment No. 2 Re the Issue of Director*  
3 *Independence (the "Reply")*. Reading International, Inc. ("RDI" or "Company"), joined with the  
4 Individual Defendants in seeking summary judgment as to the First, Second, Third, and Fourth  
5 Causes of Action in the Second Amended Complaint filed by Plaintiff James J. Cotter, Jr.  
6 ("Plaintiff" and/or "Cotter, Jr.") to the extent that such claims rely on a claim that Guy Adams,  
7 Judy Coddington, Edward Kane, Douglas McEachern, and/or Michael Wrotniak were/are not  
8 "independent" of influence by Ellen or Margaret Cotter. RDI joins in the arguments advanced  
9 on behalf of the Individual Defendants in their Motion, and also requests judgment in its favor on  
10 these claims for the reasons set forth in the attached memorandum of points and authorities.

11 This Reply is based on the following memorandum of points and authorities, the  
12 pleadings and papers filed in this action, and any oral argument of counsel made at the time of  
13 the hearing of this Motion.

14 DATED: this 21st day of October, 2016.

15 GREENBERG TRAURIG, LLP

16  
17 /s/ Mark E. Ferrario  
18 MARK E. FERRARIO, ESQ.  
19 (NV Bar No. 1625)  
20 KARA B. HENDRICKS, ESQ.  
21 (NV Bar No. 7743)  
22 TAMI D. COWDEN, ESQ.  
23 (NV Bar No. 8994)  
24 *Counsel for Reading International, Inc.*  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

This Court should grant partial summary judgment in favor of RDI on the specific issue, of the independence of Directors McEachern, Kane, Adams, Coddington and Wrotniak.<sup>1</sup> Cotter, Jr. has failed to meet his burden to present admissible evidence sufficient to establish, by a preponderance of the evidence, that any RDI Director lacked independence with respect to decisions they made on behalf of the Company. Cotter, Jr. has not presented any evidence that shows any decision was made by the Independent Directors based on the wishes of Ellen or Margaret Cotter, rather than the Director's good faith belief as to what was in the best interests of RDI. Accordingly, Plaintiff has failed to overcome the statutory presumption that such directors acted independently.

Indeed, Cotter, Jr. appears to believe that by merely *alleging* a lack of independence, based on friendships with the Cotter siblings' parents, or a friendship between a director's spouse and another director, the business judgment rule magically melts away. However, Cotter Jr. bears the burden of proof on this issue. NRS 47.180(1). Moreover, even in Delaware, upon whose authority Cotter, Jr. relies exclusively, the allegations made here would be insufficient to establish a lack of independence. Because Cotter, Jr. has failed to present evidence sufficient to satisfy his burden of proof, the Motion for Summary Judgment should be granted.

**LEGAL ARGUMENT**

Cotter, Jr.'s anemic opposition to Individual Defendants' summary judgment motion reveals the lack of evidence to support his claims. He has produced no evidence that any of the relationships that purportedly prevent the Independent Directors from exercising business judgment in good faith are of such importance or materiality to the Independent Directors that they would risk their integrity, reputation, and personal liability for the sake of preserving the relationship. Despite the past year of expedited discovery, dozens of depositions, and production of thousands upon thousands of pages of documents, the best Cotter, Jr. can do to refute the independence issue raised in the summary judgment motion is point to random facts

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<sup>1</sup> For purposes of this Reply, Guy Adams, Edward Kane, Douglas McEachern, Judy Coddington and Michael Wrotniak will be referred to collectively as "Independent Directors."

1 that in no way deem any director not to be independent. RDI has suffered tremendously during  
2 this litigation which as has consumed insurance proceeds and required Company executives and  
3 managers to devote substantial time to this litigation that could otherwise be spent on RDI  
4 business. This Court must call a halt to this meritless action.

5 **A. Summary Judgment May be Granted as to this Factual Issue.**

6 Cotter, Jr. contends that summary judgment cannot be granted on the issue of director  
7 independence. He first claims that because a lack of director independence is not itself a cause  
8 of action, nor a specific element of a claim that summary judgment cannot be granted as to this  
9 issue. However, partial summary judgment orders are appropriate and this Court has the  
10 authority to determine whether there is sufficient fact support for any aspect of a claim. *See*  
11 *NRCP 56(b) and (d)*.

12 Here, Cotter, Jr. contends that each of the non-Cotter Independent Defendants lack  
13 independence and thus, summarily, breached his or her duty of loyalty to RDI. However, in  
14 order for Cotter, Jr. to prevail on his claims against such Defendants, he bears the burden of  
15 proving a lack of independence. *NRS 47.180(1); 78.138(3); see also, Teamsters Union 25*  
16 *Health Servs. & Ins. Plan v. Baiera*, 119 A.3d 44, 59 (Del. Ch. 2015) (directors are “presumed to  
17 be independent). If Cotter, Jr. cannot meet that burden, then his claims based on a breach of  
18 loyalty by the Independent Directors must fail. The granting of summary judgment on the  
19 factual issue of the independence of each of the Independent Director will significantly narrow  
20 any issues to be tried by a jury. This is a wholly proper use of the summary judgment device.

21 **B. Plaintiff Effectively Conceded that Director McEachern is Independent of Influence**  
22 **by Ellen Cotter and Margaret Cotter.**

23 Cotter, Jr. presented no evidence of any lack of independence on the part of Director  
24 McEachern. Accordingly there is no dispute as to McEachern’s independence.

25 **C. Plaintiff has Failed to Demonstrate any Lack of Independence in Judy Coddington,**  
26 **Edward Kane, or Michael Wrotniak.**

27 Cotter, Jr. bases his challenges to the independence of Directors Coddington, Kane and  
28 Wrotniak on their relationships with various Cotter relatives, living and dead. But Cotter, Jr. has

1 presented no evidence to suggest that such relationships are of such material importance to these  
2 directors that any would sacrifice their own honor in order to maintain such relationships. Nor  
3 has Cotter, Jr. presented any evidence that these Directors have actually abandoned their  
4 fiduciary obligations in order to maintain the relationships. The law is “clear that mere  
5 allegations that directors are friendly with, travel in the same social circles, or have past business  
6 relationships with the proponent of a transaction . . . are not enough to rebut the presumption of  
7 independence. *In re MFW Shareholders Litig.*, 67 A.3d 496, 509 (Del. Ch. 2013).

8 ***1. Cotter, Jr. Failed to Present Sufficient Evidence to Show Ms. Coddling***  
9 ***Lacks Independence.***

10 Significantly, Cotter, Jr. bases his claims of non-independence of Ms. Coddling on the  
11 basis of her friendship with his mother Mary Cotter. He has offered Exhibits 14-16 in his  
12 Opposition in an effort to show such bias. **Cotter, Jr. Appendix, Exhibits 14-16.** However,  
13 these exhibits do not support a claim of any sort of influence upon Ms. Coddling by Ellen or  
14 Margaret Cotter.

15 a. Plaintiff’s Exhibit 14 consists of a June 9, 2014 email exchange  
16 between Mary Cotter -- wife of then living and breathing CEO, James Cotter, Sr.-- to a RDI  
17 employee, asking that employee to Fed Ex travel invoices to Ms. Coddling, explaining that her  
18 “computer does not connect to Margaret printer.” [sic]. Mrs. Coddling further asked the RDI  
19 employee to call her “at Margaret if you need any info.” The signature block on the email  
20 indicates that Mary Cotter worked for Designer Travel, Inc.

21 The obvious inference—indeed, the only reasonable inference— from this email is that  
22 Mary Coddling, on behalf of Designer Travel, Inc. arranged travel for Ms. Coddling, and needed  
23 to send invoices to Ms. Coddling. However, Mary was staying at her daughter Margaret’s home,  
24 and her own computer was incompatible with Margaret’s printer.

25 Despite the rather obvious implications of the email above, Cotter, Jr. contends that it  
26 indicates that “MC used her RDI computer (and assistant) to process invoices for Judy Coddling’s  
27 travel.” Opposition, p. 7. However, the action was taken by *Mary Cotter*, who was at that time  
28 the wife of RDI’s CEO. Cotter, Jr.’s attempt to use this email to show a strong relationship

1 between Margaret and Ms. Coddling is, not reasonable.

2                   b.       Plaintiff's Exhibit 15 consists of an October 4, 2015 email to  
3 Margaret *from a third party*, who mentions that Ms. Coddling will be in New York, and asks  
4 whether Margaret can assist in obtaining certain theater tickets, for which the third party and Ms.  
5 Coddling would pay. Margaret expressed a willingness to try, noting that the tickets would be  
6 full price, and asking for credit card information.

7                   In this case, Cotter, Jr. mischaracterized the evidence in a much smaller degree and  
8 claims that it was Ms. Coddling who approached Margaret rather than the third party. However,  
9 here again, it is absurd to suggest that a query to a person in the theater industry to purchase  
10 tickets to a popular show does not suggest a close and important relationship that in anyway  
11 supports Plaintiff's theory of a lack of independence.

12                   c.       Plaintiff's Exhibit 16 consists of testimony by Ellen Cotter, which  
13 shows that, prior to asking Ms. Coddling to consider serving on RDI's board, she had met her  
14 "between five and ten times" over the course of 15 years, *one* of which times was at Mrs.  
15 Cotter's home. **Cotter, Jr. Appendix, Exhibit 16, 58:22-59:11.** Not even Cotter, Jr. was able to  
16 render this testimony as suggesting a close and materially important relationship.

17                   The remainder of Cotter, Jr.'s evidence consists of his own affidavit, in which he  
18 speculates as to Ms. Coddling's purported discussions with Ellen Cotter, and contends that Ms.  
19 Coddling indicated that one of the Cotter siblings—not excluding Cotter, Jr. should manage RDI.  
20 Since an opinion that a Cotter should manage RDI is not inconsistent with a good faith belief that  
21 RDI's best interests would be served by such management, such testimony does not suffice to  
22 establish any inability to make independent business judgments with respect to RDI.

23                   2.       ***Plaintiff has Failed to Demonstrate any Lack of Independence of***  
24                   ***Edward Kane.***

25                   Cotter, Jr. contends that Director Kane is unable to exercise his business judgment with  
26 respect to decisions wherein Cotter, Jr. disagrees with his sisters, based on the longstanding  
27 friendship and working relationship Mr. Kane had with Cotter, Sr. Cotter, Jr. presents testimony  
28 by Mr. Kane regarding his understanding of Cotter, Sr.'s concerns and wishes, and claims that

1 Mr. Kane's views regarding Cotter, Sr.'s wishes kept him from exercising independent  
2 judgment. Motion, pp. 3-6. However, Cotter, Jr. does not explain *how* Mr. Kane's views on the  
3 wishes of Cotter, Sr. somehow prevent Mr. Kane from exercising his own judgment on behalf of  
4 RDI. Certainly there is no testimony that Mr. Kane has acted against what he believes is in  
5 RDI's best interest.

6 Significantly, Cotter, Jr. attempted, through careful excising of snippets of testimony  
7 from Mr. Kane, to show that Mr. Kane voted against what Kane personally wanted. Opposition,  
8 p. 5. However, contrary to Cotter, Jr.'s attempts to mislead the Court, it was not Cotter, Jr.'s  
9 unwillingness to settle the trust litigation that caused his termination, *but instead, his*  
10 *unwillingness to accept the curtailment of his own authority as CEO.* Cotter, Jr.'s own exhibit  
11 shows that Mr. Kane testified:

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

13 A. Right.

14 Q. -- why did you vote against him?

15 A. Because I wanted him to stay as C.E.O., working with his sisters who were  
16 work -- willing to work with him for the benefit of the company.  
17 And to me it was a wonderful solution, and it had no adverse impact. If it didn't  
work out, then we would deal with it. But he would work  
with them and -- as an executive committee.

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

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

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

23 [Objection]

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

*After all they were the operating executives of this company.*

26 See Cotter, Jr.'s Opposition Appendix, Exhibit 1, 11:12-12:11 (Bold original, italics added).

27 This testimony shows the decision was, indeed, based on the best interest of the Company. Kane  
28 viewed the Cotter sisters more valuable to RDI than Cotter, Jr.

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 01:18 p.m.  
Supreme Court Case No. 75053  
Clerk of Supreme Court

JOINT APPENDIX IN SUPPORT OF  
APPELLANT'S OPENING BRIEF

VOLUME XIX (JA4501-4737)

Steve Morris, Esq. (#1543)  
Akke Levin, Esq. (#9102)  
Morris Law Group  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, NV 89101  
Telephone: (702) 474-9400

Attorneys for Appellant  
James J. Cotter, Jr.



# JOINT APPENDIX IN SUPPORT OF APPELLANT'S OPENING BRIEF

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## 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 XIX (JA4501-4737)** 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 efilng service:

Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Ste. 110  
Las Vegas, NV 89119

Christopher Tayback  
Marshall Searcy  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
[christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com)  
[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)

*Attorneys for Respondents Edward Kane,  
Douglas McEachern, Judy Coddling, and  
Michael Wrotniak*

Ara H. Shirinian, Settlement Judge  
10651 Capesthorpe Way  
Las Vegas, Nevada 89135  
[arashirinian@cox.net](mailto:arashirinian@cox.net)

Mark Ferrario  
Kara Hendricks  
Tami Cowden  
Greenberg Traurig, LLP  
10845 Griffith Peak Dr.  
Las Vegas, NV 89135  
*Attorneys for Nominal  
Defendant Reading  
International, Inc.*

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

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

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

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

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

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

3 **The Executive Committee**

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

17 **The Supposed CEO Search**

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

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

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

20           33. Although I did not agree with the termination of me as President and CEO, and  
21 thought and maintain that it was improper, I had hoped that the CEO search committee would  
22 conduct a bona fide search and provide to the board for interview three qualified finalists, as had  
23 been agreed. I now know that not only did that not happen, but that the CEO search committee  
24 terminated the search, and effectively terminated KF, after meeting with Ellen as a declared  
25 candidate for the positions of President and CEO. Independent of the results of that process, which  
26 at the time I asserted did not serve the interests of the Company, that the process was manipulated  
27 and/or aborted in my view amounts to abdication of the board's responsibilities.  
28

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

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

14 35. There were a host of issues faced by the Company due to the request of Margaret  
15 and Ellen to exercise these supposed 100,000 share option. For example, one threshold question  
16 the Company would have needed to have answered was whether the option was legally effective.  
17 That question was not answered. Another threshold question was whether the supposed 100,000  
18 share option automatically had transferred to my father's trust upon his death. That also was not  
19 answered, to my knowledge. Possibly due to such unanswered questions, the compensation  
20 committee of the Board did not authorize the exercise of the supposed 100,000 share option in  
21 April. Margaret and Ellen therefore delayed to the 2015 annual shareholders meeting. After the  
22 executive committee (at Ellen's request) had set the annual shareholders meeting for November  
23 (meaning that as a board member I had no say on the subject) and the record date for it in October  
24 2015, Ellen had Kane and Adams as two of three members of the compensation committee  
25 authorize the request to exercise the supposed 100,000 share option, which was done in September  
26 shortly before a hearing in the Nevada probate case. I understand they did so so that the 100,000  
27 shares supposedly could be registered with the Company in the name of Ellen and Margaret as  
28 executors prior to the record date. The Company received no benefit from this, in fact suffered the

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

4 **Monetary Rewards to Margaret, Ellen and Adams**

5 36. In March 2016, the Board approved giving Margaret employment at the Company  
6 as the senior executive in charge of development of the Company's valuable New York real estate.  
7 That is a position Margaret had sought since my father passed. It is a position that I refused to give  
8 her, with the then support of all of the non-Cotter directors, because she was unqualified to hold it.  
9 She has no prior real estate development experience. What was discussed during my tenure as  
10 President and CEO was providing Margaret employment at the Company, so that she could have  
11 health benefits for herself and her two children, in a position in which she would continue to be  
12 responsible for the modest live theater operations and in which she could work in connection with  
13 any development of the Company's New York real estate, but not as the senior executive  
14 responsible for the development of the Company's New York real estate. In other words, Margaret  
15 could have a position, but she would not have a position that called upon her to do that which she  
16 had no experience doing and that which she was unqualified to do. That is the position Margaret  
17 was given in March. It is a highly compensated position that reflects its responsibilities. But  
18 Margaret has neither the prior experience nor the qualifications to hold it. Nevertheless, she is paid  
19 as if she does. Which, in my view, amounts to waste of Company monies. Additionally, the  
20 \$200,000 paid to Margaret, ostensibly for concessions Margaret previously was willing to make  
21 for free to become an employee of the Company, and reportedly for prior services rendered which  
22 the Board year after year had not chosen to pay her, is simply a gift, presumably because Margaret  
23 made less money in 2015 due to the Stomp debacle.

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



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

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

11 **The Offer**

12 39. Ellen shared with the full Board, in or about early June, an offer by third parties to  
13 purchase all of the outstanding stock of RDI for cash consideration at a price of approximately  
14 33% above the prices of which RDI stock then traded (i.e., the "Offer"). The Board met on June 2,  
15 2016 regarding the Offer. At that time, Ellen proposed to have management prepare  
16 documentation regarding the value of the Company to be provided to Board members for their  
17 review and consideration in advance of another board meeting to consider the Offer. I objected,  
18 suggesting that an independent person or company be charged with preparing such documentation  
19 for review by the Board. My objection was noted and overruled, and the Board agreed to proceed  
20 in the manner Ellen suggested. Additionally, board members inquired what Ellen and Margaret as  
21 controlling shareholders wanted to do in response to the Offer.

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

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

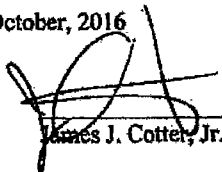
3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996


**Lewis Roca**  
**ROTHGERBER CHRISTIE**

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

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

15 DATED this 13<sup>th</sup> day of October, 2016

16   
17 James J. Cotter, Jr.



CLERK OF THE COURT

1 **APEN**  
2 Mark G. Krum (SBN 10913)  
3 Lewis Roca Rothgerber Christie LLP  
4 3993 Howard Hughes Pkwy, Suite 600  
5 Las Vegas, NV 89169-5996  
6 Tel: 702-949-8200  
7 Fax: 702-949-8398  
8 E-mail: [mkrum@lrcc.com](mailto:mkrum@lrcc.com)

9 *Attorneys for Plaintiff, James J. Cotter, Jr.*

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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.

READING INTERNATIONAL, INC., a  
Nevada corporation,

Nominal Defendant.

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

Plaintiffs,

vs.

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

Coordinated with:

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

Case No. A-16-735305-B  
Dept. No. XI

Jointly Administered

Business Court

**APPENDIX OF EXHIBITS IN SUPPORT  
OF PLAINTIFF JAMES J. COTTER, JR.'S  
OPPOSITION PLAINTIFF JAMES J.  
COTTER, JR.'S OPPOSITION TO  
DEFENDANT GOULD'S MOTION FOR  
SUMMARY JUDGMENT (Exhibits 2, 7, 9  
and 12 Filed Under Seal)**

3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996

**Lewis Roca  
ROTHGERBER CHRISTIE**

3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

**APPENDIX OF EXHIBITS**

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<u>Exhibit</u>	<u>Description</u>	<u>Page Nos.</u>
1	Excerpts from April 28, 2016 deposition of Guy Adams	001-009
2	Depo Exhibit 115 – Filed separately under seal	010-012
3	Excerpts from June 8, 2016 deposition of William Gould	013-017
4	Excerpts from April 29, 2016 deposition of Guy Adams	018-022
5	Excerpts from July 6, 2016 deposition of Jim Cotter, Jr	023-027
6	Excerpts from February 12, 2016 deposition of Timothy Storey	028-031
7	Depo Exhibit 380 – Filed separately under seal	032-038
8	Excerpts from August 18, 2016 deposition of Robert Mayes	039-043
9	Depo Exhibit 422 – Filed separately under seal	044-047
10	Depo Exhibit 347	048-056
11	Depo Exhibit 390	057-059
12	Depo Exhibit 119 Douglas McEachern – Filed separately under seal	060-070

DATED this 17th day of October, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Mark G. Krum

Mark G. Krum (SBN 10913)  
3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996  
Tel: 702.949.8200  
Fax: 702.949.8398

*Attorneys for Plaintiff James J. Cotter, Jr.*

3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of October, 2016, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO DEFENDANT GOULD'S MOTION FOR SUMMARY JUDGMENT (Exhibits 2, 7, 9 and 12 filed under seal)** to be electronically filed and served via this Court's electronic filing system to all parties listed on the E-Service Master List.

/s/ Luz Horvath

An employee of Lewis Roca Rothgerber Christie  
LLP

## **Exhibit 1**

## **Exhibit 1**

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., )  
derivatively on behalf of )  
Reading International, Inc., )  
Plaintiff, ) Case No.  
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

READING INTERNATIONAL, INC.,  
a Nevada corporation,

Nominal Defendant.

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

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 2**

**(Filed Separately Under Seal)**



## **Exhibit 3**

## **Exhibit 3**

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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 Q. Now having looking at this document, does that  
2 refresh your recollection of whether there was any  
3 discussion at the August 4, 2015 board meeting when  
4 Ellen announced the members of the search -- CEO search  
5 committee of whether there was any question or  
6 discussion about whether she was or might be a  
7 candidate?

8 A. I don't think there was.

9 Q. Would you have approved a candidate being a  
10 member of a search committee?

11 A. No.

12 Q. Did you have or do you have any thoughts about  
13 whether someone who is an interim CEO might be, likely  
14 is, or almost certainly is a candidate?

15 MR. SEARCY: Objection. Vague.

16 MR. RHOW: Join.

17 THE WITNESS: I didn't have any view around that, I  
18 don't think.

19 MR. KRUM:

20 Q. By the way, you recall at the August 4 board  
21 meeting, there was a vote with respect to board minutes  
22 from meeting in May and June?

23 A. Not specifically, no.

24 Q. Do you recall a board meeting at which you  
25 abstained from the vote to approve board minutes?

1 A. Was that -- I thought I was in L.A. for that  
2 meeting.

3 Q. I believe you were.

4 A. Okay. So was I at the meeting at August 4th?  
5 Because I assumed I hadn't been.

6 Q. Well, you know --

7 A. Whichever meeting it was.

8 Q. Let me correct it. I do not know whether you  
9 were there in person.

10 A. I recollect being at a board meeting in L.A.,  
11 somewhere around here, where the issue of minutes was  
12 discussed, I think.

13 Q. And what do you recall about that discussion  
14 about that issue?

15 A. About the minutes? We received a series of  
16 draft minutes quite well after the meetings that they  
17 referred to, and that they were for discussion, as they  
18 usually were. And my view was that it was impossible  
19 for me to look at those meetings in detail -- I'm sorry  
20 look at those minutes in detail, and make any meaningful  
21 comment at the meeting.

22 I had been told, and it was apparent to me, that  
23 the minutes had been carefully prepared and reviewed and  
24 they were quite long, and it just seemed to me in the  
25 circumstances very difficult for me to make any kind of

1 meaningful comment around changing them to make them  
2 what I thought would accurately reflect of what was  
3 said.

4 Q. So did you abstain from the vote?

5 A. So I abstained.

6 Q. We're done with that document. Thank you.

7 Mr. Storey, let me show you what the court reporter  
8 has marked as Exhibit 31, and that's a document --  
9 one-page document bearing production number TS 614.

10 A. I recognize the document.

11 (Whereupon the document referred to is marked by  
12 the reporter as EXHIBIT 31 for identification.)

13 MR. KRUM:

14 Q. What do you recognize it to be?

15 A. It is an e-mail from me to Ellen Cotter, copied  
16 to the board, asking for an update on the process to  
17 select a CEO.

18 Q. So does that reflect that between August 4 and  
19 September 9, you'd received no information?

20 A. Yes.

21 Q. Let me show you what the court reporter has  
22 marked as Exhibit 32, a document bearing production  
23 numbers TS 615 through 617.

24 A. Yes.

25 (Whereupon the document referred to is marked by

1 I, Teckla T. Hollins, CSR 13125, do hereby declare:

2 That, prior to being examined, the witness named in  
3 the foregoing deposition was by me duly sworn pursuant  
4 to Section 30(f)(1) of the Federal Rules of Civil  
5 Procedure and the deposition is a true record of the  
6 testimony given by the witness.

7 That said deposition was taken down by me in  
8 shorthand at the time and place therein named and  
9 thereafter reduced to text under my direction.

10 That the witness was requested to review the  
11 transcript and make any changes to the  
12 transcript as a result of that review  
13 pursuant to Section 30(e) of the Federal  
14 Rules of Civil Procedure.

15 No changes have been provided by the witness  
16 during the period allowed.

17 The changes made by the witness are appended  
18 to the transcript.

19 No request was made that the transcript be  
20 reviewed pursuant to Section 30(e) of the  
21 Federal Rules of Civil Procedure.

22 I further declare that I have no interest in the  
23 event of the action.

24 I declare under penalty of perjury under the laws  
25 of the United States of America that the foregoing is  
true and correct.

WITNESS my hand this 3rd day of

March, 2016.

*Teckla T. Hollins*

Teckla T. Hollins, CSR 13125

## **Exhibit 4**

## **Exhibit 4**

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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 re-election?

2 A. Yes.

3 Q. Tell us about those communications,  
4 please.

5 MR. TAYBACK: Object to the form of the  
6 question.

7 You can answer.

8 THE WITNESS: She said they would not -- if we  
9 nominated him, that she and Margaret would not vote  
10 the shares for him to be elected.

11 BY MR. KRUM:

12 Q. And she said that to you and anybody  
13 else, or was it just you?

14 A. To me before -- in the office, she  
15 mentioned that to me.

16 Q. What was your response?

17 A. Okay.

18 Q. So --

19 A. I agreed with her.

20 Q. You said two or three weeks after the  
21 call with Mr. Storey, I believe, that someone  
22 suggested a candidate; is that right?

23 A. Maybe two, yeah.

24 Q. And who suggested who?

25 A. I think -- my recollection is, after

1 Ellen said she had someone in mind, she sent an  
2 email with Judy Coddington's résumé around for us to  
3 speak to and review and consider.

4 Q. Between the time the special committee  
5 voted unanimously not to nominate Mr. Storey to  
6 stand for re-election and the however many weeks  
7 later Ellen Cotter sent an email with Judy  
8 Coddington's résumé, what steps, if any, did the  
9 special nominating committee take to identify  
10 directorial candidates for the slot that was  
11 vacated by the decision not to renominate  
12 Mr. Storey?

13 MR. TAYBACK: Objection; form and foundation.

14 THE WITNESS: We talked about if we knew of  
15 anyone. I said I didn't know anyone that would  
16 serve on the company in these circumstances, being  
17 sued, and who's going to ultimately vote the stock  
18 and control it. No one would come aboard that I  
19 knew.

20 And Ed Kane said he didn't know anyone.  
21 Doug McEachern said he would think about it; he  
22 might have an idea or two. And that's where we  
23 were. And then Ellen said, I think I have a name  
24 of somebody that will serve.

25 ///

1 BY MR. KRUM:

2 Q. Did McEachern ever suggest anyone?

3 A. I think -- my recollection is that Judy's  
4 name came to us while Doug was in the process.

5 Q. So the answer is, you don't think he did  
6 because you received a candidate from Ellen?

7 A. My answer is, I think he was in the  
8 process and he stopped it when he got Judy  
9 Coddington's résumé.

10 Q. Did you have any conversations with  
11 either Ed Kane or Doug McEachern about a process or  
12 trying to create a process to identify directorial  
13 candidates?

14 A. Not at the nominating committee meeting,  
15 we did not. It was after the nominating committee  
16 we said we should consider this in advance and not  
17 do this up against a time -- time constraint.

18 Q. Well, at the time, the shareholder  
19 meeting, annual shareholders meeting had been  
20 scheduled; right?

21 A. I believe so, yes.

22 Q. So as a practical matter, you did have a  
23 time constraint, you had to have a nominee to  
24 include in the proxy statement; correct?

25 A. Yes.

CERTIFICATE OF REPORTER

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

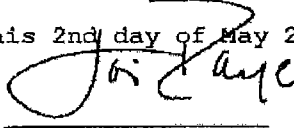
I, Lori Raye, a duly commissioned and  
licensed court reporter for the State of  
California, do hereby certify:

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

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

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

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

  
\_\_\_\_\_  
LORI RAYE  
CSR No. 7052

## **Exhibit 5**

## **Exhibit 5**

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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES 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  
Wednesday, July 6, 2016  
Volume III

Reported by:  
JANICE SCHUTZMAN, CSR No. 9509  
Job No. 2343561  
Pages 568 - 838

Page 568

1 Q. So by the time you were terminated, it's  
2 not that -- you had not concluded that it was  
3 wasteful for the company to have both Mr. Ellis  
4 provide services as a general counsel and  
5 Mr. Tompkins to be a consulting lawyer to the 11:54AM  
6 company?

7 A. I do think there's a degree of waste  
8 having, again, two high-powered lawyers serving as  
9 counsel for the company.

10 And in fact, in terms of just going back to 11:54AM  
11 my testimony, that is one of the things I would have  
12 done, to have one general counsel representing the  
13 interest of the company, not have two. It just was  
14 a recipe for disaster.

15 Q. And by the time you were terminated, that 11:55AM  
16 was something that, even though you thought it was  
17 wasteful in your view, you hadn't undertaken to do;  
18 correct?

19 A. Correct. I didn't think it was  
20 inappropriate, given the timing and the situation. 11:55AM  
21 Had we had different circumstances, I certainly  
22 would have taken that ac- -- that step.

23 Q. One of the things you said that you  
24 wouldn't -- would not have done is delay -- or use  
25 outside lawyers to draft the minutes of board 11:55AM

Page 662

1 meetings and delay in their dissemination, and you  
2 also said include fabricated information.

3 What information do you believe reflected  
4 in the company's board minutes has been fabricated?

5 MR. KRUM: Object to the characterization 11:56AM  
6 of the testimony.

7 THE WITNESS: I mean, there were examples  
8 of draft minutes that were prepared by Bill Ellis,  
9 who was functioning as corporate secretary, and in  
10 the first draft he had a set of minutes. 11:56AM

11 And once it goes to Akin Gump, who was  
12 representing the company or Ellen in terms of the --  
13 in terms of my termination, and to Greenberg  
14 Traurig, the minutes evolve into minutes that I  
15 don't recognize and actions taken in the minutes 11:57AM  
16 that I didn't believe reflected what actually  
17 happened but that substantiated the positions that  
18 Ellen and the company wanted to take.

19 BY MR. TAYBACK:

20 Q. And can you think of a single specific 11:57AM  
21 statement that you recall seeing in a board minute  
22 that you say, that's just false, that's untrue?

23 A. There were a number of examples that I had  
24 related to the company with a number of the minutes.

25 Q. And when --

Page 663



1           A.    So I can't tell you today specifically the  
2   examples.  
3           Q.    When you say "related to the company," you  
4   mean in written correspondence; correct?  
5                    You said you objected to the minutes in           11:57AM  
6   some written form.  
7           A.    I think there were examples where I had.   I  
8   had also objected orally at the meetings, saying  
9   these things didn't occur.  
10                   Like for example, I think we had discussed       11:58AM  
11   at the last deposition where Ellen had said, hey,  
12   let's move item No. 10 to item No. 1, and that was  
13   just one example of something that did not occur.  
14           Q.    And when you made objections orally at  
15   the -- to the minutes at the meeting at which those       11:58AM  
16   minutes were presented, in fact, your objection was  
17   recorded in the minutes; correct?  
18                   MR. KRUM:   Objection, the document speaks  
19   for itself.  
20                    You can answer if you know.                   11:58AM  
21                   THE WITNESS:   I can't specifically recall.  
22   BY MR. TAYBACK:  
23           Q.    Did you ever have your counsel draft any  
24   letters to the company objecting to the minutes that  
25   were being disseminated?                               11:58AM

Page 664

1 I, JANICE SCHUTZMAN, Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were placed under oath; that  
8 the testimony of the witness and all objections made  
9 by counsel at the time of the examination were  
10 recorded stenographically by me, and were thereafter  
11 transcribed under my direction and supervision; and  
12 that the foregoing pages contain a full, true and  
13 accurate record of all proceedings and testimony to  
14 the best of my skill and ability.

15 I further certify that I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or any of the parties.

18 IN WITNESS WHEREOF, I have subscribed my name  
19 this 19th day of July, 2016.  
20  
21

22   
23

24 JANICE SCHUTZMAN

25 CSR No. 9509

Page 838

## **Exhibit 6**

## **Exhibit 6**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 JAMES J. COTTER, JR., individually and)  
5 derivatively on behalf of Reading )  
6 International, Inc., )  
7 Plaintiff, )  
8 vs. ) No. A-15-719860-B  
9 MARGARET COTTER, ELLEN COTTER, GUY ) Coordinated with:  
10 ADAMS, EDWARD KANE, DOUGLAS McEACHERN, ) P-14-082942-E  
11 TIMOTHY STOREY, WILLIAM GOULD, and )  
12 DOES 1 through 100, inclusive, )  
13 Defendants. )  
14 and )  
15 \_\_\_\_\_ )  
16 READING INTERNATIONAL, INC., a )  
17 Nevada corporation, )  
18 \_\_\_\_\_ )  
19 Nominal Defendant. )  
20  
21 DEPOSITION OF TIMOTHY STOREY, a defendant herein,  
22 noticed by LEWIS ROCA ROTHGERBER CHRISTIE LLP, at  
23 1453 Third Street Promenade, Santa Monica,  
24 California, at 9:28 a.m., on Friday, February 12,  
25 2016, before Teckla T. Hollins, CSR 13125.  
  
Job Number 291961

1 Q. Now having looking at this document, does that  
2 refresh your recollection of whether there was any  
3 discussion at the August 4, 2015 board meeting when  
4 Ellen announced the members of the search -- CEO search  
5 committee of whether there was any question or  
6 discussion about whether she was or might be a  
7 candidate?

8 A. I don't think there was.

9 Q. Would you have approved a candidate being a  
10 member of a search committee?

11 A. No.

12 Q. Did you have or do you have any thoughts about  
13 whether someone who is an interim CEO might be, likely  
14 is, or almost certainly is a candidate?

15 MR. SEARCY: Objection. Vague.

16 MR. RHOW: Join.

17 THE WITNESS: I didn't have any view around that, I  
18 don't think.

19 MR. KRUM:

20 Q. By the way, you recall at the August 4 board  
21 meeting, there was a vote with respect to board minutes  
22 from meeting in May and June?

23 A. Not specifically, no.

24 Q. Do you recall a board meeting at which you  
25 abstained from the vote to approve board minutes?

1 A. Was that -- I thought I was in L.A. for that  
2 meeting.

3 Q. I believe you were.

4 A. Okay. So was I at the meeting at August 4th?  
5 Because I assumed I hadn't been.

6 Q. Well, you know --

7 A. Whichever meeting it was.

8 Q. Let me correct it. I do not know whether you  
9 were there in person.

10 A. I recollect being at a board meeting in L.A.,  
11 somewhere around here, where the issue of minutes was  
12 discussed, I think.

13 Q. And what do you recall about that discussion  
14 about that issue?

15 A. About the minutes? We received a series of  
16 draft minutes quite well after the meetings that they  
17 referred to, and that they were for discussion, as they  
18 usually were. And my view was that it was impossible  
19 for me to look at those meetings in detail -- I'm sorry  
20 look at those minutes in detail, and make any meaningful  
21 comment at the meeting.

22 I had been told, and it was apparent to me, that  
23 the minutes had been carefully prepared and reviewed and  
24 they were quite long, and it just seemed to me in the  
25 circumstances very difficult for me to make any kind of

1 meaningful comment around changing them to make them  
2 what I thought would accurately reflect of what was  
3 said.

4 Q. So did you abstain from the vote?

5 A. So I abstained.

6 Q. We're done with that document. Thank you.

7 Mr. Storey, let me show you what the court reporter  
8 has marked as Exhibit 31, and that's a document --  
9 one-page document bearing production number TS 614.

10 A. I recognize the document.

11 (Whereupon the document referred to is marked by  
12 the reporter as EXHIBIT 31 for identification.)

13 MR. KRUM:

14 Q. What do you recognize it to be?

15 A. It is an e-mail from me to Ellen Cotter, copied  
16 to the board, asking for an update on the process to  
17 select a CEO.

18 Q. So does that reflect that between August 4 and  
19 September 9, you'd received no information?

20 A. Yes.

21 Q. Let me show you what the court reporter has  
22 marked as Exhibit 32, a document bearing production  
23 numbers TS 615 through 617.

24 A. Yes.

25 (Whereupon the document referred to is marked by

# **EXHIBIT 7**

**(Filed Separately Under Seal)**



## **Exhibit 8**

## **Exhibit 8**

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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)	)	

VIDEOTAPED DEPOSITION OF ROBERT MAYES  
TAKEN ON THURSDAY, AUGUST 18, 2016

REPORTED BY:  
PATRICIA L. HUBBARD, CSR #3400  
Job No.: 331292

1 particular candidate?

2 A. There was a general consensus toward --  
3 toward one -- one candidate in particular. But  
4 there was not -- the feedback from the board was,  
5 you know, "Now we think we might need more operating  
6 company experience." There was a shift.

7 Q. Do you recall whether Korn Ferry  
8 recommended Ellen Cotter for further assessment  
9 along with any other candidates?

10 A. We did -- we rec- -- we encouraged Craig  
11 Tomkins to run Ellen through the assessment process.

12 Q. Okay.

13 MS. LINDSAY: Can you please mark this  
14 as 422.

15 (Whereupon the document referred  
16 to was marked Defendants'  
17 Exhibit 422 by the Certified  
18 Shorthand Reporter and is attached  
19 hereto.)

20 BY MS. LINDSAY:

21 Q. Do you recognize Exhibit 422?

22 A. Yes.

23 Q. What is it?

24 A. It is a candidate report.

25 Q. For Ellen Cotter?

1 A. Correct.

2 Q. And what did you do to prepare this  
3 candidate report, if you prepared it?

4 A. We did this at the behest of, I believe,  
5 Craig Tomkins and formulated a resume from the  
6 internet, did some basic internet research, and then  
7 I wrote a brief assessment -- well, it's not an  
8 assessment. I wrote a brief overview of her  
9 candidacy based on my interaction with her as a  
10 search committee member.

11 Q. So it was based partially on your  
12 opinion of her?

13 A. Yeah. Starting with the professional  
14 attributes on page three.

15 Q. Do you recall when this candidate report  
16 was prepared?

17 A. I think it was just after the new year.

18 MR. KRUM: Excuse me. Taking Kara's  
19 line here, does this document have a production  
20 number?

21 MS. LINDSAY: It was produced by Korn  
22 Ferry.

23 MR. KRUM: Okay. Thanks.

24 BY MS. LINDSAY:

25 Q. Directing your attention to -- I'm done

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

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

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

1 That the foregoing pages contain a full,  
2 true and accurate record of the proceedings and  
3 testimony to the best of my skill and ability;  
4

5 I further certify that I am not a relative  
6 or employee or attorney or counsel of any of the  
7 parties, nor am I a relative or employee of such  
8 attorney or counsel, nor am I financially interested  
9 in the outcome of this action.  
10

11 IN WITNESS WHEREOF, I have subscribed my  
12 name this 19th day of August, 2016.  
13

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16 PATRICIA L. HUBBARD, CSR #3400  
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# **EXHIBIT 9**

**(Filed Separately Under Seal)**

## **Exhibit 10**

## **Exhibit 10**



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

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

**FORM 8-K**

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

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

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

Nevada  
(State or Other Jurisdiction of Incorporation)

1-8625  
(Commission File Number)

95-3885184  
(L.R.S. Employer Identification No.)

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

90045  
(Zip Code)

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

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

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12).
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)).
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).

EXH 347  
DATE 6-28-16  
WIT *Ellen*  
PATRICIA HUBBARD

---

5/4/2016

8K Press release Ellen CEO

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

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

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

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

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

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

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

**ITEM 8.01      OTHER EVENTS**

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

5/4/2016

BK Press release Ellen CEO