

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.

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JOINT APPENDIX IN SUPPORT OF
APPELLANT'S OPENING BRIEF

VOLUME XXVI (JA6149-6328)

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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 XXVI (JA6149-6328)** 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:

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

1 THE COURT: Thank you.

2 Ms. Levin, is this your motion?

3 MS. LEVIN: Yes, Your Honor.

4 As we said in our opposition, we believe this is an
5 improper and premature motion just because Mr. Cotter
6 obviously will be here at trial testifying.

7 THE COURT: So you want me to rule on the questions
8 and answers as they're given. So if somebody asks him, well,
9 did you talk to Mr. Adams about what he was going to do, he
10 can then tell me what he said.

11 MS. LEVIN: Correct, Your Honor.

12 THE COURT: Well, what did you think he meant?
13 That's speculation.

14 MS. LEVIN: Unless, of course, he's got a basis for
15 his belief. And I think that some of the deposition
16 testimony, those responses were invited by the very questions.
17 So to the extent that he has a basis to believe -- you know,
18 to state his belief I think that, again, it should be
19 determined on the question by question.

20 THE COURT: Okay. So the motion is denied. It's
21 premature. It's an issue that has to be handled at trial
22 based upon the foundation that is laid related to the issue.

23 So -- and plus you won't be here. You won't be
24 here; right?

25 MR. RHOW: I'm sorry?

1 THE COURT: You won't be here; right?

2 MR. RHOW: I don't know. I hope not. Is Your Honor
3 saying I should not be here or that my client won't be here
4 then?

5 THE COURT: That's what the business judgment ruling
6 deals with; right? So I granted your client's business
7 judgment rule motion. Well, you know, he may be a witness.

8 MR. KRUM: I'm sorry, Your Honor. Did I miss
9 something?

10 THE COURT: What?

11 MR. KRUM: We haven't had that motion argued yet,
12 Mr. Gould's motion.

13 THE COURT: I included Mr. Gould because you briefed
14 it relate to all of the motions for summary judgment and I
15 asked you questions about all the directors, except Mr. Adams.

16 MR. KRUM: I'm sorry. I didn't understand that,
17 Your Honor. I didn't answer as to Mr. Gould.

18 THE COURT: Do you want to tell me an answer to Mr.
19 Gould?

20 MR. KRUM: I do, because we have a hearing set for
21 the 8th on his motion, which is why misunderstood that.

22 THE COURT: I used it because it was included in
23 your opposition, the supplement to those motions.

24 MR. KRUM: That was confusion that we created, and I
25 apologize. The reason we did that, Your Honor, is that we

1 didn't have an opportunity to prepare a Gould brief, but we
2 didn't want to be accused of doing nothing. And some of the
3 evidence in those motions in our view did relate to Gould, and
4 we therefore put him on there.

5 That said, he filed two pieces of paper, they asked
6 me if we could have the hearing today. I told them no, I
7 wanted to respond. So -- but let me try to answer your
8 question with respect to Mr. Gould. So we start, Your Honor,
9 as we do, with the threat to terminate and the termination.
10 And I respectfully submit --

11 THE COURT: I will tell you that on your Mr. Gould
12 you've got the same list that we've already talked about.
13 What I'm trying to find out is -- and I understand the threat
14 is part of what you've alleged related to Mr. Gould along with
15 the other six or seven bullet points that are on pages 5 and 6
16 of the opposition. Is there something else related to Mr.
17 Gould, something like you have with Mr. Adams that would
18 establish a lack of disinterestedness?

19 MR. KRUM: Let me answer, and then you'll decide.

20 THE COURT: Yeah. That's what I'm trying to pull
21 out of you.

22 MR. KRUM: So, for example, with respect to the
23 termination Mr. Cotter raised the question of Mr. Adams's
24 independence before a vote was taken, and Mr. Gould asked Mr.
25 Adams, well, can you tell us about that. And Mr. Adams got

1 mad and said in words or substance, no. And Mr. Gould said,
2 okay. That, Your Honor, is a perfect example of a failure to
3 act in the face of a known duty to act. We're not talking
4 about someone who is unfamiliar with fiduciary obligations
5 here. Mr. Gould is a corporate lawyer.

6 So we get to the -- we get to the executive
7 committee, same meeting, June 12. Ellen Cotter says, I want
8 to repopulate the executive committee, Mr. Gould, would you
9 like to be on it. His testimony, his deposition testimony was
10 that he declined because he knew that it would take a lot of
11 time. Now, if he knew that it would take a lot of time, Your
12 Honor, how is it that it didn't occur to him that this was
13 what the sisters were doing in October of 2014 when they were
14 trying to circumvent the board?

15 THE COURT: These are all on your list of bullet
16 points.

17 MR. KRUM: Okay.

18 THE COURT: What I'm trying to find out is if
19 there's anything that's not on the list of bullet points that
20 are on pages 5 and 6 of your supplemental opposition that
21 relate to Mr. Gould. Because when I made my ruling I was
22 including Mr. Gould as someone because I specifically excluded
23 Mr. Adams and the two Ms. Cotters.

24 MR. KRUM: Bear with me. I'm mentally working.

25 THE COURT: I'm watching you. I'm watching him

1 work.

2 MR. KRUM: So I don't think we had the executive
3 committee there, but I just said that.

4 So then, Your Honor, the composition of the board.
5 So Mr. Gould was not a member of the nominating committee.
6 His testimony was that, on a Friday Ellen Cotter called me and
7 asked me if she could come to my office and she and Craig
8 Tompkins came to my office and showed me Judy Coddington's resume
9 and said we were going to have a board meeting on Monday to
10 put Ms. Coddington on the board. And Bill Gould said, this isn't
11 sufficient time, I can't do my job. But he voted for her
12 nonetheless. That, Your Honor, is the same thing that happens
13 over and over and over again with Mr. Gould. That is, in the
14 face of a known duty to act he chooses not to do so. That is
15 intentional misconduct. Your Honor, you've denied the motion
16 with respect to the CEO search. That is Mr. Gould. It is Mr.
17 Gould and Mr. McEachern who are the ones who together with
18 Margaret Cotter aborted the CEO search. Literally the last
19 time they spoke to Korn Ferry was the day Ellen Cotter
20 declared her candidacy. After that what did they do? They
21 told Craig Tompkins to tell Korn Ferry to do no more work.
22 And Mr. Gould, he was the one whose name was on a press
23 release saying, Ellen Cotter was made CEO following a thorough
24 search. She was not made CEO as a result of that search. She
25 was made CEO in spite of that search.

1 THE COURT: Okay. So all of those are issues that
2 I'm aware of considered when I had previously included Mr.
3 Gould in the granting of the summary judgment related to the
4 business judgment rule. The fact that I am denying certain
5 issues related to other summary judgments does not diminish
6 the fact that the directors that I found there was not
7 evidence of a lack of disinterestedness have the protection
8 the statute provides to them.

9 Okay. So let's go back to Mr. Cotter's Motion
10 Number 3. This is related to the coach.

11 MS. LEVIN: Your Honor, this motion should be denied
12 because the hiring of High Point, that's post hoc --

13 THE COURT: It's your motion. You wanted it
14 granted.

15 MS. LEVIN: I'm sorry. You know, the Court -- I'm
16 sorry. The Court should exclude the after-acquired evidence
17 on the -- in the form of any testimony or documents relating
18 to the hiring of High Point, because the breach of fiduciary
19 duty claims, they are -- they concern what the directors did
20 and knew at the time that they decided to fire the plaintiff.
21 So we cited the Smith versus Van Gorkom case, which holds post
22 hoc data is not relevant to the decision.

23 So at the time that they made this decision they did
24 not have nor did they rely on the High Point evidence. So
25 therefore the after-acquired evidence cannot be as a matter of

1 law relevant to their decision to terminate the plaintiff.
2 That would amount to a retroactive assessment of his ability,
3 which are not at issue. And I think that that's the -- you
4 know, the --

5 THE COURT: The problem I have with that is part of
6 what your client's position has been in this case is he is
7 suitable to be acting as the CEO, and if there is information
8 that is relevant to that suitability, that's where I have the
9 problem on this. I certainly understand from a decision-
10 making process that that information was not in the possession
11 of anyone who was making the decisions at the time. But given
12 the affirmative proposition by your client that he is suitable
13 to CEO, I have concerns about granting the motion at this
14 stage.

15 MS. LEVIN: Well -- okay. So -- but with respect to
16 the decision which you can agree that they could not use that
17 evidence to show that after the fact they made the right
18 decision because of the after --

19 THE COURT: No. That's a problem if your client is
20 saying he's suitable and therefore he should be able to be
21 CEO. Because part of what he originally asked for was to make
22 them make him be CEO.

23 MS. LEVIN: All right. And here at issue I believe
24 it's the -- we're seeking to void the termination.

25 THE COURT: I know.

1 MS. LEVIN: So -- but I think that even -- and I
2 think that in that respect if you were inclined to allow it on
3 his suitability, the problem then becomes first of all the
4 hiring of consultant doesn't necessary mean that somebody is
5 unsuitable.

6 THE COURT: Absolutely. It may mean they're trying
7 to get better.

8 MS. LEVIN: Exactly. And I was thinking -- when I
9 read these facts I was thinking about the analogy. If you
10 were a professional runner and you hire a runner coach --

11 THE COURT: Coach.

12 MS. LEVIN: -- doesn't mean that you're not a good
13 runner. You may --

14 THE COURT: You want to be better.

15 MS. LEVIN: Exactly. So that was --

16 THE COURT: I understand.

17 MS. LEVIN: So and the other thing is that, you
18 know, the opposition argues, well, but it looks like in his
19 own assessment he wasn't good for it. And that, of course,
20 again doesn't follow from that. And so then we get into the
21 category of even if there's a remote relevance, Your Honor,
22 then whatever that relevance is would be substantially
23 outweighed by the unfair prejudicial effect that that would
24 cause. Because, again, his assumed thoughts, then the jury
25 could think like, well, you know, he thinks he's not qualified

1 because he hired a coach. So all in all I believe that it's
2 unfairly prejudicial.

3 Just on the point of the unclean hands defense,
4 again they are citing the Fetish, Las Vegas Fetish case. But,
5 again, the unclean hands defense requires egregious misconduct
6 and serious harm caused by it. And they haven't further
7 substantiated that. So with that being said, our position is
8 to exclude it for those reasons.

9 THE COURT: Thank you.

10 MS. LEVIN: Thank you.

11 THE COURT: Mr. Searcy --

12 MR. SEARCY: I'll address that.

13 THE COURT: -- I am inclined to deny the motion.
14 But if the evidence is admitted at trial, to admit it with a
15 limiting instruction that says that it only goes to
16 suitability.

17 MR. SEARCY: And, Your Honor, I think that we're
18 okay with that.

19 THE COURT: Okay.

20 MR. SEARCY: I just want to clarify that we can
21 certainly ask Mr. Cotter about the Alderton documents --

22 THE COURT: You ask him about it, then I'm going to
23 give the limiting instruction, and we'll probably give it five
24 times or six times, and it'll be a written instruction, so
25 it's part of it. And if the plaintiff doesn't want me to give

1 the limiting instruction because they believe that calls to
2 much attention to it, they can, of course, waive that request.

3 MR. SEARCY: Thank you, Your Honor.

4 THE COURT: Okay. So think about whether you really
5 want the limiting instruction, come up with your text for the
6 limiting instruction, and then we'll talk about it when we
7 have our final pretrial conference as to whether you think you
8 really want it.

9 That takes me to the last motion in limine by Mr.
10 Cotter, which relates to the ability of Mr. Ferrario to
11 participate at trial, also known as Motion in Limine Number 2.

12 MR. KRUM: Thank you, Your Honor. I enjoy this very
13 much, showing that perhaps I've spent too many years in the
14 corporate governance jurisprudence. Three points, and it's
15 not complicated. First, as a general rule a nominal defendant
16 is not allowed to introduce evidence and defend the merits of
17 claims against the director defendants.

18 Second, the handful of exceptions to that are
19 exceptions where it's a serious fundamental corporate interest
20 that is challenged by the derivative suit, a reorganization or
21 restructuring, an effort to appoint a receiver. None of those
22 exist here.

23 Third, if you disagree with us on all of that,
24 there's a question of unfair prejudice and waste of time.
25 And, you know, the individual defendants are represented by

1 capable counsel. They don't need a second lawyer carrying
2 their water. And for a jury to have someone who represents
3 the company asking questions that imply conclusions adverse to
4 the plaintiff is, if not unfairly prejudicial, something
5 beyond that.

6 So that's the argument in a nutshell, Your Honor.
7 If you have any questions, I'd be happy to answer them.

8 THE COURT: Nope. Motion's denied.

9 All right. So let's go to your Motion in Limine
10 Number 1 regarding advice of counsel. I forgot we need to hit
11 that one. Ms. Levin.

12 And then we're going to go to the Chief Justice
13 Steel that I'm not going to really hear, because I didn't give
14 you permission to refile.

15 MS. LEVIN: Your Honor is familiar with the share
16 options, so if I talk about the share option, I don't --

17 THE COURT: I am.

18 MS. LEVIN: Okay. Well --

19 THE COURT: And also with the drama related to the
20 production and the creation and all the stuff about the advice
21 of counsel issue.

22 MS. LEVIN: Okay. I'll just --

23 THE COURT: But I also am aware the Nevada Supreme
24 Court has told us on a business judgment issue we cannot reach
25 behind the advice of counsel except to make a determination as

1 to essentially process issues, how the attorney was hired,
2 what the scope of the retention was, and those kind of issues,
3 as opposed to the actual advice.

4 MS. LEVIN: That's true, Your Honor. And so our
5 arguments are really twofold. Number one is that Adams and
6 Kane, who were two of the three directors on the compensation
7 committee, they testified, as the Court found in its October
8 27, 2016, hearing, that they relied solely on the substance of
9 advice of counsel to determine whether the authorization
10 decision to authorize the estate to invoke the option was
11 proper. So, unlike in Wynn or in Converge, on which the
12 defendants rely, they did not rely on anything else. So if
13 they are asked at trial to explain why they authorized the
14 option, they must rely on that legal advice.

15 So the second point is that the defendants waived
16 the attorney-client privilege by partially disclosing
17 attorney-client privileged information. Now, they're saying
18 -- or RDI says in the opposition that individual directors
19 cannot waive the privilege.

20 THE COURT: That's the Jacobs versus Sands case.

21 MS. LEVIN: Exact, Your Honor. And I agree with
22 that. But, of course, RDI can only act through its officers
23 and directors.

24 THE COURT: That's the Jacobs versus Sands case.

25 MS. LEVIN: And the current officer -- and I think

1 in particular if you look at the Exhibit 4 that we attached
2 to our motion, is that that email was produced by Ellen
3 Cotter, who is a current CEO and is an officer and director,
4 and she --

5 THE COURT: I understand.

6 MS. LEVIN: So, in other words --

7 THE COURT: And then Mr. Ferrario clawed it back.

8 MS. LEVIN: Right. So she produced it, and so
9 there's a Supreme Court case that says, "The power to waive
10 the corporate attorney-client privilege rests with the
11 corporation's management and is usually -- and is normally
12 exercised by its officers and directors." And that's what
13 happened here.

14 So I think especially Exhibit 4, but even Exhibit 2
15 and 3, the 2 and 3 they raise the legal issues. 2 and 3
16 identify the legal issues of whether there was a reason why
17 Ellen Cotter could not exercise the option and whether enough
18 -- whether the trust documents did not pour over -- the share
19 option didn't pour over into the trust. But Exhibit 4
20 specifically seeks legal advice from the company attorney and
21 as to the legal rights of the estate to exercise the option in
22 light of the proxy language. So that is -- under our statute
23 is an attorney-client communication for the purpose of
24 obtaining legal advice. So they partially disclosed that, so
25 we believe there's a waiver issue. And under Wardleigh you

1 cannot use the attorney privilege both as a shield and a
2 sword, which is what they're now doing, is because what
3 they're going to say is, well, we partially disclosed but you
4 cannot find out what it was. But even the very --

5 THE COURT: But that's the Nevada Supreme Court
6 who's made that decision, not the rest of us. They were very
7 clear that we're not allowed to get behind that.

8 MS. LEVIN: Correct. But one thing that the Wynn
9 decision did not decide was the waiver issue. And that was in
10 Footnote 3 of the decision.

11 THE COURT: I made that decision separately after
12 that came back. But that's a case by case, and I haven't made
13 that decision in this case. In fact, my belief is you guys
14 have a writ pending on this issue still. Right?

15 MR. KRUM: I think the writ pending is on a
16 different privilege issue, Your Honor.

17 THE COURT: Okay.

18 MS. HENDRICKS: Your Honor, the writ relating to
19 this issue was filed by RDI, and the Supreme Court actually
20 came back and said the facts were analogous to Wynn and it
21 needed to make a decision, and that was shortly after you did
22 make the decision when we were back before you on it.

23 THE COURT: Yeah. We had a hearing.

24 MS. HENDRICKS: And we had the supplemental
25 briefing.

1 THE COURT: Yep. Okay. So anything else on this
2 one?

3 MS. LEVIN: Only -- the only thing is that the
4 partially disclosed privileged emails themselves show that the
5 board had information that would cause reliance on advice to
6 be improper. So that would --

7 THE COURT: Okay. So your motion's denied. Come up
8 here. I'm going to give you these. These are your I believe
9 documents you actually want sealed. Since I granted your
10 motion, it was on the calendar today, hopefully you can work
11 out with the Clerk's Office so they will actually take the
12 sealed documents and put them so they're part of the record in
13 some way.

14 MS. LEVIN: And I brought them with me, too.

15 THE COURT: Yeah. Good luck. You've got to do it
16 at the counter.

17 MS. LEVIN: Okay. Thank you.

18 THE COURT: Okay. So I am declining to hear again
19 the motion in limine on Chief Justice Steel. I've previously
20 made a ruling on that. I've reviewed your brief, and there's
21 nothing in it that causes me to change my mind.

22 I have already granted your motions to seal and
23 redact. It was on calendar for today.

24 And now we need to set our final pretrial
25 conference. I usually do it the week before.

1 MR. KRUM: The week before is fine, Your Honor.

2 (Pause in the proceedings)

3 THE COURT: The week before is fine?

4 MR. KRUM: The week before is fine, Your Honor.

5 THE COURT: What day are you guys arguing in the
6 Supreme Court?

7 MR. TAYBACK: That's the 3rd.

8 THE COURT: 3rd. So do you want to come in on --

9 MR. TAYBACK: 4th?

10 THE CLERK: [Inaudible].

11 THE COURT: No, I'm not seeing them on January 2,
12 you're seeing them on January 2.

13 How about on January 5 at 3:00 o'clock?

14 MR. TAYBACK: That's good. Thank you.

15 MR. KRUM: Perfect.

16 MR. FERRARIO: Thank you, Judge.

17 THE COURT: That will be your final pretrial
18 conference. At your final pretrial conference we're not going
19 to bring exhibits, because you're already going to deal with
20 that. But you are going to bring any jury instructions,
21 you're going to exchange your draft jury instructions. If you
22 have limiting instructions you think are appropriate, try and
23 have those, as well. And we're also going to deal with any
24 exhibits that you want in a notebook for the jury. The only
25 reason I suggest that is sometimes documents that we show on

1 screens aren't easily able to be seen by a juror. There's
2 contract documents and things you may want. If there are
3 selected items you want to have in a jury notebook, it will be
4 a single jury notebook. It will be not more than 3 inches.
5 So whatever we put in it has to fit in the 3 inches. And so
6 if you have things you think you want included in that, we'll
7 talk about that. And you're going to -- I will make final
8 decisions on voir dire questions at that time. I encourage
9 you to exchange them a week ahead of time.

10 MR. KRUM: Your Honor, with respect to exhibits we
11 have a date this week of Wednesday or Thursday for our exhibit
12 list. I think in view of today's developments it would be a
13 good idea to push that back to next week.

14 THE COURT: You guys need to get working on it.

15 MR. KRUM: No, we're working on it.

16 THE COURT: It takes a lot longer than you think it
17 does.

18 All right. Anything else that I missed?

19 MR. FERRARIO: There may be some utility to that,
20 Mark, in light of the rulings of the Court today, because the
21 complexion of the case has changed.

22 MR. KRUM: Well, that's -- we're working on it. We
23 understand that, Your Honor. So may we have until Wednesday
24 of next week you think, Mark?

25 MR. TAYBACK: Yeah, that's fine.

1 THE COURT: I still need to see representatives from
2 those parties who remain in the case at the calendar call on
3 December 18th. If you are out of town, I do not do call-ins
4 for calendar calls, Mr. Krum, so just make sure Mr. Morris and
5 Ms. Levin know whatever it is they need to say.

6 I am going to be asking you whether given the
7 rulings I made today it has changed the estimate that you
8 provided to me through Ms. Hendricks on December 4th as the
9 amount of time for trial. Because I need to negotiate for
10 space, and knowing the time that I need is important for me in
11 my space negotiations.

12 MR. RHOW: Your Honor, sorry. One point of
13 clarification as to Mr. Gould specifically. He is out of the
14 case entirely?

15 THE COURT: Well, I granted the motion on the
16 business judgment for him. My understanding is that is the
17 only way that you would be involved, because there are no
18 direct breach of contract claims against you. If there were
19 other types of claims against you that were not protected by
20 the business judgment rule, you might not be out. But I
21 didn't see that in the briefing. But I don't know your case
22 as well as you do.

23 MR. RHOW: Assuming that's the case, I just want to
24 make sure that no one's going to sanction me if I don't show
25 up.

1 THE COURT: Do you think you have any remaining
2 claims against Mr. Gould given my ruling today?

3 MR. KRUM: Your Honor, probably not. But I'll go
4 back through it.

5 THE COURT: If you could communicate if you think
6 there are any, and then I'll have to handle that on a
7 supplemental motion practice.

8 MR. RHOW: Understood, Your Honor.

9 THE COURT: Okay. So the people who I anticipate
10 will be here only in the capacity as witnesses would be --
11 okay, I've got to go back to this list -- Kane, McEachern,
12 Gould, Coddington, Wrotniak. That's all of them. So the people
13 who remain parties are Cotter, Cotter, Adams, and then Mr.
14 Cotter.

15 MR. TAYBACK: Yes, Your Honor. I understand that.

16 THE COURT: All right. So see you on the 18th.

17 MR. TAYBACK: Thank you, Your Honor.

18 MR. KRUM: Thank you.

19 MR. EDWARDS: Your Honor --

20 THE COURT: Yes, Jim.

21 MR. EDWARDS: -- on the 2nd is local counsel going
22 to be here for the exhibits? Do you want local counsel here?

23 THE COURT: Counsel does not need to be here. They
24 can send paralegals. So local counsel does not need to come
25 sit through it if they don't want to.

1 MR. EDWARDS: Okay.

2 THE COURT: But it may be helpful if local counsel
3 is going to be intimately involved in the process of doing it
4 for you to have someone here. But I leave that to work out
5 with your people.

6 Anything else?

7 MS. HENDRICKS: Your Honor, on the exhibit list did
8 we get an extra week, then, so we kind of work through these
9 issues?

10 THE COURT: I'm not involved in the exhibit list
11 issue. That's you guys on 2.67. I'm out of that.

12 MR. FERRARIO: Thank you, Your Honor.

13 THE PROCEEDINGS CONCLUDED AT 12:00 NOON

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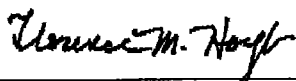
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE M. HOYT, TRANSCRIBER

12/12/17

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Attorneys for Defendants Margaret Cotter,
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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, et al.,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

JA6170

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

- 11 • Individual Defendants' Motion for Partial Summary Judgment
12 (No. 1) re: Plaintiff's Termination and Reinstatement Claims,
13 and supplement thereto;
- 14 • Individual Defendants' Motion for Partial Summary Judgment
15 (No. 2) re: The Issue of Director Independence, and supplement
16 thereto;
- 17 • Individual Defendants' Motion for Partial Summary Judgment
18 (No. 3) on Plaintiff's Claims Relating to the Purported
19 Unsolicited Offer, and supplement thereto;
- 20 • Individual Defendants' Motion for Partial Summary Judgment
21 (No. 5) on Plaintiff's Claims Related to the Appointment of
22 Ellen Cotter as CEO, and supplement thereto;
- 23 • Individual Defendants' Motion for Partial Summary Judgment
24 (No. 6) re: Plaintiff's Claims Related to the Estate's Option
25 Exercise, the Appointment of Margaret Cotter, the
26 Compensation Packages of Ellen Cotter and Margaret Cotter,
27

1 and the Additional Compensation to Margaret Cotter and Guy
2 Adams, and supplement thereto;

- 3 • Defendant Gould's Motion for Summary Judgment;
- 4 • Individual Defendants' Renewed Motion *in Limine* to Exclude
5 Expert Testimony of Myron Steele Based on Supplemental
6 Authority;
- 7 • Individual Defendants' Motion *in Limine* to Exclude Evidence
8 That Is More Prejudicial Than Probative;
- 9 • Defendant Gould's Motion *in Limine* to Exclude Irrelevant
10 Speculative Evidence;
- 11 • RDI's Motion to Redact Opposition to Plaintiff James J. Cotter,
12 Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File
13 Exhibit "E" Under Seal;
- 14 • Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- 15 • Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-
16 Related Evidence by Nominal Defendant Reading
17 International, Inc.;
- 18 • Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- 19 • Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's
20 Opposition to Motion *in Limine* to Exclude Evidence That Is
21 More Prejudicial Than Probative;
- 22 • Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact
23 Portions of Plaintiff's Supplemental Opposition to Motion for
24 Summary Judgment Nos. 2 and 3 and Gould Summary
25 Judgment Motion;
- 26
- 27
- 28

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

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

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

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

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

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

9 IT IS FURTHER ORDERED THAT the Individual Defendants'
10 Motion for Partial Summary Judgment (No. 6) re: Plaintiff's Claims Related
11 to the Estate's Option Exercise, the Appointment of Margaret Cotter, the
12 Compensation Packages of Ellen Cotter and Margaret Cotter, and the
13 Additional Compensation to Margaret Cotter and Guy Adams is DENIED.

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

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

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

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

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

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

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

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

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

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

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

19
20 DATED this 28th day of December, 2017.

21 
22 _____
23 DISTRICT COURT JUDGE
24
25
26
27
28

1
2 PREPARED AND SUBMITTED BY:

3 COHEN|JOHNSON|PARKER|EDWARDS

4
5 By: /s/ H. Stan Johnson

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25 *Ellen Cotter, Douglas McEachern, Guy Adams,*
26 *Edward Kane, Judy Coddling, and Michael*
27 *Wrotniak*
28

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18 Attorneys for Plaintiff
19 James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

16 **JAMES J. COTTER, JR.,**
17 **derivatively on behalf of Reading**
18 **International, Inc.,**

Plaintiff,

v.

20 **MARGARET COTTER, ELLEN**
21 **COTTER, GUY ADAMS,**
22 **EDWARD KANE, DOUGLAS**
23 **McEACHERN, WILLIAM**
24 **GOULD, JUDY CODDING,**
25 **MICHAEL WROTONIAK,**

Defendants.

And

26 **READING INTERNATIONAL,**
27 **INC., a Nevada corporation,**

28 **Nominal Defendant.**

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

MOTION STAY

AND

**APPLICATION FOR ORDER
SHORTENING TIME**

JA6177

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1 Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court
2 to stay this case pending filing and resolution of his forthcoming petition for
3 writ of mandamus of the Court's impending order granting the individual
4 defendants' motions for partial summary judgments Nos. 1 and 2 ("Partial
5 MSJ Nos. 1 and 2") and William Gould's motion for summary judgment
6 ("Gould MSJ"). Plaintiff further moves the Court under EDCR 2.26 for an
7 Order shortening time to notice and hear this Motion.

8 MORRIS LAW GROUP

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

I, Akke Levin, declare:

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

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

3. On December 18, Plaintiff submitted a motion for reconsideration of the Court's rulings on Partial MSJs Nos. 1 and 2, Gould's MSJ, and the Court's dismissal of William Gould, Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak from the case.

4. On December 21, 2017, Plaintiff submitted to the Court a proposed order on all the Court's December 11 rulings.

5. The Motion for Reconsideration is set for hearing on December 28, 2017.

6. Good cause exists under EDCR 2.26 to shorten the time for notice and hearing of this Motion to Stay. Trial is set to begin on January 8,

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1 2018. If the Motion to Stay is set on the regular calendar, it would not be
2 heard until after trial begins, which would defeat its purpose. Plaintiff
3 proposes that the Court hears this Motion on December 28, 2017, the same
4 day and time that the Court scheduled hearing on Plaintiff's Motion for
5 Reconsideration.

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

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

10
11 
12 Akke Levin, Bar No. 9102

13 **ORDER SHORTENING TIME**

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

16 IT IS HEREBY ORDERED that the time for notice and hearing of
17 the Motion for Reconsideration and Clarification shall be, and it hereby is,
18 shortened and shall be heard on shortened time on the 28th day of
19 December, 2017, at the hour of 9:00 a.m..

20 (per agreement)

21 
22 Judge Elizabeth Goff Gonzalez
23 District Court Judge, Dept. 11

24 DATED: 28 DECEMBER 2017

25 **I. INTRODUCTION**

26 The Court on December 11, 2017 dismissed all Plaintiff's four
27 claims against five of the eight defendants because the Court found there
28 were no issues of material fact as to their disinterestedness and

JA6180

independence. The Court's rulings were based the individual defendants' Partial MSJ Nos. 1 and 2 and Gould's MSJ. Plaintiff is seeking reconsideration of this ruling. Plaintiff has prepared and will file—as soon as the Court enters an order on these rulings—a petition for writ of mandamus seeking to vacate the impending order on the motions for summary judgment to the extent the Court does not amend its December 11 rulings following the hearing on Plaintiff's Motion for Reconsideration. A stay of this case pending the resolution of Plaintiff's Writ Petition is warranted under *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*, 130 Nev. ___, ___, 335 P.3d 199 (2014) and NRAP 8(c).

II. ARGUMENT

A. The Court Should Stay the Case to Permit Plaintiff to file a Writ Petition.

Plaintiff's writ petition is based, in part, on the Court's dismissal of all four *claims* against five defendants whereas the individual director defendants other than Gould had filed only motions for partial summary judgment on certain *issues*. In *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*—a case on point in which the district court found in favor of the plaintiff on two claims "even though the full merits of these claims were not specifically argued" in the motions or at the hearing—the district court "stayed the remainder of the case so that Renown could seek writ relief in [the Nevada Supreme Court]." 130 Nev. ___, ___, 335 P.3d 199, 201 (2014). Given the similarities of both cases (as more fully further discussed in Plaintiff's Motion for Reconsideration) the Court should likewise stay this case.

B. The Court Should Stay the Case Pending the Outcome of Plaintiff's Writ Petition.

A party may seek a stay of the proceedings in the district court pending the "resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ." NRAP 8(a)(1)(A). The initial stay

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1. motion must be made in the district court. *Id.* "In deciding whether to issue
2 a stay or injunction, the Supreme Court or Court of Appeals will generally
3 consider the following factors: (1) whether the object of the appeal or writ
4 petition will be defeated if the stay or injunction is denied; (2) whether
5 appellant/petitioner will suffer irreparable or serious injury if the stay or
6 injunction is denied; (3) whether respondent/real party in interest will
7 suffer irreparable or serious injury if the stay or injunction is granted; and
8 (4) whether appellant/petitioner is likely to prevail on the merits in the
9 appeal or writ petition." NRAP 8(c). Not all factors have to weigh in the
10 moving party's favor: some factors may be particularly strong and
11 "counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120
12 Nev. 248, 251, 89 P.3d 36, 38 (2004). As discussed below, however, each of
13 these factors weighs in Plaintiff's favor.

14 **1. The Object of the Writ Petition Would be Defeated if the**
15 **Stay is Denied.**

16 The object of Plaintiff's writ petition will be defeated if trial
17 proceeds on January 8 against just three defendants when the result of a
18 successful writ petition will require a second trial against all eight individual
19 defendants. *Cf. McCrea*, 120 Nev. at 251, 89 P.3d at 39 (finding that the
20 benefits of arbitration, including its purpose to avoid "longer time periods
21 associated with litigation," would "likely be lost" if the appellant "had to
22 simultaneously or sequentially proceed in both judicial and arbitral
23 forums"). Thus, the first factor weighs in Plaintiff's favor.

24 **2. Plaintiff Would Suffer Serious Harm Without a stay.**

25 As demonstrated in Plaintiff's Motion for Reconsideration, the
26 presumption under NRS 78.138 is rebuttable. If Plaintiff is not allowed to
27 rebut the rebuttable presumption against the five dismissed director
28 defendants at trial, Plaintiff will suffer severe harm at trial, because it

JA6182

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1 deprives him of his right to present his case against the five dismissed
2 director defendants to a jury.

3 **3. Defendants would not Suffer Prejudice, much less**
4 **Irreparable Harm, if a Stay is granted.**

5 It would be in all the parties' interest—including defendants'
6 interest—to stay the case and avoid a costly and time-consuming "do over"
7 of the trial that is about to start if the Nevada Supreme Court vacates the
8 district court's impending order. This factor therefore also weighs in
9 Plaintiff's favor.

10 **4. Plaintiff is likely to succeed on the merits.**

11 Plaintiff is likely to prevail on one or more aspects of his Writ
12 Petition, which seeks an order vacating the impending order on Partial MSJ
13 Nos. 1 and 2, Gould's MSJ, and the Court's ruling to dismiss five of the
14 director defendants from the case on the grounds that: (1) Plaintiff did not
15 get notice and an opportunity to be heard before all four claims were
16 dismissed against these five defendants; (2) briefing on Gould's MSJ was still
17 open; and (3) the Court's ruling deprived Plaintiff of the right to introduce
18 evidence at trial to rebut the presumption that the acts and omissions of the
19 five dismissed directors were protected by the business judgment rule.

20 In *Renown*, the Nevada Supreme Court granted the hospital's
21 writ petition in similar circumstances. There, the district court found in
22 favor of the plaintiff "on his breach of contract and intentional interference
23 with contract claims, even though the full merits of these claims were not
24 specifically argued in the cross-motions for summary judgment or at the
25 hearing." 130 Nev. at ___, 335 P.3d at 202. The Nevada Supreme Court
26 granted the writ petition because these claims were not mentioned
27 anywhere "in the six summary judgment briefs" and *Renown* did not receive
28 ten days notice and an opportunity to defend itself on those claims. *Id.*

JA6183

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1 Similarly here, the director defendants other than Gould filed only motions
2 for partial summary judgment on certain issues (not claims) and Plaintiff
3 did not receive notice and an opportunity to defend himself before
4 summary judgment was granted as to five defendants.

5 As to the third ground, Plaintiff raises a sound legal issue that is
6 meritorious as well: the district court decided Plaintiff's fiduciary duty
7 claims against five directors based solely on the grounds that Plaintiff had
8 failed to raise a disputed issue of material fact regarding their
9 disinterestedness or independence. This factor therefore also weighs in
10 Plaintiff's favor.

11 **III. CONCLUSION**

12 For the reasons stated above, the Court should stay this action
13 pending decision of the Writ Petition.

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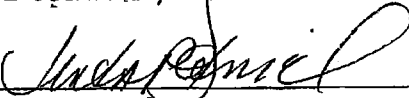
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CERTIFICATE OF SERVICE

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

DATED this 12th day of December, 2017.

By: 
An employee of Morris Law Group



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.

Plaintiff

vs.

MARGARET COTTER, et al.

Defendants
.....

CASE NO. A-15-719860-B
A-16-735305-B
P-14-082942-E

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTION FOR RECONSIDERATION
AND MOTION FOR STAY**

THURSDAY, DECEMBER 28, 2017

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

JA6186

APPEARANCES:

FOR THE PLAINTIFF:

MARK G. KRUM, ESQ.
AKKE LEVIN, ESQ.

FOR THE DEFENDANTS:

H. STANLEY JOHNSON, ESQ.
MARSHALL M. SEARCY, ESQ.
MARK E. FERRARIO, ESQ.
SHOSHANNA BANNETT, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 28, 2017, 9:02 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 Mr. Ferrario, so kind of you to join us.

5 MR. FERRARIO: Wouldn't miss it.

6 THE COURT: You can sit down.

7 Mr. Ferrario called my staff yesterday to see if he
8 could get out of coming to court.

9 MR. FERRARIO: I just hinted.

10 THE COURT: So I have a motion for stay that was
11 submitted on an OST, but it was submitted after 5:00 o'clock
12 on Tuesday, so we didn't get it in time to set it for this
13 morning. Does anyone have an objection to the motion for stay
14 being heard after I hear the motion for reconsideration?

15 MR. SEARCY: No objection.

16 THE COURT: Okay. So we'll hear that this morning.
17 I'll have Dulce take care of whatever that means. But come on
18 up and let's do the motion.

19 (Pause in the proceedings)

20 THE COURT: Ms. Levin, I don't know what happens
21 after this, but I'm now handing it to Dulce, and you and Dulce
22 talk after the hearing.

23 MS. LEVIN: The motion to stay?

24 THE COURT: Okay. You're up, Mr. Krum.

25 MR. KRUM: Thank you, Your Honor. Good morning.

1 The motion for reconsideration, as I trust you saw,
2 raises three arguments. And I'll speak to the two principal
3 arguments, the first of which is what we view as the error of
4 granting a dismissal of the case when it wasn't sought. The
5 second is what we view as the error of the application of the
6 business judgment rule. The motion -- excuse me. The
7 oppositions pretty much agree with us on how you handle this,
8 and we just disagree about how it should have been handled.

9 But before I speak to that, Your Honor, I note that
10 there was some complaint about there wasn't any new evidence.
11 I don't know if that's correct or not, but there is new
12 evidence that we were not in a position to include in our
13 motion because we just received it last night. And what it
14 is, Your Honor, is that the five individuals with respect to
15 whom you made a determination that there was no disputed issue
16 of material fact --

17 THE COURT: Coddington, Kane, Gould, Wrotniak, and
18 McEachern.

19 MR. KRUM: Correct. Yeah. Those five individuals
20 have apparently requested that the matter be added to a board
21 meeting agenda tomorrow. And what they propose to do is to
22 ratify the conduct of some of them and some of others as to
23 matters, Your Honor, with respect to which you denied motions
24 for summary judgment. So --

25 THE COURT: Mr. Krum, let me step back for a minute

1 just so we're clear. Because it may be that I communicated
2 poorly when we were all here. I made a determination that
3 there was no genuine issue of material fact as to the
4 interestedness of those five individuals. As a result, that
5 means the direct claims against those individuals for personal
6 liability was granted, because I did not make a finding that
7 there was an interestedness on their part. I understand you
8 may have issues with that from a factual standpoint, and we'll
9 talk about that in a minute.

10 The impact of that is that it doesn't affect the
11 claims that you're making against the company. Because while
12 you are arguing that there has been a breach of an agreement
13 and other things related to the conduct of those individuals,
14 as well, that doesn't preclude from making that argument. It
15 simply precludes under the business judgment rule from
16 obtaining personal liability against those five directors who
17 I made a determination there was insufficient evidence to go
18 forward given the business judgment rule.

19 So I'm just trying to make sure that we're clear on
20 what I did. Because when I was reading your briefing I wasn't
21 really sure that that came across.

22 MR. KRUM: Well, Your Honor, I think so. I think
23 that we just have a disagreement.

24 THE COURT: All right.

25 MR. KRUM: And disagreement, Your Honor, not with --

1 so much with respect to the facts, but rather with respect to
2 the law and the application of the business judgment rule.
3 But may I finish this new evidence?

4 THE COURT: Yes, please.

5 MR. KRUM: Because I think, Your Honor, this goes to
6 interestedness or --

7 THE COURT: Ratification?

8 MR. KRUM: -- independence. Indeed it does, Your
9 Honor, independence.

10 THE COURT: Okay.

11 MR. KRUM: So here's what we have. We have five
12 individuals who think they're out of the case now, and they're
13 prepared to take steps so that new evidence can be introduced
14 in the case against the other individual defendants. What
15 they're trying to do, Your Honor, is change the burden of
16 proof at trial we're supposed to commence on January 8th.
17 Because what they're going to say is that a majority of
18 disinterested and independent directors have ratified all
19 these actions and that Mr. Krum's argument that the remaining
20 directors bear the burden of proof and so forth and so on
21 doesn't play anymore. And so what they're doing, Your Honor,
22 is creating an entire new fact set so the lawyers can try to
23 argue different legal standards apply.

24 Now, if I may, because I don't want to speak to the
25 particulars, it's easy to look at them. May I give this to

1 you?

2 THE COURT: Is it okay if I mark it as Court's
3 Exhibit 1, since you're getting a copy?

4 MR. SEARCY: That's acceptable, Your Honor, now that
5 I've got a copy.

6 MR. KRUM: And it's stamped as confidential.

7 THE COURT: Court's Exhibit 1, please.

8 Okay. Since it's stamped as confidential because it
9 apparently includes commercially sensitive information, I am
10 going to not talk about it specifically, but only in
11 generalities. How's that?

12 MR. KRUM: Thank you, Your Honor.

13 THE CLERK: So you want this sealed, Your Honor?

14 THE COURT: It will be sealed.

15 THE CLERK: Thank you.

16 THE COURT: Thank you, Dulce.

17 MR. KRUM: So, Your Honor, the point of this action
18 to date and action that's anticipated is that it shows -- it
19 evidences further the lack of independence of these persons
20 who are undertaking to ratify conduct you have found to be
21 such that it raises a triable issue of fact. So on the issue
22 of independence with respect to which we disagree,
23 respectfully, as to how that can be rebutted -- I mean, I
24 think I understood what you said, and the opposition takes the
25 position that reflects my understanding of what you said, that

1 we didn't show disinterestedness, actually was what you said,
2 and therefore --

3 THE COURT: Lack of interestedness.

4 MR. KRUM: Yeah. And therefore the rule applies and
5 there's no liability. And I respectfully disagree. And
6 we've talked past each other at some length at the last
7 hearing where I kept talking about the evidence and you kept
8 telling me I was talking about evidence of breach of fiduciary
9 duty. And I don't intend to repeat that. But this, Your
10 Honor, is new evidence. It is new evidence of a lack of
11 independence. And that's without regard to the issue that
12 what do we do now. These five people who are witnesses, based
13 on your decision, are going to come in here and testify, we
14 ratified the actions set out in pages 3(a) and (b) of the
15 document that I handed to the Court. And these are matters
16 that -- as to which you denied summary judgment. They're
17 matters as to which equitable relief is sought, and they're
18 going to argue to you, Judge, based on the actions of these
19 five people you've found are independent the case is over, you
20 can't grant equitable relief no matter whether you could
21 before. So I --

22 THE COURT: Most people might say that's a little
23 late in the game.

24 MR. KRUM: Well, I think it is, Your Honor. And so
25 maybe I'm ahead of myself on the stay issue.

1 But -- so that's the new evidence that we learned --
2 I learned about 10:00 o'clock when I landed in LAX back on the
3 48 last night.

4 So on the first issue, Your Honor, that was in our
5 motion the Court granted summary judgment as to these five
6 individuals and dismissed the case as to the claims for breach
7 of the duty of care, breach of the duty of loyalty, and breach
8 of the duty of candor.

9 Now, the only motion that sought summary judgment
10 across the board was the one by Mr. Gould. And, of course,
11 you know our point on that, and we talked about it at the last
12 hearing. I'm not going to repeat myself.

13 The other ones were described as motions for partial
14 summary judgment, and they were directed at specific issues.
15 There wasn't a single one that said dismiss the case. And
16 with respect to partial -- Motion for Partial Summary Judgment
17 Number 2, which was the one -- that director interestedness,
18 that didn't request dismissal, either. All that did was
19 request a determination on that discrete issue. And, Your
20 Honor, the business judgment rule is a evidentiary
21 presumption, and we're entitled to rebut it, and we're
22 entitled to do so by showing that they breached their
23 fiduciary duties. I'm not going to go into that, because I'm
24 already repeating myself.

25 The other thing I'd say, Your Honor, is at the

1 hearing in October of 2016 we had some discussion about the
2 nature of these motions, and at page 83, line 8 to 12, you
3 said, "It's not summary judgment, but, yeah, I understand
4 you're asking for a pretrial ruling or a pretrial
5 determination. But it's not supposed to be summary judgment
6 on that kind of fact." And the fact that was raised by Mr.
7 Tayback to which you responded was independence. And so
8 that's why we understood we were supposed to provide these
9 details. And then we get to the question of what's jury
10 instruction going to be with respect to, for example, the
11 abort CEO search.

12 So, Your Honor, the last point on this independence
13 issue, independence isn't required. You know, their duty of
14 care claims can be made and brought regardless of whether
15 there's independence or interest and so forth. And the same,
16 by the way, is true for duty of candor claims. That issue
17 really ties in with the duty of loyalty. So now the last
18 comment on that is -- and this perhaps is why we seem to be
19 talking past one another or perhaps I wasn't listening well,
20 as the case may be -- breaches of the duty of loyalty are
21 evidence of a lack of independence. It's -- the loyalty is
22 supposed to be singular. It's supposed to be to the company.
23 It's not supposed to be divvied up between the company and the
24 controlling shareholders or any other party. And where it is
25 -- where there's evidence that it is, that's evidence of a

1 lack of independence.

2 So on the business judgment rule, Your Honor, I
3 think we've covered that. We have a different view of what it
4 means to have a director who is not -- does not lack
5 independence and who is disinterested. All that means in our
6 view is that the presumption applies, the three-part
7 presumption, and that we can rebut it by evidencing any one of
8 those three parts didn't happen. And the Shoen case talks
9 about that and the cases we cited in the briefing, and so I'm
10 not going to belabor that.

11 So I guess with that, unless you have questions,
12 I'll stop.

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

14 MR. SEARCY: Your Honor, I'll try to be brief. The
15 plaintiff's claim that we didn't move on all the causes of
16 action is a red herring here. We moved on all the specific
17 breaches that were supposedly put at issue by plaintiff in
18 their causes of action, and in fact at the Court's direction
19 plaintiff identified the breaches that are at issue in their
20 supplemental briefing, and we moved on all of those issues.
21 And those are set forth on page 6 of our opposition.

22 With respect to Motion Number 2 that we filed, which
23 went specifically to the issue of disinterestedness, that was
24 clearly dispositive on all claims with respect to those
25 directors, because it implicated the business judgment rule.

1 Issues in this case have been briefed extensively.
2 They've had every opportunity to submit evidence on these
3 issues, and they failed to come forward with any evidence that
4 would show a lack of disinterestedness with respect to the
5 directors on whom you've granted summary judgment,
6 specifically Mr. Kane, Mr. McEachern, Mr. Wrotniak, and Ms.
7 Coddling. They haven't come forward with any evidence showing
8 a beholdenness or some sort of self interest that is
9 implicated in any of the transactions that are at issue in
10 this case.

11 With respect to the new evidence that plaintiff has
12 now come forward with --

13 THE COURT: Court Exhibit 1.

14 MR. SEARCY: Court Exhibit 1. Thank you, Your
15 Honor.

16 -- this simply demonstrates the problem with the
17 reasoning of plaintiffs with respect to all of this.
18 Plaintiff disagrees with the decision of the board, therefore
19 that somehow is supposed to be an indication of lack of
20 disinterestedness. It doesn't work that way with the business
21 judgment rule. He's got to come forward with evidence that
22 shows that their reasoning, that their thought process was
23 somehow impacted. He's failed to do that.

24 Your Honor, the motion for reconsideration should be
25 denied.

1 THE COURT: Thank you.

2 Ms. Bennett.

3 MS. BANNETT: Mr. Krum didn't address Mr. Gould
4 specifically when he spoke, but, again, he did not point to
5 any evidence that shows that Mr. Gould had a financial
6 relationship with either of the Cotter sisters or that Mr.
7 Gould had a close personal relationship with either of the
8 Cotter sisters. And under the business judgment rule that is
9 what is needed in order to rebut the presumption and move on
10 to the next part of the case. It's not only what the Court
11 has said, it's also what plaintiff's own expert witness said.
12 That would be Chief Justice Steele from the Delaware Supreme
13 Court, former Chief Justice. He found that there was no
14 evidence that Mr. Gould was -- lacked independence or lacked
15 disinterested and, as a result, he found that there is no
16 basis for the claims against Mr. Gould to proceed. He did not
17 apply his opinions about breaches of fiduciary duty to Mr.
18 Gould, and he specifically excepted him from his opinions in
19 this case.

20 If the Court has any questions about Mr. Gould --

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

22 Mr. Ferrario, anything on behalf of the nominal
23 defendant?

24 MR. FERRARIO: No, Your Honor. Other than I think
25 your ruling initially was correct and I think it should stand.

1 And I suspect that coming out of the meeting Friday, depending
2 on what occurs, there may be some issues we may need to bring
3 to Your Honor's attention at the pretrial conference set for
4 next Friday. And I'm not saying this to be facetious. I have
5 gone through Mr. Krum's complaint, participated in one of the
6 calls, you know, dealing with the pretrial order, and I've
7 gone through the pretrial order. And I really think it would
8 be beneficial for the Court -- we're going to have a jury
9 impaneled -- that at that pretrial conference that plaintiff
10 articulate clearly what claims plaintiff believes he still has
11 left.

12 THE COURT: I'm not there.

13 MR. FERRARIO: Okay. I'm just --

14 THE COURT: That is technically part of what has to
15 be in the pretrial order, though.

16 MR. FERRARIO: And, Judge, the pretrial order, Ms.
17 Cowden and I have gotten into a number of arguments over the
18 last couple days about what I heard coming out of the call and
19 what's in the pretrial order. I think everybody was pressed
20 due to the holidays. We got this in. I'm just going to
21 encourage Your Honor at that pretrial conference, and it may
22 be a somewhat unusual pretrial conference, that we have some
23 delineation as to what the claims remaining actually are.
24 Because I don't think we -- my reading of it in light of the
25 Court's ruling, there's very little, if anything, left to be

1 tried. And, again, there may be something occurring, and Mr.
2 Krum assumes certain things are going to happen. There may be
3 something occurring on Friday that may provide some relief
4 under Nevada Revised Statutes, NRS 78.140 in particular, and
5 there may be something --

6 THE COURT: Little late for ratification. It's a
7 little late for ratification, Mr. Ferrario.

8 MR. FERRARIO: Well, Your Honor -- and I anticipated
9 you may say that. But keep in mind --

10 THE COURT: I've got a trial starting a week from
11 Monday.

12 MR. FERRARIO: Your Honor, I understand that. But
13 keep in mind because of how this unfolded and what happened
14 with the motions for summary judgment until the Court ruled,
15 any attempted ratification would have involved arguments by
16 them as to lack of independence, that type stuff. So there
17 has been a change in the tenor of the case. That's all I'm
18 telling the Court. I'm just giving you a heads up. Lots of
19 stuff going on. And looking forward to the pretrial
20 conference.

21 THE COURT: Okay. Oh, swell.

22 Mr. Krum.

23 MR. KRUM: Briefly, Your Honor. The assertion by
24 Mr. Searcy that they moved on everything is incorrect. First,
25 as we discussed last October, the manner in which the duty of

1 loyalty claim is pleaded, for example, is all this conduct
2 collectively evidences a breach of the duty of loyalty.
3 That's the same thing as moving for summary judgment of the
4 case, and they didn't do that, either.

5 Second, Your Honor, they didn't even move on all the
6 particular matters we identified as matters that we thought in
7 and of themselves, not just with others, constituted or gave
8 rise to breaches of fiduciary duty. And we've said this. And
9 the first example is the first one, which is threat, the
10 attempted extortion by Adams, Kane, and McEachern when they
11 threatened plaintiff with termination if he didn't resolve his
12 personal trust and estate disputes with his sisters on terms
13 satisfactory to them.

14 As to the comments by counsel for Mr. Gould -- and I
15 try to be descriptive, not disparaging -- relieves a check-the-
16 box analysis to the question of independence. It's not are
17 they financially dependent and are they -- have thick-as-blood
18 relations, yes, no, end of analysis.

19 THE COURT: Do they sleep on an air mattress in the
20 Manhattan apartment and go visit.

21 MR. KRUM: I recall that conversation. And so the
22 point is particularly important with respect to Mr. Gould,
23 because we have, as we've described, an ongoing course of
24 conscious -- a conscious decision not to do his job and to
25 acquiesce to the wishes of the controlling shareholders.

1 And the last thing I want to say in reply is the
2 characterization of Chief Justice Steele is misleading and in
3 fact actually it's inaccurate. He answered a specific
4 question that was in the nature of a hypothetical question
5 that didn't go to anything beyond that. And because he didn't
6 need to get to that second step for the purpose of his
7 opinion, he didn't do it.

8 Unless you have questions, Your Honor, I have
9 nothing further.

10 THE COURT: I don't have any questions.

11 The motion for reconsideration is denied. I do not
12 see -- although I've reviewed Court's Exhibit 1, I do not see
13 any new information that would cause me to change my decision
14 from a factual standpoint, and I have not been provided with
15 any new legal analysis that would cause me to change my
16 decision.

17 That takes me to the motion to stay.

18 MR. KRUM: Your Honor, on the motion to stay we have
19 the same two principal issues, whether the Court committed
20 error when it granted summary judgment and dismissed the case
21 as to those individuals -- I'm not going to repeat that;
22 you've read it, you've heard it -- on the second issue the
23 question is one where I think we respectfully disagree with
24 the Court and the defendants as to what the consequence is of
25 a director being able to invoke the statute and the business

1 judgment rule. And in our view that's nothing more than the
2 -- than that the plaintiff bears the initial burden of proving
3 that the director didn't in fact do what he's presumed to do.

4 And those are -- those are questions, Your Honor,
5 along with a third one about viewing the evidence collectively
6 that we're going to make the subject of a writ.

7 In terms of a stay what we have is the prospect of,
8 in our view, Your Honor, trying substantially the same case
9 without these five people as defendants, having an appeal with
10 respect to them and whatever is appealed from the trial, and
11 then, if we're successful, looking at a do over. If we're
12 successful on any of these issues. And --

13 THE COURT: That's how it is on every time I grant
14 partial summary judgment, Mr. Krum.

15 MR. KRUM: Understood, Your Honor. Understood. I
16 think that -- we think, respectfully, these issues are
17 particularly apt for review, but we'll see.

18 The other issue is what we just talked about with
19 Exhibit 1. And, you know, we have people who are attempting
20 to move the target, so to speak, and that puts us in a
21 completely untenable position. As I explained earlier,
22 they're going to introduce evidence -- they're going to seek
23 to introduce evidence about something that happened -- actions
24 they took based on a decision you made; they're going to
25 argue, Your Honor, that that's a different --

1 THE COURT: After the pretrial order was submitted.
2 MR. KRUM: Well, they're going to argue, Your Honor,
3 that there are different burdens of proof as a result of that.
4 And if --
5 THE COURT: I understand, Mr. Krum.
6 MR. KRUM: If you don't let them do that, Your
7 Honor, then they're going to preserve that for appeal. And
8 so --
9 THE COURT: People preserve things for appeal every
10 day in Department -- well, every Monday in Department 11.
11 MR. KRUM: Yeah. So that's all I have, Your Honor.
12 Thank you.
13 THE COURT: Anything else?
14 MR. SEARCY: Nothing from me, Your Honor.
15 THE COURT: The motion for stay is denied.
16 MR. KRUM: Well, Your Honor, we've submitted an
17 order that I think we indicated in our cover letter was
18 acceptable to the defendants except in one respect, and that
19 single respect was that Mr. Gould's counsel initially
20 objected, and the other individuals have joined, that we
21 included once or twice in that order a sentence or phrase to
22 the effect that Mr. Gould's summary judgment motion was set
23 for January 8th. And our thinking was no more complicated
24 than this. You can either sign the order as we submitted it,
25 or you can interlineate that out and sign it. Because

1 otherwise it's a mutually acceptable order. And we'd like to
2 have that signed as quickly as possible.

3 THE COURT: If Cassandra was here, I would ask if we
4 had it. But she's not here.

5 MR. KRUM: We'll be happy to deliver another --

6 THE COURT: Did you submit a competing order in Word
7 format the way I require it?

8 MS. BANNETT: We didn't. We can do that if --

9 THE COURT: Well, see, that creates a problem with
10 me getting Mr. Krum an order if you intend to submit a
11 competing order in Word format.

12 MS. BANNETT: We can do that.

13 MR. SEARCY: We'll take care of that today.

14 MR. KRUM: Actually, let us be helpful. We'll
15 submit ours in Word, and we'll have one with and one without.
16 They objected to objectionable language.

17 MR. SEARCY: That's certainly acceptable, Your
18 Honor.

19 THE COURT: That's perfect, as well. Either way you
20 do it. Just so I have the two versions in Word so I can look
21 at them and make a decision which is the most appropriate.

22 MR. KRUM: Will do, Your Honor.

23 MS. LEVIN: And to who -- I'm sorry, Your Honor. To
24 who do we send it?

25 THE COURT: Send it to

1 kutinacd@clarkcountycourts.us. And
2 dept111c@clarkcountycourts.us. That's for my JEA and my law
3 clerk.

4 All right. So just so everybody remembers, I don't
5 think Mr. Gould is going to be at issue given my ruling, so I
6 think he will only be involved as a witness, so I'm not
7 addressing these comments to Ms. Bannett.

8 Addressing them to you, Mr. Searcy. You know that
9 Nevada counsel has to be present at your side the entire
10 trial.

11 MR. SEARCY: Thank you, Your Honor.

12 THE COURT: So someone from the Cohen firm has to be
13 here sitting there with you doing whatever it is they have to
14 do. So if there becomes an issue on our quirky Eighth
15 Judicial District Court rules or other unusual procedures in
16 Nevada, you can turn to them and say, hey, really, and we can
17 deal with it then.

18 MR. SEARCY: He has been sending me notes throughout
19 the entire hearing, Your Honor.

20 THE COURT: I know he has. I know. Well, and
21 you've had Mr. Edwards some and you've had Mr. Johnson some,
22 and, you know, it's not like you haven't had one of them. I'm
23 just reminding you I'm not waiving it for the trial.

24 MR. SEARCY: Thank you, Your Honor. I understand.

25 THE COURT: All right. Anything else?

1 MR. KRUM: No, Your Honor.

2 THE COURT: Okay. When you meet with the IT folks
3 next week on Tuesday please make sure everything works. If
4 there are concerns, I would rather know about the problems
5 soon. We are still working with the facility across the
6 street.

7 MR. FERRARIO: Are we meeting over there?

8 THE COURT: Well, I'm not in charge of that. That's
9 Dulce.

10 THE CLERK: I think we're meeting in this courtroom,
11 but I want to confirm with Brandi. [Inaudible].

12 MR. FERRARIO: Whatever we do here will transfer
13 over there?

14 THE COURT: When Judge Bailess lets us. We are
15 serving at his pleasure. I don't have a courtroom.

16 MR. FERRARIO: If think if you say that like every
17 day on the record, some little --

18 THE COURT: I have a meeting with County Management
19 next week. All right. What else?

20 MR. FERRARIO: I thought we were getting the big one
21 upstairs when they refurb it.

22 THE COURT: And when's that going to be, Mr.
23 Ferrario? How long do you think that construction project's
24 going to last?

25 MR. FERRARIO: I agree. Okay. That I do know.

1 THE COURT: Okay. Anything else?

2 MR. KRUM: No, Your Honor.

3 THE COURT: All right. So, Mr. Krum, Ms. Levin,
4 you're sending me the versions. I'm going to review them, I'm
5 going to sign one. We'll let you know which one is signed,
6 and then you do what you've got to do with the Supreme Court
7 and ask them for the stay, because I've already denied it.

8 MR. KRUM: Understood.

9 THE COURT: And if they want to stay your trial,
10 they'll stay your trial.

11 MR. KRUM: Thanks, Your Honor.

12 MR. FERRARIO: Thank you, Your Honor.

13 MR. SEARCY: Thank you.

14 THE COURT: Otherwise I will have you guys visiting
15 with Dulce on the 2nd and visiting with me on the 5th.

16 THE PROCEEDINGS CONCLUDED AT 9:31 A.M.

17 * * * * *

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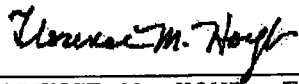
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

12/28/17

DATE

COURT EXHIBIT 1

READING INTERNATIONAL, INC. BOARD OF
DIRECTORS MEETING AGENDA

TO

12-28-18 HEARING ON MOTION FOR
RECONSIDERATION AND STAY

(TO BE FILED UNDER SEAL)

12/29/2017/29

MORRIS LAW GROUP

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18 Attorneys for Plaintiff
19 James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

23 Plaintiff,

24 v.

25 MARGARET COTTER, ELLEN
26 COTTER, GUY ADAMS,
27 EDWARD KANE, DOUGLAS
28 McEACHERN, WILLIAM
GOULD, JUDY CODDING,
MICHAEL WROTNIAK,

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,
Nominal Defendant.

Electronically Filed
12/29/2017 1:23 PM
Steven D. Grierson
CLERK OF THE CC



) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

MORRIS LAW GROUP
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1 PLEASE TAKE NOTICE that an Order Regarding Defendants'
2 Motions for Partial Summary Judgment and Plaintiff's and Defendants'
3 Motions *in Limine* was entered by this Honorable Court on the 28th day of
4 December, 2017. A copy of the Order is attached hereto as Exhibit A.
5

6 MORRIS LAW GROUP
7

8 By: /s/ Akke Levin
9 Steve Morris, Bar No. 1543
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 29th day of December, 2017.

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

12/2912/29

EXHIBIT A

JA6215

12/2912/29

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12/28/2017 4:22 PM
Steven D. Grierson
CLERK OF THE COURT



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Attorneys for Defendants Margaret Cotter,

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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, et al.,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

Case No.: A-15-719860-B

Dept. No.: XI

Case No.: P-14-082942-E

Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

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

- 11 • Individual Defendants' Motion for Partial Summary Judgment
12 (No. 1) re: Plaintiff's Termination and Reinstatement Claims,
13 and supplement thereto;
- 14 • Individual Defendants' Motion for Partial Summary Judgment
15 (No. 2) re: The Issue of Director Independence, and supplement
16 thereto;
- 17 • Individual Defendants' Motion for Partial Summary Judgment
18 (No. 3) on Plaintiff's Claims Relating to the Purported
19 Unsolicited Offer, and supplement thereto;
- 20 • Individual Defendants' Motion for Partial Summary Judgment
21 (No. 5) on Plaintiff's Claims Related to the Appointment of
22 Ellen Cotter as CEO, and supplement thereto;
- 23 • Individual Defendants' Motion for Partial Summary Judgment
24 (No. 6) re: Plaintiff's Claims Related to the Estate's Option
25 Exercise, the Appointment of Margaret Cotter, the
26 Compensation Packages of Ellen Cotter and Margaret Cotter,

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and the Additional Compensation to Margaret Cotter and Guy Adams, and supplement thereto;

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

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

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

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

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

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

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

9 IT IS FURTHER ORDERED THAT the Individual Defendants'
10 Motion for Partial Summary Judgment (No. 6) re: Plaintiff's Claims Related
11 to the Estate's Option Exercise, the Appointment of Margaret Cotter, the
12 Compensation Packages of Ellen Cotter and Margaret Cotter, and the
13 Additional Compensation to Margaret Cotter and Guy Adams is DENIED.

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

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

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

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

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

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

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

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

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

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

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

19
20 DATED this 28th day of December, 2017.

21 
22 DISTRICT COURT JUDGE
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1
2 PREPARED AND SUBMITTED BY:

3 COHEN|JOHNSON|PARKER|EDWARDS

4
5 By: /s/ H. Stan Johnson

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26 *Edward Kane, Judy Coddling, and Michael*
27 *Wrotniak*

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James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

MOTION FOR RULE 54(b)
CERTIFICATION AND STAY

AND

APPLICATION FOR ORDER
SHORTENING TIME

Hrg: 01/04/18

@ 8:30 a.m.

Electronically Filed
12/29/2017 5:15 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

FILE WITH
MASTER CALENDAR

12-29-17A05:59 RCVD

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1 Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court
2 on an emergency basis under Nev. R. Civ. P. 54(b) for an order certifying the
3 portion of her December 28, 2017 Order that grants William Gould's Motion
4 for Summary Judgment ("Gould MSJ"), grants defendants' motions for
5 partial summary judgments Nos. 1 and 2 ("Partial MSJ Nos. 1 and 2") and
6 dismisses defendants William Gould, Douglas McEachern, Edward Kane,
7 Judy Coddington, and Michael Wrotniak from the case as final. Plaintiff further
8 moves the Court under EDCR 2.26 for an Order shortening time to notice
9 and hear this Motion.

10
11 MORRIS LAW GROUP

12
13 By: 

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21 Boston, MA 02108

22 Attorneys for Plaintiff
23 James J. Cotter, Jr.
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DECLARATION OF AKKE LEVIN
IN SUPPORT OF APPLICATION FOR
ORDER SHORTENING TIME

I, Akke Levin, declare:

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

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

3. On December 18, 2017, Plaintiff submitted a motion for reconsideration of the Court's rulings on Partial MJS Nos. 1 and 2, Gould's MSJ, and the Court's dismissal of William Gould, Edward Kane, Douglas McEachern, Judy Coddling, and Michael Wrotniak from the case. Plaintiff also submitted a Motion to Stay on December 26, 2017.

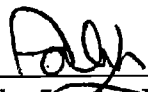
4. During the December 28, 2017 hearing, the Court denied Plaintiff's Motion for Reconsideration and Motion to Stay.

5. On December 28, 2017, the Court signed the order on Gould's MSJ, the individual defendants' Partial MSJs, and the MILs ("Order").

1 6. Good cause exists under EDCR 2.26 to shorten the time for
2 notice and hearing of this Motion for Rule 54(b) certification. Trial is set to
3 begin on January 8, 2018. The Court denied Plaintiff's Motion to Stay.
4 Plaintiff plans to seek immediate relief in the Nevada Supreme Court, but
5 the form of relief—direct appeal or writ petition—depends on whether the
6 Court will certify portions of the order as final. If this Motion for Rule 54(b)
7 certification is set on the regular calendar, it would not be heard until after
8 trial begins. Plaintiff proposes a telephonic hearing with counsel on Friday
9 afternoon, December 29, 2017, so that Plaintiff may timely file his writ
10 petition or appeal immediately thereafter.

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


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

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17 Akke Levin, Bar No. 9102
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ORDER SHORTENING TIME

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

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration and Clarification shall be, and it hereby is, shortened and shall be heard on shortened time on the 4th day of Jan, 2018 at the hour of 8³⁰ a.m..


Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11

DATED: 29 Dec 17

1 **I. INTRODUCTION**

2 The Court on December 11, 2017 dismissed all of Plaintiff's
3 claims against five of the eight defendants because the Court found there
4 were no issues of material fact as to their disinterestedness and
5 independence. The Court's rulings were based the individual defendants'
6 Partial MSJ Nos. 1 and 2 and Gould's MSJ. For the reasons stated below, the
7 Court should certify as final its order (1) granting Gould's MSJ, (2) granting
8 Partial MSJ Nos. 1 and 2, and (3) dismissing defendants William Gould,
9 Douglas McEachern, Edward Kane, Judy Coddling, and Michael Wrotniak.
10 The Court should further stay the case pending Plaintiff's appeal. A
11 proposed order is attached as Exhibit 1.

12 **II. ARGUMENT**

13 **A. The Legal Basis for this Motion**

14 NRCP 54 (b) provides, in relevant part:

15 (b) Judgment Involving Multiple Parties. When multiple parties
16 are involved, the court may direct the entry of a final judgment
17 as to one or more but fewer than all of the parties only upon an
18 express determination that there is no just reason for delay and
upon an express direction for the entry of judgment

19 When "asked to certify a judgment based on the elimination of a
20 party, [the district court] should first consider the prejudice to that party in
21 being forced to wait to bring its appeal." *Mallin v. Farmers Ins. Exch.*, 106
22 Nev. 606, 611, 797 P.2d 978, 981 (1990). "Second, the district court should
23 consider the prejudice to the parties remaining below if the judgment is
24 certified as final." *Id.* "[T]he fact that a decision by [the Nevada Supreme
25 Court] will affect the decision below cannot be the deciding issue" and
26 preclude a finding that there is no just reason to delay an appeal. *Id.* at 610,
27 797 P.2d at 981. "The district court should weigh the prejudice to the various
28 parties and should certify a judgment as final in a 'parties' case if the

1 prejudice to the eliminated party would be greater than the prejudice to the
2 parties remaining below." *Id.* at 611, 797 P.2d at 981.

3 **B. Plaintiff will be Severely Prejudiced If Required to Wait to**
4 **Appeal.**

5 Plaintiff will be severely prejudiced if required to wait to appeal,
6 for a number of reasons.

7 First, as the remaining defendants have made clear, they will
8 take the position that dismissal of this case as against the five individual
9 director defendants severely limits the matters on which Plaintiff can base
10 breach of fiduciary duty claims against the remaining defendants. In that
11 regard, defendants have indicated that they will take the position that, with
12 respect to any matter as to which a majority of the directors making or
13 approving a decision have been dismissed by the Court, those matters alone
14 may not serve as bases for breach of fiduciary duty claims against the
15 remaining defendants. Any doubt that that is the position defendants
16 intend to pursue is put to rest by Court Exhibit 1 to the December 28, 2018
17 hearing, which shows that the dismissed five director defendants intend to
18 take action to formally ratify prior conduct as to which the remaining
19 director defendants will not be able to show that a majority of the directors
20 who made or approved the decision were disinterested and independent.
21 For example, with respect to the 3-to-2 vote to terminate Plaintiff, the five
22 dismissed director defendants intend to ratify that vote, and then allow the
23 remaining defendants to argue that Adams' lack of independence does not
24 matter and that the termination vote cannot serve as a basis for liability on
25 his part. Thus, according to the remaining defendants, the Court's ruling
26 dismissing the five director defendants effectively guts Plaintiff's case.

27 Second, as the remaining director defendants have previewed,
28 they will take the position that dismissal of the case as against the five
dismissed director defendants affects which party bears the burden of proof.

1 With respect to matters as to which the Court has determined that the
2 remaining defendants lacked disinterestedness, independence or both and
3 therefore cannot invoke the statutory presumptions typically referred to as
4 the business judgment rule, the remaining defendants will argue that the
5 business judgment rule nevertheless applies because a majority of the
6 directors who made or approved the challenged decision were found by the
7 Court not to lack disinterestedness or independence and were dismissed.
8 As to matters with respect to which they cannot show that a majority of the
9 directors who made or approved the challenged decision were dismissed by
10 the Court, the remaining defendants clearly intend to rely on the
11 forthcoming ratification of those actions by the dismissed five director
12 defendants. One example that illustrates this point is the 3-to-2 termination
13 vote.

14 Third, and independent of the foregoing, Plaintiff is severely
15 prejudiced because the jury is certain to be confused about why the same
16 evidence showing breaches of fiduciary duty by a more than one director is
17 introduced when fewer than all of the directors who engaged in such
18 fiduciary breaches remained defendants. For example, as the Court has
19 seen, the evidence will show clearly that Adams, Kane and McEachern
20 threatened Plaintiff with termination if he did not resolve trust and estate
21 disputes with his sisters on terms satisfactory to them. In particular, the
22 evidence will show that at the board meeting adjourned in the early
23 afternoon on May 29, 2015, the three told Plaintiff that the meeting would
24 reconvene telephonically at 6:00 p.m. that evening and that they would vote
25 to terminate him as President and CEO of RDI if he had not resolved the
26 trust and estate disputes on terms satisfactory to his sisters. The likely and
27 reasonable inferences jurors will draw from the fact that only Adams of the
28 three remains a defendant is that extortionate conduct in furtherance of the

1 interests of the sisters, not the interests of RDI, is not a breach of fiduciary
2 duty.

3 Fourth, plaintiff's ability to present this case, which arises from
4 an ongoing course of breaches of loyalty by directors who consistently and
5 repeatedly deferred to the wishes of the controlling shareholders rather than
6 protecting only the interests of the Company, is severely impaired.

7 **C. The Remaining Defendants Will not be Prejudiced if the**
8 **Order Dismissing the Five is Certified.**

9 On the other hand, the remaining defendants will not be
10 prejudiced, much less severely prejudiced, if the Court grants the rule 54(b)
11 certification Plaintiff requests. Presumably they will complain about delay,
12 but delay does not compare to substantive prejudice and, as a practical
13 matter, they lack standing to complain, having effectively stayed this case
14 for approximately a year by their writ practice regarding discovery matters.
15 Indeed, the only "prejudice" to which the remaining defendants can cite is
16 the possible loss of the ability to defend the case against them based on the
17 Court's ruling dismissing the five, which will be lost only if this case is
18 stayed. In other words, the remaining defendants will suffer no actual
19 prejudice, much less severe prejudice, if the Court grants rule 54(b)
20 certification.

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1 **III. CONCLUSION**

2 For the reasons stated above, the Court should grant this Motion
3 and certify under Rule 54(b) as final its order (1) granting Gould's MSJ, (2)
4 granting Partial MSJ Nos. 1 and 2; and (3) dismissing defendants William
5 Gould, Douglas McEachern, Edward Kane, Judy Coddling, and Michael
6 Wrotniak, and stay the case pending Plaintiff's appeal.

7 MORRIS LAW GROUP

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9 By: 

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties, as registered with the Court's E-Filing and E-Service System:
MOTION FOR RULE 54(b) CERTIFICATION AND STAY AND APPLICATION FOR ORDER SHORTENING TIME. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 29th day of December, 2017.

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

Exhibit 1

MORRIS LAW GROUP

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Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **[PROPOSED] ORDER GRANTING**

) **PLAINTIFF'S MOTION FOR RULE**

) **54(b) CERTIFICATION AND STAY**

) **Date of Hearing: December __, 2017**

) **Time of Hearing: __a.m./P.M.**

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

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

11 The Court therefore finds and determines, under Nev. R. Civ. P.
12 54(b), that there is no just reason for delay and hereby directs entry of
13 judgment as to defendants Edward Kane, Douglas McEachern, William
14 Gould, Judy Coddling, and Michael Wrotniak on all of Plaintiff's claims
15 against them.
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1 IT IS FURTHER ORDERED THAT the case is stayed pending
2 Plaintiff's appeal.
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4 DATED this ____ day of _____, 2017.
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6
7 THE HONORABLE ELIZABETH
8 GONZALEZ,
9 DISTRICT COURT JUDGE

10 Submitted by:

11 MORRIS LAW GROUP
12

13 By: /s/ Akke Levin

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13 Judy Coddington, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,

20 v.

MARGARET COTTER, *et al.*,
Defendants.

21 AND

22 READING INTERNATIONAL, INC., a Nevada
23 corporation,

24 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

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

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: January 4, 2018
Time of Hearing: 8:30 a.m.

JA6238

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1 factor test governing stays pending appeal in Nevada. As set forth below, Plaintiff cannot meet
2 any—let alone all—of the elements required for such a stay. There is no basis for the Court to
3 revisit its earlier ruling. Plaintiff’s motion for a stay should be denied.

4 ARGUMENT

5 In Nevada, courts are to consider four factors when evaluating a request to stay trial
6 pending an appeal: (1) whether the object of the appeal or writ petition will be defeated if the
7 stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay
8 is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if
9 the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the
10 appeal or writ petition. *See Hansen v. Eighth Judicial Dist. Ct. In and For the Cnty. of Clark*,
11 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); NRAP 8(c). As demonstrated below, Plaintiff
12 cannot meet any of these requirements.

13 **I. THE OBJECT OF PLAINTIFF’S APPEAL WILL NOT BE DEFEATED IF A** 14 **STAY IS DENIED**

15 The object of Plaintiff’s appeal is to seek the view of another court as to whether
16 Directors Wrotniak, Coddington, McEachern, Kane, and Gould are disinterested and independent as
17 a matter of law with respect to a series of RDI Board decisions that he has challenged. Plaintiff
18 has not waived his claims against these Individual Defendants, nor will he do so if this case
19 proceeds to trial in the near future. Indeed, after trial, Plaintiff will be able to combine his appeal
20 as to the Court’s independence ruling with any other issues that he may seek to contest. Absent
21 the “waiver” of an entire issue or defense, courts in Nevada do not consider the object of an
22 appeal to be defeated. *See Hansen*, 116 Nev. at 657-58, 6 P.3d at 986 (because party’s
23 jurisdictional challenge, rejected by the district court, was preserved and could eventually be
24 heard on appeal, no waiver existed and thus the object of appeal was not defeated); *cf. Mikohn*
25 *Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) (granting stay because
26 allowing case to proceed in district court rather than in an arbitration would defeat the object of
27 appeal). Because the object of Plaintiff’s appeal will be preserved even if the parties proceed to
28 trial on January 8, 2018, the first factor suggests that a stay is not warranted.

1 **II. PLAINTIFF WILL NOT SUFFER IRREPARABLE OR SERIOUS INJURY IF**
2 **THE STAY IS DENIED**

3 In his motion, Plaintiff asserts that he will be “severely prejudiced” absent a stay pending
4 appeal because RDI and the Individual Defendants will likely use the Court’s summary judgment
5 ruling to make arguments at trial that are not favorable to his case, including that the business
6 judgment rule applies to certain transactions approved or ratified by a majority of disinterested,
7 independent directors or that the behavior of purportedly interested directors (such as Guy
8 Adams) was consistent with the behavior of other, legally-independent directors. (See Mot. at 7-
9 9.) Plaintiff further contends that costs and efficiency weighs in favor of a stay, as the possibility
10 of a second trial will be avoided. (*Id.*)

11 Neither argument has merit. As the Court recognized at the December 29, 2017 hearing,
12 Plaintiff’s substantive objections to proceeding to trial are no different from any plaintiff who
13 has lost on a partial summary judgment motion. Nevada does not provide disgruntled plaintiffs
14 with an automatic stay and right of immediate appeal simply because some of the original claims
15 or defendants are no longer in the case. That the Individual Defendants may take advantage of a
16 favorable summary judgment ruling to make arguments at trial plainly available based on the
17 record and under governing law is a fact of litigation, not irreparable or serious injury to
18 Plaintiff. See *Hansen*, 116 Nev. at 658, 6 P.3d at 987 (noting that “irreparable harm is harm for
19 which compensatory damages would be inadequate, such as the sale of a home at trustee’s sale,
20 because real property is unique”). For instance, while Plaintiff complains about the RDI Board’s
21 votes on December 29, 2017 to ratify both Plaintiff’s termination and the exercise of a share
22 purchase option held by the Estate of James J. Cotter, Sr. (see Mot. at 7), this is simply evidence
23 that the RDI Board and its directors continue to take action; indeed, the Board has held scores of
24 meetings and voted on numerous matters since the filing of Plaintiff’s lawsuit. That the Board
25 continues to move forward is not grounds for delay, rather it is a reason for moving on to trial.
26 The legal effect of the Board’s ratification decision, which is now accomplished, is clear under
27 NRS 78.140 and the Nevada Supreme Court’s decision in *Shoen v. SAC Holding Corp.*, 122 Nev.
28 621, 636, 137 P.3d 1171, 1181 (2006). Of course, there are other grounds for a defense verdict

1 separate and apart from independence and/or ratification, and the fact that the Court's
2 independence decision made Plaintiff's factually unsupportable case more difficult legally for
3 him is not the kind of irreparable or undue injury that supports delay.

4 Plaintiff's related contention that a second trial will be avoided is mere "speculation," and
5 courts have rejected the possibility that a "do over" may result following an appeal as a valid
6 basis to stay a case. *See Busey v. Richland Sch. Dist.*, No. 2:13-CV-5022-TOR, 2016 WL
7 8938423, at *4 (E.D. Wash. Apr. 13, 2016) (denying certification and stay pending appeal
8 because plaintiff's argument that a second trial would be avoided was "speculative"); *Hansen*,
9 116 Nev. at 658, 6 P.3d at 986-87 (noting that appellant's argument that, absent a stay, it would
10 be "required to participate 'needlessly' in the expense of . . . trial" is "neither irreparable nor
11 serious" injury). Indeed, *every appeal*, whether before or after trial, raises the specter of a
12 potential second trial. Accordingly, Plaintiff cannot satisfy the second factor required for a stay
13 pending appeal.

14 **III. THE INDIVIDUAL DEFENDANTS WILL SUFFER SERIOUS INJURY IF A**
15 **STAY IS GRANTED**

16 Admittedly, "a mere delay in pursuing . . . litigation" does not normally constitute
17 irreparable injury or serious harm. *Mikohn*, 120 Nev. at 253, 89 P.3d at 39. However, the
18 Nevada Supreme Court has recognized that, "in certain cases," it may, and that possibility
19 "should be considered in the stay analysis." *Id.* In this case, where the parties are two-and-a-half
20 years removed from Plaintiff's termination that started it all, the Individual Defendants are
21 rightfully concerned that they may suffer irreparable or serious injury if a stay is granted and the
22 case stalls on the very eve of trial.

23 Since June 2015, the Individual Defendants have been repeatedly smeared in the press by
24 a serious of wild, unsupportable accusations made entirely out of vindictiveness by a divisive,
25 poorly-performing CEO who threatened to "ruin them financially" even before they terminated
26 him. Others (such as the T2 plaintiffs) have brought follow-on suits against the Individual
27 Defendants based solely on Plaintiff's claims only to discover that they are without merit, and
28 have exited the litigation by settling on favorable terms. Not only have Plaintiff's baseless

1 allegations threatened the professional reputations and livelihood of the Individual Defendants,
2 they have seriously affected the business operations of RDI as it seeks to move beyond the
3 turmoil fostered by Plaintiff. Indeed, given Plaintiff's (untenable) reinstatement demand, RDI
4 continues to face great uncertainty regarding its permanent leadership.

5 In any lengthy litigation where delays have occurred, important witnesses may forget
6 relevant facts or become unavailable. However, here, where the business operations of a
7 company and the lives of its directors continue to be harmed because the board made an
8 informed business judgment to do what it thought was best for the company and its stockholders,
9 it makes sense to avoid further injury and proceed to the planned trial. This is also true because
10 there are dispositive issues—other than directorial independence—to be tried that may moot any
11 appeal by Plaintiff. For example, if Plaintiff cannot prove at trial that he would be a suitable
12 CEO, then the injunctive relief he seeks is moot; if Plaintiff cannot establish damages to RDI at
13 trial, then his entire case fails. There is no valid reason to delay resolution of these issues just to
14 allow Plaintiff another chance to revisit the Court's independence determination, which may be
15 mooted by what happens at trial.

16 **IV. PLAINTIFF IS UNLIKELY TO PREVAIL ON THE MERITS OF HIS APPEAL**

17 In his motion, Plaintiff has not argued, let alone established, that he is likely to prevail on
18 the merits of his appeal. The Court's decision to award summary judgment in favor of Directors
19 Wrotniak, Coddington, McEachern, Kane, and Gould followed multiple rounds of summary
20 judgment briefing and a year of additional discovery pursuant to Nevada Rule of Civil Procedure
21 56(f), which the Court allowed to ensure that Plaintiff had been given a full and fair opportunity
22 to try to prove his claims. The Court held multiple oral arguments on Plaintiff's claims prior to
23 its decision, and repeatedly asked whether there were any additional facts that Plaintiff wanted
24 the Court to consider in determining the independence/disinterestedness issue. Moreover, the
25 Court considered—and rejected—Plaintiff's Motion for Reconsideration in which he attempted
26 to reargue the issues on which he lost. Absent any indication that Plaintiff is likely to prevail on
27 his appeal of the Court's considered ruling (which he is not), a stay pending appeal is entirely
28 unwarranted.

1 **CONCLUSION**

2 For the reasons set forth above, the Individual Defendants respectfully request that the
3 Court deny Plaintiff's Motion to Stay this case pending appeal. The Individual Defendants take
4 no position on Plaintiff's request for certification under Nevada Rule of Civil Procedure 54(b).

5 Dated: January 2, 2018
6

7 **COHENJOHNSONPARKERREDWARDS**

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CERTIFICATE OF SERVICE

I hereby certify that, on January 2, 2018, I caused a true and correct copy of the foregoing
THE INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
RULE 54(b) CERTIFICATION AND STAY to be served on all interested parties, as
registered with the Court's E-Filing and E-Service System.

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

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20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

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

25 Plaintiff,

26 v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,
Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **REPLY IN SUPPORT OF**
) **MOTION FOR RULE 54(b)**
) **CERTIFICATION AND STAY**

) **DATE: 1/4/2018**

) **TIME: 8:30 a.m.**

JA6246

1 I. INTRODUCTION

2 By his "Motion for Rule 54(b) Certification and Stay..." (the
3 "Motion"), plaintiff James J Cotter, Jr. ("Plaintiff") sought a rule 54 (b)
4 certification of the Court's rulings that included dismissing five director
5 defendants from the case, and sought a stay of the case before the Court
6 pending disposition by the Nevada Supreme Court of issues arising from
7 the Court's rulings dismissing the five director defendants.

8 The three remaining individual defendants filed an opposition
9 (the "Opposition") which took no position on the certification request and
10 argued against the request for a stay, making two principal arguments. The
11 first was that, notwithstanding their position that the Court's rulings "made
12 Plaintiff's ... case [against them] more difficult legally," requiring Plaintiff to
13 proceed to trial against them does not cause Plaintiff serious injury or defeat
14 an object of Plaintiff's appeal. The second is that the remaining defendants
15 are entitled to defend the case against them at trial by using newly created
16 evidence, namely, the December 29, 2017 "ratification" by the five dismissed
17 director defendants of the only issues the three contend remain, namely,
18 Plaintiff's termination and the authorization of the 100,000 share option,
19 because (they contend) that "ratification" was merely an ordinary course of
20 business action by the (other five) RDI directors. In truth, the purported
21 ratification is nothing less than an effort to change the evidence and burden
22 of proof at trial and, ultimately, the results of the trial against the remaining
23 three defendants. This too creates obvious prejudice of Plaintiff and, in the
24 process, undermines at least one object of Plaintiff's appeal. In taking these
25 positions, the Opposition shows that the Motion should be granted, both as
26 to the certification sought and as to the stay sought, for the reasons
27 described below.
28

1 **A. An Object of Plaintiff's Appeal Will be Defeated, and Plaintiff**
2 **Will Suffer Serious Prejudice and Harm, if a Stay is Denied.**

3 As Plaintiff demonstrated in the Motion, because of (i) what
4 defendants maintain are the legal consequences of the Court's dismissal of
5 the five director defendants on the case against the remaining three
6 defendants and, separately, (ii) actions the five dismissed defendants took
7 on December 29 to attempt to ratify conduct of the three remaining
8 defendants which indisputably remains a subject of the trial, one of the
9 objects of the relief Plaintiff seeks and will seek from the Nevada Supreme
10 Court, to avert changes in the applicable legal standards and possibly the
11 evidence that may be fatal to his case against the three defendants, will be
12 defeated if a stay is denied. As Plaintiff also demonstrated, he will be
13 severely prejudiced if a stay is denied.

14 For example, Plaintiff in the Motion first argued as follows:

15 "First, as the remaining defendants have made clear,
16 they will take the position that dismissal of this case
17 as against the five individual director defendants
18 severely limits the matters on which Plaintiff can
19 base breach of fiduciary duty claims against the
20 remaining defendants. In that regard, defendants
21 have indicated that they will take the position that,
22 with respect to any matter as to which a majority of
23 the directors making or approving a decision have
24 been dismissed by the Court, those matters alone
25 may not serve as bases for breach of fiduciary duty
26 claims against the remaining defendants."

27 (Motion at 7:7-15.)

28 In the Motion. Plaintiff also argued as follows:

 Second, as the remaining director defendants have
previewed, they will take the position that dismissal
of the case as against the five dismissed director
defendants affects which party bears the burden of
proof. With respect to matters as to which the Court
has determined that the remaining defendants lacked
disinterestedness, independence or both and

1 therefore cannot invoke the statutory presumptions
2 typically referred to as the business judgment rule,
3 the remaining defendants will argue that the
4 business judgment rule nevertheless applies because
5 a majority of the directors who made or approved
6 the challenged decision were found by the Court not
7 to lack disinterestedness or independence and were
8 dismissed.

9 (Motion at 7:27–8:7.)

10 In their Opposition, the remaining three defendants do not
11 dispute the foregoing. On the contrary, they tacitly admit it, stating:

12 "[T]he fact that the Court's independence decision
13 made Plaintiff's ... case more difficult legally for him
14 is not the kind of irreparable or undue injury that
15 supports delay."

16 (Opposition at 4:1–2.)

17 The Opposition's conclusion of no irreparable or undue injury
18 does not follow from the admission of their position regarding the legal and
19 practical consequence of the Court's rulings. Instead, the erroneous
20 conclusion of no irreparable or undue injury is predicated on the erroneous
21 premise that the sole object of Plaintiff's writ and appeal is limited to
22 "seek[ing] review of another court as to whether [the dismissed five] are
23 disinterested and independent as a matter of law..." (Opposition at 2:14–17)
24 and that "Plaintiff's substantive objections to proceeding to trial [therefore]
25 are no different from any plaintiff who has lost a partial summary judgment
26 motion" (Opposition at 3:10–13). The individual defendants are mistaken,
27 as the Motion shows.

28 The legal and practical consequences of the relief Plaintiff seeks
and will seek from the Nevada Supreme Court are not limited to the
dismissed five. It also concerns the remaining three defendants, as the
Motion demonstrates and as the Opposition tacitly acknowledges. Simply
put, the statement in the Opposition "that the Court's independence decision

1 makes Plaintiff's ... case more difficult legally" is a backhanded way of
2 admitting the individual defendants' position that the Court's ruling
3 dismissing the five director defendants eliminates as to the remaining three
4 defendants every issue in the case (except for the two with respect to which
5 those defendants on December 29 took actions to change the evidence and
6 legal standard at the trial of the remaining three defendants, which is
7 discussed below). As the Opposition acknowledges (Opposition at 2:20-22),
8 that is exactly what Nevada courts hold amounts to defeating the object of
9 an appeal.

10 Separately, Plaintiff in the Motion also argued as follows:

11 As to matters with respect to which they cannot
12 show that a majority of the directors who made or
13 approved the challenged decision were dismissed by
14 the Court, the remaining defendants clearly intend to
15 rely on the forthcoming ratification of those actions
16 by the dismissed five director defendants. One
17 example that illustrates this point is the 3 to 2
18 termination vote.

19 (Motion at 8:8-13.)

20 Not only does the Opposition not dispute the foregoing, it
21 affirmatively and boldly embraces it and previews the argument the three
22 remaining defendants intend to make at trial, stating as follows:

23 "[] Plaintiff complains about the RDI Board's
24 votes [meaning the vote of the five dismissed
25 directors] on December 29, 2017 to ratify both
26 Plaintiff's termination and the exercise of a share
27 purchase option held by the Estate of James J Cotter,
28 Sr.... The legal effect of the Board's ratification
decision, which is now accomplished, is clear under
NRS 78.140 and the Nevada Supreme Court's
decision in *Shoen v. SAC Holding Corp.*, 122 Nev. 621,
636, 137 P.3d 1171, 1181 (2006)."

(Opposition at 3:19-28.)

1 The foregoing is nothing less than an admission that the three
2 remaining defendants, with the intervening assistance of the five dismissed
3 defendants, intend to take advantage of the Court's rulings which are and
4 will be the subject of review by the Nevada Supreme Court to alter the
5 evidence proffered, to change the burden of proof applied and, ultimately,
6 to change the results of the trial against the remaining three defendants. In
7 taking that position, expressly in the Opposition, the three remaining
8 defendants have made the case that proceeding with trial against them prior
9 to resolution of the issues raised by the Court's rulings dismissing the five
10 director defendants necessarily will require rulings by the Court at and/or
11 before trial that will serve as additional bases for appeal by one side or both.
12 Moreover, whether the recently created evidence should be admitted, and
13 what it shows, are issues as to which Plaintiff will be required to take
14 different positions than if the matters to be resolved by the Nevada Supreme
15 Court were resolved first. As the foregoing illustrates, proceeding with trial
16 under the circumstances puts the parties, Plaintiff in particular and the
17 Court in some respects as well, in the position of "shooting at a moving
18 target" and, in the process, severely prejudicing Plaintiff and undermining
19 one of the objects of Plaintiff's writ and appeal.

20 **II. CONCLUSION**

21 For the foregoing reasons, Plaintiff respectfully submits that the
22 Motion should be granted in all respects.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **REPLY IN SUPPORT OF MOTION FOR RULE 54(b) CERTIFICATION AND STAY**, to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

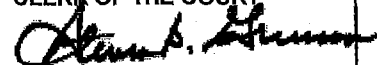
DATED this 3rd day of January, 2018.

By: /s/ PATRICIA FERRUGIA

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Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

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

) Coordinated with:

) Case No. P-14-0824-42-E
) Dept. No. XI

) Jointly Administered

) **ORDER GRANTING PLAINTIFF'S
MOTION FOR RULE 54(b)
CERTIFICATION AND STAY**

) **Date of Hearing: January 4, 2017
Time of Hearing: 8:30 a.m.**

JA6254

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

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

11 The Court therefore finds and determines, under Nev. R. Civ. P.
12 54(b), that there is no just reason for delay and hereby directs entry of
13 judgment as to defendants Edward Kane, Douglas McEachern, William
14 Gould, Judy Coddington, and Michael Wrotniak on all of Plaintiff's claims
15 against them.
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1 IT IS FURTHER ORDERED THAT the case is

2 ☐ stayed;

3 ☒ not stayed pending Plaintiff's appeal.

4
5 DATED this ____ day of January, 2018.

6
7
8 THE HONORABLE ELIZABETH
9 GONZALEZ,
10 DISTRICT COURT JUDGE

11 Submitted by:

12 MORRIS LAW GROUP

13
14 By: /s/ Akke Levin

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Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

**READING INTERNATIONAL,
INC.,** a Nevada corporation,
Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **ORDER DENYING PLAINTIFF'S
MOTION TO STAY AND MOTION
FOR RECONSIDERATION**

) **Date of Hearing: December 28, 2017**

) **Time of Hearing: 9:00 a.m.**

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

11 The Court, having considered the papers filed in support of and
12 in opposition to the Motion for Reconsideration and Motion to Stay, having
13 heard oral argument of the parties, having considered (sealed) Court Exhibit
14 1, and for good cause appearing:

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

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

23 DATED this 4 day of Jan, 2018.

24
25 
26 THE HONORABLE ELIZABETH
27 GONZALEZ,
28 DISTRICT COURT JUDGE

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1 Submitted by:

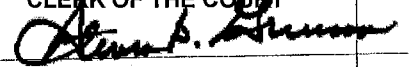
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Ellen Cotter, and Guy Adams

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.
MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

**THE REMAINING DIRECTOR
DEFENDANTS' MOTION FOR
JUDGMENT AS A MATTER OF LAW**

**APPLICATION FOR ORDER
SHORTENING TIME**

Judge: Hon. Elizabeth Gonzalez
Date of Hearing:
Time of Hearing:

01-03-18P05:00 RC

JA6260


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

2 Pursuant to Nevada Rules of Civil Procedure 12 and 56, Defendants Margaret Cotter,
3 Ellen Cotter, and Guy Adams (collectively, the "Remaining Director Defendants"), by and
4 through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart &
5 Sullivan, LLP, hereby submit this Motion for Judgment as a Matter of Law. The Remaining
6 Director Defendants request that this matter be heard on an order shortening time.

7 This Motion is based upon the following Memorandum of Points and Authorities, the
8 Declaration of Noah S. Helpern, the pleadings and papers on file, and any oral argument that the
9 time of a hearing on this motion.

10
11 Dated: January 3, 2018

12 **COHEN|JOHNSON|PARKER|EDWARDS**

13
14 By: /s/ H. Stan Johnson 

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

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor, IT IS
HEREBY ORDERED that Defendants Margaret Cotter, Ellen Cotter, and Guy Adams'
(collectively, "Remaining Director Defendants") Motion for Judgment as a Matter of Law shall
be heard before the above-entitled Court in Department XI, on the 8th day of
January, 2018 at 8⁰⁰ (a.m.)p.m., or as soon thereafter as counsel can be heard.

Dated this _____ day of January, 2018


DISTRICT COURT JUDGE

CR

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

By: 

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DECLARATION OF COUNSEL NOAH HELPERN

I, Noah Helpern, state and declare as follows:

1. I am a member of the bar of the State of California, and am an attorney with Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (the "Remaining Director Defendants"). I make this declaration based upon personal, firsthand knowledge, except where stated to be on information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration (hereinafter referred to as "HD"), I am legally competent to testify to its contents in a court of law. This declaration is made in good faith and not for the purpose of delay.

2. Attached hereto as **Exhibit A** is a true and correct copy of the December 29, 2017 Notice of Entry of the Court's December 28, 2017 Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions *in Limine*.

3. Attached hereto as **Exhibit B** is a true and correct copy of the draft Minutes of the Meeting of the Reading International, Inc. ("RDI") Board of Directors held on December 29, 2017, which remain subject to approval by the Board.

4. The Court's December 28, 2017 Order granted summary judgment in favor of RDI Directors William Gould, Douglas McEachern, Edward Kane, Judy Coddington, and Michael Wrotniak on all claims following a determination that no genuine issue of material fact existed as to the disinterestedness and independence of each; the Court denied summary judgment, and left for trial, whether Directors Guy Adams, Ellen Cotter, and Margaret Cotter were disinterested and/or independent with respect to the transactions challenged by Plaintiff.

5. The Court's December 28, 2017 Order left only two transactions without the votes of a majority of legally disinterested, independent directors: (1) the actions taken by the Board up to and including Plaintiff's termination; and (2) the decision by RDI's Compensation Committee to allow the exercise of an option held by the Estate of James J. Cotter, Sr.

6. On December 29, 2017, the RDI Board held a Special Meeting in which the five directors found by this Court to be legally disinterested and independent (Gould, McEachern,

1 Kane, Coddington, and Wrotniak) reconsidered and ratified the Board's actions relating to

2 Plaintiff's termination and the stock option exercise. The Remaining Defendant Directors Guy
3 Adams, Ellen Cotter, and Margaret Cotter did not vote on the resolutions adopted by the Board.

4 7. Pursuant to NRS 78.140(2)(a) and the Nevada Supreme Court's decision in *Shoen*
5 *v. SAC Holding Corp.*, 122 Nev. 621, 636, 137 P.3d 1171, 1181 (2006), Nevada's business
6 judgment rule therefore applies to the Board's actions relating to Plaintiff's termination and the
7 stock option exercise because those decisions were ratified by a majority of disinterested,
8 independent directors.

9 8. Given that the business judgment presumption applies to all Board actions
10 challenged by Plaintiff and it is beyond dispute that each decision was attributable to a rational
11 business purpose, Plaintiff cannot sustain any of his breach of fiduciary duty claims against any
12 of the Remaining Director Defendants. Judgment as a matter of law on Plaintiff's fiduciary duty
13 claims should therefore be awarded to the Remaining Director Defendants.

14 9. Because Plaintiff cannot show a breach of fiduciary duty by any Defendant, he
15 cannot establish the elements required for a cognizable aiding and abetting breach of fiduciary
16 duty claim. As such, his Fourth Cause of Action, asserted against Ellen and Margaret Cotter,
17 also fails as a matter of law. Judgment on Plaintiff's aiding and abetting claim should therefore
18 be awarded to Ellen and Margaret Cotter, leaving no actionable claims left for trial.

19 10. Good cause exists to hear this motion on shortened time. Presenting this motion
20 in the ordinary course would prevent the Court from ruling on it prior to the scheduled trial date.
21 Because this motion may moot the need for a trial, the grant of an order shortening time is
22 appropriate.

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

25 Executed on January 3, 2018, in Las Vegas, Nevada.

26
27 /s/ Noah Helpert
Noah Helpert



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 As a result of the Court's recent ruling, which granted summary judgment on all claims in
4 favor of Reading International, Inc. ("RDI") Directors William Gould, Douglas McEachern,
5 Edward Kane, Judy Coddington, and Michael Wrotniak, all of the corporate "transactions" alleged
6 by Plaintiff James J. Cotter, Jr. to be actionable breaches of fiduciary duty were approved by a
7 majority of disinterested, independent directors, save for two: (1) the actions taken by Board
8 members leading up to and including the termination of Plaintiff as CEO and President of RDI;
9 and (2) the RDI Compensation Committee's approval of the exercise of a stock option held by
10 the Estate of James J. Cotter, Sr. With respect to those transactions, the outcome-determinative
11 vote was cast by Director Guy Adams, and the Court concluded there were genuine issues of
12 material fact as to his independence that precluded judgment as a matter of law in his favor.

13 Following the Court's decision, the full RDI Board convened a Special Meeting on
14 December 29, 2017 at the request of the five disinterested, independent directors to reevaluate
15 the two remaining transactions. Such reconsideration made logical sense, given that Plaintiff is
16 asking that those Board decisions be re-reviewed through this litigation. This reexamination was
17 also appropriate under NRS 78.140 and the Nevada Supreme Court's decision in *Shoen v. SAC*
18 *Holding Corp.*, 122 Nev. 621, 636, 137 P.3d 1171, 1181 (2006), which provide that a transaction
19 involving or depending on an interested director, such as—potentially—Mr. Adams, may
20 become "valid" and subject to the business judgment rule following an informed ratification at
21 any time.

22 After discussing Plaintiff's allegations as to the potential interestedness or non-
23 independence of Mr. Adams, the independent directors addressed the challenged termination and
24 stock option decisions at the Special Meeting. In doing so, they were informed by the
25 Company's counsel, their own extensive knowledge of the applicable facts, their previous
26 corporate board experience, and a further review of the contemporaneous RDI Board materials
27 relevant to those decisions; the Board also allowed additional debate and comment. Ultimately,
28 with Mr. Adams, Ellen Cotter, and Margaret Cotter not voting, the RDI Board voted 5-1 (with

1 only Plaintiff dissenting) to ratify Plaintiff's termination and the Compensation Committee's
2 stock option decision. With the RDI Board having met all of the legally-required criteria,
3 Nevada's strong business judgment rule therefore applies to those "transactions," as it does to the
4 other corporate decisions questioned by Plaintiff in this derivative suit. Because Plaintiff's
5 breach of fiduciary duty claims cannot survive upon an application of Nevada's business
6 judgment rule and his aiding and abetting breach of fiduciary duty claim also fails without a
7 cognizable breach, judgment in favor of the Remaining Director Defendants as to all claims is
8 fully warranted. No trial is necessary: all challenged actions have either been approved or
9 ratified by a disinterested majority of directors, meaning that, as a matter of law, RDI has
10 suffered no damage, and only damage to the Company is at issue in this derivative litigation.

11 **FACTUAL BACKGROUND**

12 **A. The Court Granted Summary Judgment in Favor of Five Director** 13 **Defendants on All Claims**

14 Plaintiff filed his currently-operative Second Amended Complaint in this action on
15 September 2, 2016, which asserts broad derivative claims for breach of the fiduciary duties of
16 care, loyalty, candor, and disclosure against the other eight current members of the Reading
17 International, Inc. ("Reading") Board of Directors—Douglas McEachern, Edward Kane, William
18 Gould, Judy Coddington, Michael Wrotniak, Guy Adams, Ellen Cotter, and Margaret Cotter—as
19 well as an additional claim for aiding and abetting breach of fiduciary duty against Ellen and
20 Margaret Cotter. (*See* Second Am. Compl. ("SAC") ¶¶ 173-200.) As Plaintiff subsequently
21 clarified, his Second Amended Complaint identifies six "actions or transactions" by these RDI
22 directors that he claimed were "independently entailing or constituting breaches of fiduciary
23 duty": (1) the threat to terminate Plaintiff "if he did not resolve [the Cotter family] trust
24 disputes"; (2) Plaintiff's actual termination; (3) the authorization of the exercise of the 100,000
25 share option to the Estate of James J. Cotter, Sr.; (4) the permanent CEO search, which resulted
26 in Ellen Cotter's selection; (5) the decision to hire Margaret Cotter as Executive Vice President,
27 Real Estate Development-New York; and (6) the Board's response to the indications of interest
28

1 presented by Patton Vision. (*See, e.g.,* Pl.'s Opp'n to Ind. Defs.' Suppl. Mot. for Summ. J.
2 Nos. 1 & 2 at 5-6.)

3 In conformity with the case management schedule set forth by the Court, the Director
4 Defendants moved for summary judgment on each of these issues, as well as generally as to all
5 claims with respect to their independence and disinterestedness. At the hearing on the Director
6 Defendants motions held on December 11, 2017, the Court determined that Plaintiff failed to
7 raise a genuine issue of triable fact as to the disinterestedness and/or independence of Directors
8 Wrotniak, Coddington, McEachern, Kane, and Gould. In light of Nevada's strong business
9 judgment rule and consistent with well-established law, the Court granted summary judgment in
10 favor of these directors on all breach of fiduciary duty claims asserted by Plaintiff. Shortly
11 thereafter, Plaintiff moved for reconsideration of the Court's ruling, which the Director
12 Defendants opposed. At a hearing held on December 28, 2017, the Court denied Plaintiff's
13 motion for reconsideration and indicated that it would enter a written order later that day
14 granting summary judgment in favor of Directors Wrotniak, Coddington, McEachern, Kane, and
15 Gould on all claims—which it subsequently did. (*See* HD Ex. A (12/29/17 Notice of Entry of
16 Order).)

17 B. **A Majority of Independent, Disinterested RDI Directors Subsequently**
18 **Ratified the Board's Decision to Terminate Plaintiff and the Compensation**
Committee's Decision to Permit the Exercise of a Share Purchase Option

19 Given the contours of the Court's summary judgment ruling, a majority of disinterested,
20 independent RDI directors approved three of the transactions identified as "breaches" by
21 Plaintiff, thereby triggering the application of Nevada's business judgment rule as to those
22 decisions—the search for a permanent CEO of RDI, which culminated in the hiring of Ellen
23 Cotter; the hiring of Margaret Cotter as Executive Vice President, Real Estate Development-New
24 York; and the Board's decision not to further pursue the Patton Vision indication of interest after
25 devoting two board meetings to the issue, hearing a management presentation on the Company's
26 valuation, and discerning the intent of the controlling stockholders not to sell at that time.¹ *See*

27 _____
28 ¹ Discounting the votes of Guy Adams and Margaret Cotter, the selection of Ellen
Cotter was approved by a vote of 5-1 (*see* Pl.'s Proposed Tr. Ex. 35); discounting the vote of Mr.

1 *Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79; NRS 78.138(3), (7); *see also Goldman v.*

2 *Pogo.com, Inc.*, No. Civ. A. 18532-NC, 2002 WL 1358760, at *2 (Del. Ch. June 14, 2002)

3 (“Only upon a showing by a challenger that raises a reasonable doubt as to the independence
4 and/or disinterestedness of a majority of a company’s directors who approved the challenged
5 transaction will the presumption of director fealty which lies at the core of the business judgment
6 rule be rebutted.”) (citation omitted).

7 In contrast, the Court’s order left the following RDI Board decisions without a majority
8 of disinterested, independent RDI directors voting in favor: (1) Plaintiff’s June 12, 2015
9 termination, which was approved by legally-independent directors McEachern and Kane, as well
10 as Mr. Adams and the Cotter sisters, for whom independence/disinterestedness remains a jury
11 question; and (2) the September 21, 2015 decision by RDI’s Compensation Committee,
12 consisting of legally-independent director Kane and director Adams, to approve the use of
13 Class A Stock to pay the exercise price of an option held by the Estate of James J. Cotter, Sr.

14 After the Court’s order, Directors Gould, Kane, McEachern, Coddling, and Wrotniak
15 issued a call on December 27, 2017 for a special meeting of the RDI Board pursuant to Article II,
16 Section 7 of the Company’s Bylaws, which provides that “[u]pon the written request of a
17 majority of the directors, the Chairman or Vice Chairman of the Board or the President shall call
18 a special meeting of the Board to be held within two days of the receipt of such request.”
19 Neither Director Adams nor Ellen or Margaret Cotter participated in the calling of the special
20 meeting. (*See* HD Ex. B (12/29/17 RDI Board Minutes) at 3.) As indicated on the agenda
21 distributed in advance, the purpose of the special meeting was for the RDI Board to discuss
22
23

24 Adams, the decision to hire Margaret Cotter was approved by a vote of 5-0 (*see* Pl.’s Proposed
25 Tr. Ex. 207); and, discounting the votes of Mr. Adams and the Cotter sisters, the Board’s
26 response to the Patton Vision indication of interest was approved by a vote of 5-0. (*See* Pl.’s
27 Proposed Tr. Ex. 387.) Other Board decisions periodically complained of by Plaintiff, but
28 which—according to him—are not independently-actionable breaches, such as the appointments
of Mr. Wrotniak and Ms. Coddling as directors and the award of special compensation to Mr.
Adams, were also taken by a majority of disinterested, independent directors. (*See id.*; *see also*
Pl.’s Proposed Tr. Exs. 263, 380, 381.)

1 whether to reassess and potentially ratify the two decisions left at issue by the Court's summary
2 judgment ruling—Plaintiff's termination and the share option exercise. (*Id.* at 3-4.)

3 The full RDI Board subsequently met on December 29, 2017. (*Id.*) Counsel for the
4 Company was present, and updated the Board both on the status of this litigation as well as the
5 content of Plaintiff's allegations as to why Mr. Adams was purportedly not "independent" with
6 respect to the at-issue decisions. (*Id.*) Counsel further informed the Board as to the scope of
7 NRS 78.140 ("Restrictions on Transactions Involving Interested Directors or Officers"), as well
8 as the Board's fiduciary duties under Nevada law, including the duties of due care and loyalty.
9 (*Id.* at 4.) Without conceding the independence or disinterestedness of any directors that remain
10 as Defendants in this action, the RDI Board then proceeded to consider the actions taken leading
11 up and including Plaintiff's termination, as well as the option decision. (*Id.* at 4-5.) Mr. Adams,
12 as well as Margaret and Ellen Cotter, did not vote on either issue—leaving the discussion and
13 ultimate decisions to the five disinterested, independent directors. (*Id.* at 4-6.)

14 1. The Ratification of Actions Taken by Board Members Relating to the
15 Termination of Plaintiff as President and CEO of RDI

16 Following this introduction, Lead Independent Director Gould summarized the first issue
17 for consideration: ratification of the actions taken by the Board members relating to the
18 termination of Plaintiff as President and CEO of RDI, as such actions are outlined in the Minutes
19 of the Board Meetings held on May 21, May 29, and June 12, 2015. (*Id.* at 4.) All directors
20 were provided copies of the referenced Minutes. (*Id.*) In addition to their "thorough" review of
21 the relevant Board materials, Directors Codding and Wrotniak, who were not yet members of the
22 RDI Board at the time of Plaintiff's termination, stated that they were drawing on their
23 "extensive knowledge about the Board's reasons for the termination of Mr. Cotter, Jr.," including
24 their observations of Plaintiff's "behavior and demeanor in Board meetings" since each joined
25 over two years ago. (*Id.*) Ms. Codding expressed her view that Plaintiff "did not possess the
26 knowledge, ability or demeanor to be chief executive officer of the Company," an opinion with
27 which Mr. Wrotniak concurred. (*Id.*) Discussion then ensued regarding the Board materials,
28 including the fact that Plaintiff had retained an outside consultant, Highpoint Associates, to assist

1 him in his CEO duties—a fact that he did not disclose to the Board prior to his termination. (*Id.*
2 at 4-5.)

3 Director McEachern then made a motion, seconded by Ms. Coddington, as follows:

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

7 (*Id.* at 5.) After debate and further discussion, including an opportunity by Plaintiff to make
8 comments, the proposed resolution was adopted by Directors Coddington, Gould, Kane,
9 McEachern, and Wrotniak, with Plaintiff casting the sole vote in opposition. (*Id.*) Plaintiff
10 characterized the ratification as simply being a litigation device (*id.*), despite the fact that the five
11 ratifying directors were no longer parties to his derivative litigation and have no personal stake in
12 whether the litigation goes forward.

13 2. The Ratification of the Compensation Committee's Decision to Approve
14 the Exercise of a Share Purchase Option Held by the Cotter, Sr. Estate

15 Director Gould then introduced the second issue for consideration: ratification of the
16 September 21, 2015 decision by RDI's Compensation Committee to permit the Estate of James J.
17 Cotter, Sr. to use Class A non-voting stock as the means of payment (as opposed to cash) for the
18 exercise of an option to purchase 100,000 shares of Class B voting stock in RDI. (*Id.*) Counsel
19 for the Company summarized the information regarding the matter considered by the
20 Compensation Committee in 2015, including the fact that acceptance of stock was within the
21 discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan
22 under which the stock option was granted. (*Id.*) The disinterested, independent Board members
23 then generally expressed their awareness of the information as well as their review of the
24 relevant Board materials and Compensation Committee minutes, and opened the floor up for
debate, including comment by Plaintiff. (*Id.*)

25 A motion was made and seconded, as follows:

26 BE IT HEREBY RESOLVED that the Board ratifies the decision of the Compensation
27 Committee of the Company, as outlined in the minutes of its September 21, 2015
28 meeting, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting

1 stock as the means of payment for the exercise of an option to purchase 100,000
2 shares of Class B voting stock of the Company.

3 (*Id.* at 6.) The proposed resolution was then adopted by Directors Coddington, Gould, Kane,
4 McEachern, and Wrotniak, with Plaintiff casting the sole vote in opposition. (*Id.*) Again,
5 Plaintiff complained that the ratification vote was taken solely for a “litigation purpose” (*id.* at 5-
6 6) despite the fact that the ratifying directors have no personal stake in any relevant litigation.

7 The Board then moved, without objection, that its resolutions include the “authorization
8 to take such other actions as may be necessary to accomplish the matters approved herein.” (*Id.*
9 at 6.) Given the legal impact of the ratification of these previous decisions by a majority of
10 disinterested, independent directors under NRS 78.140 and Nevada Supreme Court precedent,
11 the Remaining Director Defendants now bring this Motion for Judgment as a Matter of Law as to
12 all claims asserted by Plaintiff.

13 ARGUMENT

14 I. THE BUSINESS JUDGMENT RULE APPLIES TO ALL DECISIONS 15 COMPLAINED OF BY PLAINTIFF

16 NRS 78.140 provides, in relevant part, that a “transaction” by a Nevada corporation such
17 as RDI “is not void or voidable” because an interested or non-independent director is present
18 during a meeting or joins in a board resolution approving the transaction if “[t]he fact of the
19 common directorship, office or financial interest is known to the board of directors or committee,
20 and the directors or members of the committee, other than any common or interested directors or
21 members of the committee, approve or *ratify* the contract or transaction in good faith.” NRS
22 78.140(2)(a) (emphasis added). Citing NRS 78.140, the Nevada Supreme Court has made clear
23 that the business judgment rule applies “in the context of *valid* interested director action, or the
24 valid exercise of business judgment by disinterested directors in light of their fiduciary duties.”
25 *Shoen*, 122 Nev. at 636, 137 P.3d at 1181 (emphasis added).

26 Here, all of the requirements for the application of NRS 78.140, and thus the business
27 judgment rule, are met with respect to the Board’s actions relating to Plaintiff’s termination and
28 the approval of the contested option exercise. All members of the RDI Board have long been
aware of Plaintiff’s claims that Mr. Adams, Ellen Cotter, and Margaret Cotter are interested or

1 not independent in light of their financial interests. Plaintiff made such allegations at the time of
2 his termination, and in every iteration of his complaints; indeed, Plaintiff has not alleged that Mr.
3 Adams' purported conflicts were not "known," but rather that RDI's directors went forward in
4 the face of these known conflicts. (*See, e.g.*, SAC ¶¶ 1, 6, 21, 33, 35, 37, 48, 49, 64-71.) The
5 RDI Board has also repeatedly discussed Plaintiff's allegations at various board meetings,
6 including at the December 29, 2017 Special Meeting. (*See* HD Ex. B (12/29/17 RDI Board
7 Minutes) at 3-4 (corporate counsel summarizing allegations of interestedness/non-independence
8 against Director Adams).) Thus, the "fact" of the "financial interest" alleged by Plaintiff was
9 certainly "known to the board of directors" at the time a majority of independent, disinterested
10 directors made their ratification decisions on December 29, 2017, as required by NRS
11 78.140(2)(a).

12 Moreover, as required by NRS 78.140(2)(a), the RDI Board ratified each of the
13 remaining challenged "transactions" by a 5-1 vote, counting only the votes of those directors
14 whom this Court has determined to be disinterested and independent as a matter of law. (*See* HD
15 Ex. B (12/29/17 RDI Board Minutes) at 5-6.) And the December 29, 2017 ratification vote was
16 certainly "in good faith": the directors who were not present at the time these matters were
17 initially decided, Mr. Wrotniak and Ms. Coddington, made an effort to inform themselves of the
18 relative merits of the decisions, including by reviewing contemporaneous materials and drawing
19 on their personal knowledge gleaned in their two years of Board service; corporate counsel was
20 present and advised the entire Board of its fiduciary duties under Nevada law, as well as the
21 history of each decision; no ratifying director had a personal stake in the derivative litigation
22 brought by Plaintiff; and discussion and debate occurred prior to the final votes, with all
23 directors—including Plaintiff—afforded the chance to ask questions or make comments. (*See*
24 *id.*) Accordingly, all of the preconditions necessary for a "valid interested director transaction"
25 under NRS 78.140(2)(a), and thus the application of the business judgment rule under *Shoen*, are
26 present.²

27
28 ² In taking this ratification action and making this argument, the Remaining Director
Defendants do not concede that Mr. Adams, Ellen Cotter, or Margaret Cotter are interested or not

1 Significantly, nothing in the text of NRS 78.140 places any deadline or time limitation
2 upon ratification. In fact, the Nevada Supreme Court in *In re Amerco Deriv. Litig.*, 127 Nev.
3 196, 252 P.3d 681 (2011), acknowledged that a ratification that occurred years after the
4 challenged conduct could have a potentially case-dispositive effect. *See* 127 Nev. at 217, 252
5 P.3d at 697, n. 6 (noting that a ratification that had apparently occurred in 2007, after the *Shoen*
6 remand, could have had a dispositive effect, but refusing to reach the issue because it was raised
7 for the first time on appeal); *see also id.*, 127 Nev. at 233, 252 P.3d at 707 n.4 (Pickering, J.,
8 concurring in part and dissenting in part) (noting that “this issue is potentially dispositive in this
9 case”). Nor should a deadline be unilaterally imposed here, especially given that Plaintiff is
10 seeking injunctive relief to reverse his June 12, 2015 termination and to be forcibly reinstated as
11 RDI’s CEO and President; as such, it makes logical sense that the present RDI Board can still
12 reevaluate the actions leading up to and involving his termination, and either reverse or ratify the
13 earlier decisions.

14 Here, because the RDI Board properly ratified the earlier termination and option approval
15 actions in conformity with NRS 78.140, “valid interested director” transactions are present and
16 the business judgment rule applies—as it does to those transactions that the Court has already
17 found to be the product of actions by a majority of disinterested, independent directors.

18 **II. JUDGMENT ON ALL BREACH OF FIDUCIARY DUTY CLAIMS IN FAVOR**
19 **OF THE REMAINING DIRECTOR DEFENDANTS IS WARRANTED UNDER**
THE BUSINESS JUDGMENT RULE

20 In this litigation, Plaintiff has never contested that if the business judgment rule were to
21 apply, his fiduciary duty claims would fail as a matter of law; instead, his entire argument has
22 been that the business judgment rule does not apply. The business judgment rule is a
23 “presumption that in making a business decision the directors of a corporation acted on an
24 informed basis, in good faith and in the honest belief that the action taken was in the best
25 interests of the company.” *Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79 (citation omitted); *see*

26 independent; rather, they continue to believe that Mr. Adams was not on both sides of any
27 disputed transaction and satisfies the legal definition of a disinterested, independent director.
28 Similarly, the Remaining Director Defendants do not concede the relevance of any
independence/disinterestedness determination under Nevada law to any of the claims at issue.

1 also NRS 78.138(3) (codifying the rule under Nevada law). "The business judgment rule
2 postulates that if directors' actions can arguably be taken to have been done for the benefit of the
3 corporation, then the directors are presumed to have been exercising their sound business
4 judgment rather than to have been responding to self-interest motivation." *Horwitz v. SW. Forest*
5 *Indus., Inc.*, 604 F. Supp. 1130, 1135 (D. Nev. 1985).

6 As the Nevada Supreme Court has stressed, "even a bad decision is generally protected
7 by the business judgment rule" *Shoen*, 122 Nev. at 636, 137 P.3d at 1181, and the rule protects
8 corporate decisions whenever they can be "attributed to any rational business purpose." *Katz v.*
9 *Chevron Corp.*, 22 Cal. App. 4th 1352, 1366 (1994). Courts have routinely found that the same
10 concerns that animated the majority of RDI directors in their termination and share option
11 decisions to be valid business judgments, immune from any claims under the operation of the
12 business judgment rule. *See, e.g., In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 72-73 (Del.
13 2006) (fact that a company's CEO cannot "work well" with its directors or executives, and
14 requires "close and constant supervision," is a valid basis for terminating the officer, and is a
15 decision protected by the business judgment rule); *Carlson v. Hallinan*, 925 A.2d 506, 540 n.232
16 (Del. Ch. 2006) (where "the evidence indicated that Carlson was not effective in the role of
17 President of CR and that he had important managerial shortcomings," "firing him could have
18 fostered CR's welfare" and was thus protected by the business judgment rule); *Franklin v. Tex.*
19 *Int'l Petroleum Corp.*, 324 F. Supp. 808, 813 (W.D. La. 1971) (an officer's "inability to perform
20 adequately" and lack of "experience, expertise, and proper degree of affability" are protected
21 reasons under the business judgment rule for his or her termination).

22 In light of the Board's recent ratifications, all of the RDI Board transactions challenged
23 by Plaintiff are protected by Nevada's strong business judgment rule. Because Plaintiff has not
24 shown, and cannot establish, that the challenged transactions were not attributable to any rational
25 business purpose, all of his breach of fiduciary duty claims are legally untenable. No trial on
26 them is necessary. Judgment as a matter of law should be awarded to the Remaining Director
27 Defendants on all breach of fiduciary duty claims.

28

1 **III. ABSENT ANY COGNIZABLE BREACH, JUDGMENT ON PLAINTIFF'S**
2 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY CLAIMS IN**
3 **FAVOR OF ELLEN AND MARGARET COTTER IS APPROPRIATE**

4 In addition to his untenable breach of fiduciary duty claims against Mr. Adams, Ellen
5 Cotter, and Margaret Cotter, Plaintiff has also asserted a claim against Ellen and Margaret Cotter
6 for aiding and abetting breach of fiduciary duty, in which he contends that his sisters "solicited
7 and aided and abetted the decisions and actions of" the other RDI Directors that he claims
8 constituted breaches of his fiduciary duties. (See SAC ¶¶ 193-200.) In Nevada, "[a]iding and
9 abetting the breach of a fiduciary duty has four required elements: (1) there must be a fiduciary
10 relationship between the two parties, (2) that the fiduciary breached, (3) the defendant knowingly
11 and substantially participated in or encouraged that breach, and (4) the plaintiff suffered damage
12 as a result of the breach." *Guilfoyle v. Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. Adv.
13 Op. 78, 335 P.3d 190, 198 (2014); *see also In re Amerco Deriv. Litig.*, 127 Nev. at 225, 252 P.3d
14 at 701 (same).

15 Given that the Court has awarded summary judgment to Directors Gould, Kane,
16 McEachern, Coddington, and Wrotniak on all breach of fiduciary duty claims against them, Plaintiff
17 cannot sustain an "aiding and abetting" claim against Ellen and Margaret Cotter based on any of
18 those directors' purported "breaches," as one cannot aid and abet a breach that does not exist.
19 *See Lift Certification Co. v. Thomas*, No. A521533, 2008 WL 8588925 (Nev. Dist. Ct. Dec. 2,
20 2008) (because "Thomas did not breach his duty of loyalty to his employer Lift, while he
21 prepared to change employment and compete with Lift, . . . it is not legally possible for
22 American Equipment to have committed the Tort of Civil Aiding and Abetting"); *Manzo v. Rite*
23 *Aid Corp.*, No. Civ. A. 18451-NC, 2002 WL 31926606, at *6 (Del. Ch. Dec. 19, 2002)
24 ("Because the breach of fiduciary duty claims are dismissed with prejudice, the claim against
25 KPMG for aiding and abetting breach of fiduciary duty is similarly dismissed with prejudice.").
26 With respect to Director Adams, the fact that a majority of disinterested, independent RDI
27 directors has now either approved or ratified all challenged transactions involving Mr. Adams is
28 further evidence that he did not commit any breach of fiduciary duty, since any bias he could
even conceivably have obviously did not affect his actual decisions, which were fully consistent

1 with those of legally disinterested, independent directors. Moreover, the fact that Mr. Adams is
2 only one of eight directors and he voted either along with a majority of disinterested directors or
3 had his decisions ratified by a majority of such directors means that any purported "breach" by
4 him did not cause any damages to RDI. Plaintiff's failure to show causal damages with respect
5 to Mr. Adams, another required element, provides yet another reason why Plaintiff's aiding and
6 abetting claim against Ellen and Margaret Cotter is unsustainable.³

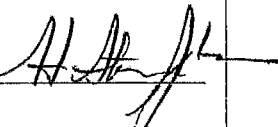
7 Accordingly, judgment as a matter of law also should be awarded to Ellen and Margaret
8 Cotter on Plaintiff's aiding and abetting breach of fiduciary duty claim—leaving no viable
9 claims for trial.

10 CONCLUSION

11 For the reasons set forth above, the Remaining Director Defendants respectfully request
12 that the Court grant their Motion for Judgment as a Matter of Law.

13
14 Dated: January 3, 2018

15 **COHENJOHNSONPARKERREDWARDS**

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26 ³ Even separate from the fact that a majority of disinterested, independent directors
27 approved or ratified the at-issue transactions, Plaintiff cannot show cognizable damages to RDI
28 as a result of the conduct he has identified—as the Director Defendants have previously
emphasized. (*See, e.g.*, Ind. Defs.' Mot. for Summ J. (No. 1) at 22-23; Ind. Defs.' Opp'n to Pl.'s
Mot. for Summ. J. at 19-20; Ind. Defs.' Reply in Supp. of Mot. for Summ. J. (No. 1) at 17-19.)

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EXHIBIT A

JA6279

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19 James J. Cotter, Jr.

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

25 Plaintiff,

26 v.

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

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

JA6280

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PLEASE TAKE NOTICE that an Order Regarding Defendants'

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

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER** . The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 29th day of December, 2017.

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

EXHIBIT A

JA6283

Steven D. Grierson

ORDER

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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, et al.,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

Case No.: A-15-719860-B

Dept. No.: XI

Case No.: P-14-082942-E

Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

JA6284

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

- Individual Defendants' Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) re: The Issue of Director Independence, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Relating to the Purported Unsolicited Offer, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO, and supplement thereto;
- Individual Defendants' Motion for Partial Summary Judgment (No. 6) re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter,

1 and the Additional Compensation to Margaret Cotter and Guy
2 Adams, and supplement thereto;

- 3 • Defendant Gould's Motion for Summary Judgment;
- 4 • Individual Defendants' Renewed Motion *in Limine* to Exclude
- 5 Expert Testimony of Myron Steele Based on Supplemental
- 6 Authority;
- 7 • Individual Defendants' Motion *in Limine* to Exclude Evidence
- 8 That Is More Prejudicial Than Probative;
- 9 • Defendant Gould's Motion *in Limine* to Exclude Irrelevant
- 10 Speculative Evidence;
- 11 • RDI's Motion to Redact Opposition to Plaintiff James J. Cotter,
- 12 Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File
- 13 Exhibit "E" Under Seal;
- 14 • Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- 15 • Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-
- 16 Related Evidence by Nominal Defendant Reading
- 17 International, Inc.;
- 18 • Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- 19 • Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's
- 20 Opposition to Motion *in Limine* to Exclude Evidence That Is
- 21 More Prejudicial Than Probative;
- 22 • Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact
- 23 Portions of Plaintiff's Supplemental Opposition to Motion for
- 24 Summary Judgment Nos. 2 and 3 and Gould Summary
- 25 Judgment Motion;
- 26
- 27
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- Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion; and
- Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 6 and Gould Summary Judgment Motion.

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

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

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

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

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

9 IT IS FURTHER ORDERED THAT the Individual Defendants'
10 Motion for Partial Summary Judgment (No. 6) re: Plaintiff's Claims Related
11 to the Estate's Option Exercise, the Appointment of Margaret Cotter, the
12 Compensation Packages of Ellen Cotter and Margaret Cotter, and the
13 Additional Compensation to Margaret Cotter and Guy Adams is DENIED.

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

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

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

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

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

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

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

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

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

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

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

19
20 DATED this 28th day of December, 2017.

21 
22 DISTRICT COURT JUDGE
23
24
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26
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28

1
2 PREPARED AND SUBMITTED BY:

3 COHEN|JOHNSON|PARKER|EDWARDS
4

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19 *Edward Kane, Judy Coddington, and Michael*
20 *Wrotniak*
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EXHIBIT B

JA6291

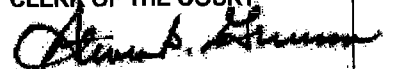
FILED UNDER SEAL

JA6292

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20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

25 Plaintiff,

26 v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

JA6293

MORRIS LAW GROUP


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

A copy of the Order is attached as Exhibit 1.

MORRIS LAW GROUP

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CERTIFICATE OF SERVICE

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

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Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 4th day of January, 2018.

By: 

EXHIBIT 1

EXHIBIT 1

JA6296

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19 **James J. Cotter, Jr.**

DISTRICT COURT
CLARK COUNTY, NEVADA

16 **JAMES J. COTTER, JR.,**
17 **derivatively on behalf of Reading**
18 **International, Inc.,**

Plaintiff,

19 **v.**

20 **MARGARET COTTER, ELLEN**
21 **COTTER, GUY ADAMS,**
22 **EDWARD KANE, DOUGLAS**
23 **McEACHERN, WILLIAM**
24 **GOULD, JUDY CODDING,**
25 **MICHAEL WROTNIAK,**

Defendants.

26 **And**

27 **READING INTERNATIONAL,**
28 **INC., a Nevada corporation,**

Nominal Defendant.

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

) **Coordinated with:**

) **Case No. P-14-0824-42-E**
) **Dept. No. XI**

) **Jointly Administered**

) **ORDER GRANTING PLAINTIFF'S**
) **MOTION FOR RULE 54(b)**
) **CERTIFICATION AND STAY**

) **Date of Hearing: January 4, 2017**
) **Time of Hearing: 8:30 a.m.**

Electronically Filed
1/4/2018 10:35 AM
Steven D. Grierson
CLERK OF THE COURT



JA6297

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

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

11 The Court therefore finds and determines, under Nev. R. Civ. P.
12 54(b), that there is no just reason for delay and hereby directs entry of
13 judgment as to defendants Edward Kane, Douglas McEachern, William
14 Gould, Judy Coddington, and Michael Wrotniak on all of Plaintiff's claims
15 against them.
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IT IS FURTHER ORDERED THAT the case is

☐ stayed;

☒ not stayed pending Plaintiff's appeal.

DATED this ____ day of January, 2018.



THE HONORABLE ELIZABETH
GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

By: /s/ Akke Levin

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1/4/2018 5:26 PM
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CLERK OF THE COURT



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20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

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

25 Plaintiff,

26 v.

27 MARGARET COTTER, ELLEN
28 COTTER, GUY ADAMS,
EDWARD KANE, DOUGLAS
McEACHERN, WILLIAM
GOULD, JUDY CODDING,
MICHAEL WROTHIAK,

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) NOTICE OF ENTRY OF ORDER

JA6300

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

A copy of the Order is attached as Exhibit 1.

MORRIS LAW GROUP

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CERTIFICATE OF SERVICE

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

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Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 4th day of January, 2018.

By: 

EXHIBIT 1

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19 James J. Cotter, Jr.

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

25 Plaintiff,

26 v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **ORDER DENYING PLAINTIFF'S**
) **MOTION TO STAY AND MOTION**
) **FOR RECONSIDERATION**

) **Date of Hearing: December 28, 2017**

) **Time of Hearing: 9:00 a.m.**

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1/4/2018 10:35 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

JA6304

MORRIS LAW GROUP

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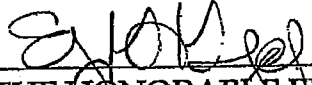
1 This matter came before the Court on December 28, 2017 for
2 hearing on plaintiff James J. Cotter, Jr.'s Motion to Stay and Motion for
3 Reconsideration or Clarification of Ruling on Motions for [Partial] Summary
4 judgment Nos. 1, 2, and 3 and Gould's Summary Judgment Motion ("Motion
5 for Reconsideration").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

11 The Court, having considered the papers filed in support of and
12 in opposition to the Motion for Reconsideration and Motion to Stay, having
13 heard oral argument of the parties, having considered (sealed) Court Exhibit
14 1, and for good cause appearing:

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

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

23 DATED this 4 day of Jan, 2018.

24
25 
26 THE HONORABLE ELIZABETH
27 GONZALEZ,
28 DISTRICT COURT JUDGE

MORRIS LAW GROUP

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1 Submitted by:

2 MORRIS LAW GROUP

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4 By: /s/ Akke Levin

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Steven D. Grierson
CLERK OF THE COURT



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.

Plaintiff

vs.

MARGARET COTTER, et al.

Defendants
.....

CASE NO. A-15-719860-B
A-16-735305-B
P-14-082942-E

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR RULE 54(b) CERTIFICATION

THURSDAY, JANUARY 4, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

JA6307

APPEARANCES:

FOR THE PLAINTIFF:

MARK G. KRUM, ESQ.
STEVE L. MORRIS, ESQ.
AKKE LEVIN, ESQ.

FOR THE DEFENDANTS:

SHOSHANA E. BANNETT, ESQ.
MARSHALL M. SEARCY, ESQ.
JAMES L. EDWARDS, ESQ.
MARK E. FERRARIO, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 4, 2018, 8:31 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Cotter.

4 MR. SEARCY: Good morning, Your Honor. It doesn't
5 appear that Mr. Ferrario's here yet.

6 THE COURT: Oh. So I'm not ready on Cotter, either,
7 huh?

8 MR. KRUM: We're ready, yes, Your Honor.

9 THE COURT: So I'm not ready yet, either. Then I
10 guess I'll just here patiently waiting for all sides of any
11 case to be available.

12 (Pause in the proceedings)

13 THE COURT: Good morning. Counsel, I was given an
14 order this morning denying plaintiff's motion to stay and
15 motion for reconsideration that appears to have been agreed to
16 by all parties. Is that accurate?

17 MR. SEARCY: That's accurate, Your Honor.

18 THE COURT: Then I'm going to go ahead and sign.
19 Ms. Levin, you can pick it up up here, if you'd like.

20 So we've finished one item of business. That takes
21 me to my second item of business, which relates to our trial
22 schedule. Dan has arranged for a courtroom here in the RJC
23 for jury selection because of the logistics related to getting
24 jurors across the street to the Phoenix Building. So Judge
25 Denton is out of town for a couple of days next week, so we're

1 going to borrow his courtroom for those couple of days, but
2 only to pick the jury. So just be aware of that. And I
3 cannot start until 1:00, because I have a Business Court
4 settlement conference.

5 MR. KRUM: Monday?

6 THE COURT: On Monday.

7 Okay. So let's go to the pending motion.

8 MR. FERRARIO: Your Honor, if we're on the
9 administrative stuff, I was asked to ask you if we need to
10 submit original depositions to the Court tomorrow --

11 THE COURT: You do.

12 MR. FERRARIO: -- or should we do it on Day 1 of the
13 trial due to the courtroom uncertainty.

14 MR. KRUM: Your Honor, we may have an issue with
15 that on account of the blizzard on the East Coast. Either we
16 will or we won't.

17 THE COURT: We're here in Las Vegas. There's not an
18 issue with a blizzard here.

19 MR. KRUM: Well, some of our originals need to come
20 out of my office.

21 THE COURT: Okay. I only need the originals of
22 depositions you intend to use in lieu of live testimony, not
23 those you intend to use for impeachment purposes.

24 MR. KRUM: Understood.

25 THE COURT: Okay.

1 MR. FERRARIO: And where do you want us to deliver
2 them tomorrow?

3 THE COURT: You're going to meet us at 2:00 o'clock
4 for the final pretrial conference.

5 MR. FERRARIO: Oh. That's right. Okay. And where
6 will be meeting?

7 THE COURT: We'll be in 10C, Judge Togliatti's
8 courtroom. I don't have a courtroom of my own. I have a
9 meeting at 11:00 o'clock about that. I'm not hopeful that
10 that will result in any changes to my current situation, but,
11 as you know, I don't have a courtroom. Since 2013 we've been
12 down a courtroom.

13 MR. FERRARIO: Can you spread that on the record? I
14 have one --

15 THE COURT: Just in case nobody knows.

16 MR. FERRARIO: I have one final question. Do you
17 want us -- if a witness is unavailable and let's say Mr. Krum
18 is going to present that witness through deposition, do you
19 want to run the depo consistently and have ours just flow, or
20 how do you want to deal with it?

21 THE COURT: It is my opinion, and I can be persuaded
22 related to this, that it is easier for the jury to understand
23 if all of that witness's testimony is presented at one time.

24 MR. FERRARIO: And I would agree with that.

25 THE COURT: But I am open to discussion with counsel

1 about that if it is a problem, and those are part of the items
2 that are on my list to talk about with you tomorrow afternoon.
3 MR. KRUM: Is it 2:00 o'clock, Your Honor, or 3:00
4 o'clock?
5 THE CLERK: 3:00 o'clock.
6 THE COURT: It's 3:00 o'clock.
7 MR. KRUM: Thank you.
8 THE COURT: In Department 10 and 10C, where we are
9 borrowing a courtroom tomorrow.
10 MR. FERRARIO: Thank you.
11 THE COURT: All right. Anything else before I go to
12 the motion?
13 Mr. Krum, it's your motion. Mr. Morris.
14 MR. MORRIS: I do have one thing that's not on
15 calendar.
16 THE COURT: Okay.
17 MR. MORRIS: We were in the Supreme Court yesterday
18 on the writ, we argued the writ.
19 THE COURT: Which writ?
20 MR. MORRIS: The one that arises out of the motion
21 to compel the production of emails between Mr. Krum and
22 Alexander Robertson that you decided --
23 THE COURT: Many years ago.
24 MR. MORRIS: -- on September the 8th, 2016.
25 THE COURT: Yes.

1 MR. MORRIS: The court pointed out to us when we
2 were arguing that they didn't have a written order on the
3 motion to compel. What they have is what we have, and that is
4 the minute order and the transcript. And Justice Gibbons
5 discussed the absence of that order. Mr. Searcy didn't know
6 that it was not in the record, and neither did I. But it
7 turns out it isn't.

8 THE COURT: There isn't an order from that?

9 MR. MORRIS: No.

10 THE COURT: There's no order that was submitted from
11 that?

12 MR. KRUM: I think, Your Honor, there was an order
13 submitted, but not signed.

14 MR. MORRIS: In any event, we don't have that order.
15 And Justice Gibbons said we could supplement the record after
16 the argument, so I prepared an order that tracks your minute
17 order and the transcript, denies the motion to compel for the
18 reason you gave, I gave it to Mr. Searcy, and he now -- he's
19 now saying that he wants some time to think about this and --

20 THE COURT: I don't get much time when the Supreme
21 Court asks me to supplement the record. I usually get a
22 couple of hours.

23 MR. SEARCY: Understood, Your Honor.

24 THE COURT: Occasionally they give me 30 days if
25 it's a really big job.

1 MR. SEARCY: This situation is somewhat odd, though,
2 Your Honor, in that we've had -- my recollection was certainly
3 that there was a written order already submitted by the Court.
4 And here what we're looking at is a written order
5 approximately almost two years after the fact for the Court to
6 sign.

7 THE COURT: Yes. That's a problem.

8 MR. SEARCY: And it is a problem, Your Honor.

9 THE COURT: But it's a problem for a number of
10 reasons, and I just don't know which one it is, because it's
11 been two years -- or a year and a half, year and a half.

12 MR. MORRIS: It was on September the 8th, 2016, not
13 quite two years, a year and a half.

14 MR. SEARCY: So what I've said to Mr. Morris is I
15 want to take a look at this, I want to take a look at the
16 issue before we agree one way or the other on the order.

17 THE COURT: So let me ask you the question. Do you
18 recall there being competing orders that were submitted on
19 that issue?

20 MR. SEARCY: Your Honor, my recollection -- and
21 apparently it's wrong, because I have looked at the record and
22 I have not seen a written order.

23 THE COURT: So you think there's a written order,
24 you just can't find it.

25 MR. SEARCY: I thought that there was one. But I

1 haven't found it. And I will note that in the appeal that was
2 taken by the plaintiff in the case that it says in the first
3 line that he is taking it from your oral order compelling
4 documents. Again, though, it was my recollection that there
5 was a written order. So we're looking for that. That's what
6 the court asked us to supplement the record with, is the
7 written order from [inaudible]. They're not asking for a new
8 order.

9 THE COURT: Oh. An existing written order.

10 MR. SEARCY: Exactly.

11 THE COURT: Okay.

12 MR. SEARCY: They're not asking that -- they're not
13 directing that the Court enter an order on this, because that
14 raises its own set of issues. Certainly we would want to go
15 back in the benefit of hindsight and the benefit of just
16 having had an argument in front of the Supreme Court to add
17 all sorts of things to the order to reflect the record.

18 THE COURT: If we enter an order, it's going to be
19 based on what happened then, a year and a half ago. It's not
20 going to be updated with what you think it should have now.

21 Mr. Morris, I'll take the order. I'm also going to
22 research if we think we logged it out and perhaps it got lost.
23 Because frequently after I sign an order it gets picked by a
24 runner from a different law firm, and we never know what
25 happens to it, and we have people a couple times a week that

1 have to resubmit orders because other runners picked up their
2 orders.

3 MR. MORRIS: The order we submitted is accompanied
4 by a copy of your minute order from that day, as well as the
5 transcript.

6 THE COURT: I'll look at it as soon as we get out of
7 here.

8 MR. MORRIS: Thank you.

9 THE COURT: Or after the bond calendar.

10 MR. SEARCY: Thank you, Your Honor.

11 THE COURT: So any other items that aren't on my
12 calendar this morning that you want to talk to me about?

13 MR. KRUM: One item of clarification about what
14 we're supposed to do tomorrow, I guess, or Monday. Hard
15 copies of the exhibits --

16 THE COURT: You do not need to bring hard copies of
17 the exhibits. Dulce's email said you don't need to worry
18 about the exhibit part because of your electronic exhibits
19 that you're using.

20 Right?

21 MR. KRUM: Thank you.

22 THE COURT: Anything else? Mr. Edwards.

23 MR. EDWARDS: We brought over a motion to stay, and
24 I don't know whether it was --

25 THE COURT: I signed it. I set it for Monday at

1 8:30.

2 (Pause in the proceedings)

3 MR. EDWARDS: We did serve it [inaudible].

4 THE COURT: Here you go, Mr. Edwards.

5 MR. EDWARDS: Thank you, Your Honor.

6 THE COURT: Apparently I was holding onto it.

7 Next? Any other issues before I get to what's
8 actually on calendar this morning?

9 If we could go to our motion for Rule 54(b)
10 certification and renewed motion for stay.

11 MR. KRUM: Thank you, Your Honor. So the
12 oppositions with respect to certification -- there was no
13 opposition from the individual defendants. They took no
14 position. The opposition from the company made a compelling
15 case, in our view, as to why both an order of certification
16 should issue, as well as a stay.

17 Let me ask. Did you receive and have an opportunity
18 to review the brief reply we submitted?

19 THE COURT: I did.

20 MR. KRUM: Okay.

21 THE COURT: And I have notes on it that I'm going to
22 say at the end that will make Mr. Searcy curious.

23 MR. KRUM: So, Your Honor, according to the
24 defendants, our case is dead on arrival based on the rulings
25 that you previously made.

1 THE COURT: I understand that's what your brief
2 said.

3 MR. KRUM: Yes.

4 THE COURT: And I understand their brief sort of
5 says that, too.

6 MR. KRUM: And to the point for the motions today,
7 Your Honor, the individual defendants acknowledge that those
8 rulings make our case against the remaining three defendants
9 more difficult legally. Those are the words they used.

10 THE COURT: So can I cut to the chase. The
11 defendants are not correct by indicating that they believe
12 that the conduct of the disinterested directors will not be
13 the subject of evidence before the jury for breach of
14 fiduciary duty claims as to the remaining defendants. If you
15 thought that, that was not what I said.

16 Okay. Next, Mr. Krum?

17 MR. KRUM: Yeah. Well, that's helpful, Your Honor.
18 It leads me to another point I have, which is I think legally
19 we're looking at potentially different standards. Assuming
20 based on what you said we're not looking at different
21 evidence, we nonetheless from the plaintiff's perspective are
22 going to be required to make a different showing on account of
23 your prior rulings. And this is why. There's no way to
24 explain to a jury how it is that three people, two or three or
25 more, as the case may be, but say, for example, with respect

1 to the 100,000 share option two people, Adams and Kane, with
2 respect to what I succinctly characterize as extortion, in
3 other words, the threat to terminate unless you settle. That
4 would be three people, Adams, Kane, and McEachern. So we put
5 on the evidence as you just described that all three of them
6 breached their fiduciary duties. There's no --

7 THE COURT: Mr. Krum, we deal with that in every
8 case, and we never explain to the jury while they're answering
9 questions on the questionnaire or interrogatories as to only
10 certain defendants. We just don't explain it. It's you don't
11 explain it. You present the evidence, you give them the
12 interrogatories, they answer them. That's part of the jury
13 instructions.

14 MR. KRUM: Well, I'm getting there. The jury
15 instruction is where I'm going on this. Bear with me. So how
16 do we explain from plaintiff's perspective that three people
17 who engaged in the same conduct, two of them are not
18 defendants here?

19 THE COURT: You don't explain it. It's not your
20 job.

21 MR. KRUM: No. And the jury instruction they're
22 going to propose is effectively going to tell the jury that,
23 well, those two people are the majority and therefore you
24 can't rule against the remaining one. And so what we're going
25 to do, Your Honor, is try a case where there is basically an

1 irrebuttable misimpression with which the jury will start.

2 And so on the stay issue what the defendants, all of
3 them, really said, Your Honor, it was made pretty clear I
4 think in the company -- so-called company opposition, they
5 don't want a stay because they want this motion that they
6 delivered yesterday, half of which is for reconsideration and
7 issues they should take up with the Nevada Supreme Court and
8 the other half of which is for summary judgment predicated on
9 evidence they created six days ago, they want that --

10 THE COURT: That's not set till Monday at 8:30.

11 MR. KRUM: Monday at 8:30. Right. And so they want
12 that to go forward, but they don't want -- they really don't
13 want the case to go forward. And I understand why they say
14 that, Your Honor. So we don't know, really, what the target
15 is, except for it's moving. It's moved since the last ruling,
16 and it may move again on Monday.

17 THE COURT: That's how litigation is, especially
18 when you're right before trial.

19 MR. KRUM: Your Honor, I think that the point of
20 that is two things.

21 THE COURT: Do you really want certification if I'm
22 not going to grant a stay?

23 MR. KRUM: Yes.

24 THE COURT: Okay. Do you object to certification?

25 MR. SEARCY: No objection, Your Honor.

1 THE COURT: The certification is granted because of
2 all the claims related to the what I've determined to be
3 disinterested directors have been resolved. That does not
4 preclude from presenting evidence related to the conduct or
5 activities of those as it relates to other issues in your
6 case. All right.

7 MR. KRUM: Your Honor, we had an order that
8 anticipated --

9 THE COURT: Granted in part?

10 MR. KRUM: -- granted in part. I thought we
11 distributed these, but perhaps not. What we did, Your Honor,
12 was it granted the certification motion --

13 THE COURT: And denied the stay?

14 MR. KRUM: Then it had check the box, grant the stay
15 or deny the stay.

16 THE COURT: Okay.

17 MR. KRUM: We were prepared for both eventualities.

18 THE COURT: This one's not that.

19 MR. SEARCY: This appears to be the wrong order, Mr.
20 Krum.

21 THE COURT: This isn't that order.

22 MR. KRUM: I have the wrong order. Well, that's --
23 my paralegal skills, and I once was one, have deteriorated.
24 So bear with me, Your Honor. I apologize.

25 Okay. The one that says what it should say.

1 THE COURT: Mr. Edwards, I did say the other day
2 that you or someone from your firm is required to be here for
3 the entire trial.

4 MR. EDWARDS: Okay. We're prepared.

5 THE COURT: It doesn't have to be you. You can send
6 [unintelligible].

7 MR. EDWARDS: I've got a trial coming up
8 [inaudible].

9 THE COURT: I just need local issue so if there is
10 an issue about the District Court Rules of the Eighth Judicial
11 Court or any of our unusual -- I will be able to turn Mr.
12 Searcy to a local Nevada attorney who can answer his questions
13 before I yell at him.

14 MR. SEARCY: I appreciate the [inaudible], Your
15 Honor.

16 THE COURT: Okay, Mr. Krum. Here's your order.
17 All right. Next? 'Bye. See you tomorrow at 3:00.

18 MR. FERRARIO: So I take it you did not want to hear
19 the points we raised and you'll hear them Monday?

20 THE COURT: What?

21 MR. FERRARIO: In our opposition.

22 THE COURT: I heard your opposition. Your
23 opposition primarily is there's nothing left to try, Judge.

24 MR. FERRARIO: And the math.

25 THE COURT: So we'll hear that Monday at 8:30. I

1 was not going to set it on less than 36 hours' notice.
2 MR. FERRARIO: No. I think that's good.
3 THE COURT: I know that we need one judicial day,
4 but some issues are a little more important.
5 MR. FERRARIO: Do we have a status check on Wynn on
6 Monday?
7 THE COURT: Okay. You're coming tomorrow at 3:00.
8 MR. FERRARIO: No. I know. Do we have a status
9 check --
10 THE COURT: And then you're coming Monday at 8:30.
11 MR. FERRARIO: What about Monday --
12 THE COURT: And then we're starting trial at 1:00
13 Monday.
14 MR. FERRARIO: I know.
15 THE COURT: I have 60 jurors coming.
16 MR. FERRARIO: I said the Wynn case.
17 THE COURT: Oh. Yes. I have an 8:00 o'clock
18 hearing on Monday on Wynn.
19 (Pause in the proceedings)
20 THE COURT: Dulce says there's nothing on Wynn. So
21 sleep in, Mr. Ferrario. I'll see you at 8:30 instead of 8:00.
22 Okay. Goodbye.
23 MR. FERRARIO: Thank you, Your Honor.
24 MR. MORRIS: Thank you, Your Honor. Monday at 8:30?
25 MR. KRUM: We're here Monday at 8:30, as well?

1 THE COURT: Monday at 3:00 [sic] -- Monday at 8:30
2 two motions. They're both about the same issue of the
3 ratification issue, and then we'll deal with it. Goodbye.

4 MR. MORRIS: Thank you, Your Honor.

5 THE PROCEEDINGS CONCLUDED AT 8:59 A.M.

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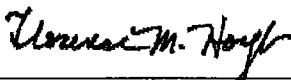
CERTIFICATION

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

AFFIRMATION

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

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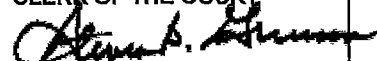
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20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

25 Plaintiff,

26 v.

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

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,
Nominal Defendant.

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

) Coordinated with:

) Case No. P-14-0824-42-E
) Dept. No. XI

) Jointly Administered

) **NOTICE OF APPEAL**

JA6326

1 Please take notice that Plaintiff James J. Cotter, Jr. hereby appeals
2 to the Supreme Court of Nevada and/or the Appeals Court of the State of
3 Nevada from:

4 1. The District Court's December 28, 2017 Order granting
5 summary judgment in favor of defendants Edward Kane, Douglas
6 McEachern, William Gould, Judy Coddington, and Michael Wrotniak on all of
7 Plaintiff's claims against them.

8 By Order dated January 4, 2018, the District Court certified its
9 Order dismissing these five defendants as final under Nev. R. Civ. P. 54(b)
10 and entered judgment in favor of them.

11 MORRIS LAW GROUP

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CERTIFICATE OF SERVICE

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

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DATED this 1st day of February, 2018.

By: /s/ Linda P. Daniel

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