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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc.,	Case No. A-15-719860-B Dept. No. XI
Plaintiff,	Coordinated with:
v.	Case No. P-14-0824-42-E
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK,	Dept. No. XI Jointly Administered
Defendants.	**PLAINTIFF'S OPPOSITION TO ELLEN COTTER, MARGARET COTTER AND GUY ADAMS' MOTION FOR SUMMMARY JUDGMENT (BASED ON "RATIFICATION"); DECLARATION OF MARK G. KRUM**
And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	**HEARING DATE: JUNE 19, 2018** **HEARING TIME: 8:30 A.M.**

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Case Number: A-15-719860-B

Docket 75053 Document 2019-23839

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I. INTRODUCTION

"Ellen Cotter, Margaret Cotter, and Guy Adams Motion for Summary Judgment" (the "Ratification MSJ") argues that certain Reading International, Inc. ("RDI" or the "Company") directors, pursuant to NRS 78.140, "ratified" certain prior conduct that remains at issue in this case and that, because the Court previously had determined that no disputed issues of material fact existed regarding their independence with respect to the matters raised in motions for partial summary judgment, those directors are independent for the purposes of the Ratification MSJ which, they argue, therefore should be granted. The Ratification MSJ must be denied for a number of independent reasons, including the following:

NRS 78.140 has no application here and, even if it did, would not warrant the relief sought by the Ratification MSJ. By its terms, NRS 78.140 applies solely to contracts and transactions between the corporation, here RDI, and the interested directors and/or officers, here, Ellen Cotter, Margaret Cotter and Guy Adams. Here, neither of the matters purportedly ratified are contracts or transactions between RDI and any or all of those defendants. Moreover, even if NRS 78.140 applied here, which it does not, it requires any decision made pursuant to it be made by independent directors acting in good faith.

Unlike the motions for partial summary judgment, in which Plaintiff bore the burden of proof on the issue of the independence of individual directors who sought to invoke the business judgment rule, here the moving party bears the burden of proving (i) the independence of the board members whose actions and/or decisions serve as the basis for the relief sought, and (ii) that those directors conducted a good faith and thorough investigation. The Ratification MSJ fails to satisfy either of those burdens.

With respect to the independence of the directors whose conduct serves as the basis for the Ratification MSJ, it proffers no evidence whatsoever. That failure alone requires denial. Moreover, the record evidence shows a lack of independence, as a matter of fact and law. First, the "independent" directors here relied entirely on "advice" from counsel representing RDI. Courts repeatedly have found that the use of company counsel evidences a lack of independence of the supposedly independent committee and/or

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individual directors who do so. Second, other factors considered in determining director independence also show a lack of independence, as shown below.

With respect to whether the directors whose conduct serves as the basis for the Ratification MSJ conducted a thorough investigation in good faith, resulting in an informed decision-making process, the sole evidence proffered in support of the Motion is the minutes of the December 29, 2017 board meeting, as if defendants had succeeded in concealing from Plaintiff and the Court the hasty, sham exercise that preceded that meeting and resulted in the preordained result, "ratification." What the belatedly produced evidence and privilege logs show is that the "ratification" scheme was conceived by GT lawyers, who first obtained approval from defendants Ellen Cotter and Margaret Cotter to pursue it, and then "advised" supposedly independent directors to "ratify" certain conduct the Court previously found to be actionable, all for the purpose of creating a purported basis on which to seek dismissal of this derivative action.

For their part, not one of the supposedly independent board members undertook in good faith to make an informed decision; instead, each did as he or she was "advised" by the conflicted lawyers on whom they mistakenly relied. Indeed, privilege log entries appear to indicate that RDI in-house counsel Craig Tompkins and defendant Ellen Cotter herself at least reviewed if not provided input regarding the operative language of Gould's December 27, 2017 email. Of course, that became the operative language of the agenda for the December 29, 2017 board meeting and, ultimately, the draft minutes which serve as the basis for the ratification MSJ.

Independent of the foregoing, the purported ratification with respect to the exercise of the so-called 100,000 share option by its terms does not "ratify" the disputed determination regarding ownership of the purported option, which remains at issue in this case. That alone also requires denial of the Ratification MSJ.

Separately, Plaintiff is entitled to relief under NRCP 56(f). Plaintiff is still reviewing and analyzing privilege logs and documents produced on May 30 and 31, 2018, as well as thousands of pages of documents produced on Saturday, June 9, 2018, Monday and Tuesday, June 11 and 12, and anticipates receiving a further supplemental

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privilege log to be produced on or about June 13, 2018. The Court previously ruled that Plaintiff is entitled to time to review such material to determine what further discovery if any Plaintiff needs. Given the significance of the responsive documents not disclosed (produced and or logged) until the very end of May 2018, and in view of the supplemental productions of June 9, 11 and 12, 2018, as well as the advice that a supplemental and/or superseding privilege log will be produced on or about June 13, 2018, Plaintiff is entitled to Rule 56(f) relief.

Finally, if the Court does not deny the Ratification MSJ or provide Plaintiff with Rule 56(f) relief, Plaintiff is entitled to and requests an evidentiary hearing with respect to both issues as to which defendants bear the burden of proof, namely, independence and a thorough investigation conducted in good faith. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 645, 137 P.3d 1171, 1187 (2006). As the record (including from May 2, 2018 evidentiary hearing) makes clear, questions of fact and credibility, the latter on the part of both the "independent" directors and their conflicted counsel, predominate.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A. Creation and Delegation of Authority to the SIC

In August 2017, the RDI board of directors to (the "Board") authorized the formation of a "Special Independent Committee" (the "SIC" or "SLC"). (*See* **Ex. 1** hereto, RDI's February 23, 2018 Form 8-K.) On or about February 23, 2018, RDI filed a Form 8-K with the SEC. That Form 8-K attached and disclosed publicly for the first time the Charter of the SIC. (*Id.* at Ex. 99.2) (The charter was admitted as defendants' Ex. B at the May 2, 2018 evidentiary hearing.) Section IV of the Charter describes the responsibilities and duties of the SIC, including the authority delegated to it with respect to this derivative action and other lawsuits (defined therein as "Cotter Related Proceedings"). The Charter states in relevant part as follows:

RESPONSIBILITIES AND DUTIES

To fulfill its responsibilities and duties, the [SIC] is authorized to, in its discretion:

****

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> ii. ... [I]nstruct legal counsel representing the Company to take certain actions, including but not limited to, file pleadings or other papers, appear in any proceedings... and otherwise take such steps as the [SIC] deemed to be in the best interest of the Company in any Cotter Related Proceedings [which includes this derivative action] or
>
> iii. Participate in and direct legal counsel representing the Company to conduct negotiations and take actions to resolve matters related to the Cotter Related Proceedings...
>
> iv. Report to the Board, as it determines to be appropriate (subject to the maintenance of attorney-client privileges and with due regard for and the institution of appropriate safeguards in order to take into account any conflicts of interest that may exist involving other members of the Board and without limiting its delegated authority under this Charter), its recommendations and conclusions with respect to the determinations delegated to it by this Charter; and
>
> v. Take all such other actions as the [SIC] may deem to be necessary or appropriate in connection with the above.
>
> **********
>
> *The [SIC] shall have the authority to enter into or bind the Company in connection with a Cotter Related Proceedings...* provided, however, that the [SIC] shall not have any authority to ...approve any merger, consolidation or liquidation of the Company.

(*Id.*) (Emphasis supplied.)

B. The Inception of "Ratification" With the SIC.

According to deposition testimony of former defendants and current RDI directors Douglas McEachern ("McEachern") and William Gould ("Gould"), the subject of ratification was first raised with them by lawyers from Greenberg Traurig ("GT"). McEachern testified that the subject of ratification was raised "in late Fall sometime of 2017," at which time it was tabled. (*See* **Ex. 7** hereto, McEachern 2/28/18 dep. tr. at 548:21-550:1.) McEachern explained that the "main focus was on the termination of Jim Cotter,

Jr." (*Id.*) McEachern also testified that "ratification" was within the purview of the SIC's responsibilities, as follows:

> *"[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification]...."*

(*Id.* at 507:1-508:2, 546:1-10.) (Emphasis supplied.)

Gould testified that the first communication he had regarding ratification was telephonically in mid or late November 2017 with GT lawyers Michael Bonner ("Bonner") and Mark Ferrario ("Ferrario"). (*See* **Ex. 6** hereto, Gould 4/5/18 dep. tr. at 509:13-15.) Gould testified that "ratification" was within the scope of his responsibilities as Chair of the SIC, as follows:

> "I was the chairman of the special [independent] committee and [GT lawyers Bonner and Ferrario] were discussing [ratification] with me in my capacity as the chairperson of that committee."

(*Id.*)

C. GT Previously Cleared "Ratification" With Defendants Ellen and Margaret Cotter.

1. Late 2016 and Early 2017

For the first time on May 30 (and 31), 2018, GT produced supplemental privilege logs jointly on behalf of RDI and the five dismissed directors. The May 30 log discloses for the first time what apparently were communications in *November or December 2016 and January 2017* regarding "ratification," among other things. (Although the log entries are deficient on their face, the inclusion of them in the log must mean that they concern "ratification.") The first entry, dated November 22, 2016, is an email from Craig Tompkins, who then was special counsel to Ellen Cotter as CEO of RDI (Ex. 18 to Plaintiff James J. Cotter Jr.'s Motion to Compel, Filed on June 8, 2018 ("JJC 6/8/18 Motion")), Tompkins 10/18/17 dep. tr. at 60:1-12), to GT attorneys Bonner and Ferrario, copied to Ellen Cotter, the subject of which is "alternative approaches: attorney-client privileged attorney work product communication." (*See* Ex. 2 to JJC 6/8/18 Motion, entry ending in 71278.) The next entry is a December 7, 2016 email from Ferrario to Tompkins and Quinn Emanuel attorneys Marshall Searcy and Christopher Tayback, the subject of which is the

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attached "option memo." (*See id.*, entry ending in 67300.) The next two entries are dated January 6 and 7, 2017, concern "alternative litigation resolution approaches" and are between Tompkins and Bonner, and copied to Ferrario *and to Ellen Cotter*. (*See id.*, entries ending in 71290 and 64891.)

2. December 2017.

In December 2017, before seeking and securing approval of "ratification" from the SIC on December 21 (described below), GT lawyers cleared the "ratification" "process" with Margaret Cotter, Ellen Cotter and Tompkins.[1] On December 13, 2017, Ferrario and Bonner exchanged emails with Tompkins, *which emails were copied to Ellen Cotter*, regarding the subject of a "Special Committee." (*See* Ex. 1 to JJC 6/8/18 Motion, entry ending in 60907 and 60911; *see also* Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log, entries ending in RDI 73538, 76569, 76783.) Those emails are described as "Communication[s] regarding Ratification process." (Ex. 1 to JJC 6/8/18 Motion, entries ending in 60907 and 60911.)

Again on December 15, 2017, Bonner exchanged emails with Tompkins, *which emails also were copied to Ellen Cotter*, regarding "Misc." (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60823 and 60824.) Those emails are described as "Communication[s] regarding ratification process." (*Id.*)

Also on December 15, 2017, Ferrario discussed the subject of ratification with *Margaret Cotter* in person. (*See* Ex. 16 to JJC 6/8/18 Motion, Margaret Cotter's February 14, 2018 Interrogatory Responses, No. 2.) (Margaret Cotter's interrogatory responses disclosed this communication regarding "ratification," but not others described herein.)

On December 21, 2015, Bonner sent an email to Tompkins, copied to *Ellen Cotter* and Ferrario, regarding "special committee/stockholder action alternatives." (*See* Ex. 1 to JJC 6/8/18 Motion, entry ending in 60533.) Ellen Cotter at her deposition acknowledged

[1]As to Craig Tompkins, RDI's General Counsel to whom GT attorneys report, Kane at deposition explained that the words he used in an email stating "according to [Ellen Cotter], Craig is also on the 'team[,]' meant that Tompkins "was [with] Ellen and Margaret versus Jim." (*See* Ex. 14 to JJC 6/8/18 Motion, Kane 5/2/16 dep. tr. at 176:18-177:1; Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105).)

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receiving this email. (*See* Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter 4/4/18 dep. tr. at 479:21-480:6.)

D. The SIC Approves "Ratification."

The SIC met telephonically with GT attorneys Bonner and Ferrario on December 21, 2017. (*See* Ex. 5 to JJC 6/8/18 Motion, redacted minutes of that December 21, 2017 meeting; *see also* GT May 31, 2018 Privilege log, entries CN 2075, 2174, 2494, 2504, 2634.) As described below, they approved "ratification" of the two decisions which thus became the subject of "ratification" votes at the December 29, 2017 Board meeting.

McEachern testified that the SIC at the December 21, 2017 telephonic meeting approved ratification in an effort to "resolve" certain issues that remained in this derivative action, stating as follows:

> *"[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification].* ... I think we had a call [on December 21, 2017] to talk about a couple issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and we were trying to address them in a fashion to resolve them."

(See Ex. 7 hereto, at 507:1-508:2, 546:1-10.) (Emphasis supplied.)

With respect to the December 21, 2017 SIC meeting, Gould testified that the SIC "formally [took] action" to advance "ratification." (*See* **Ex. 5** hereto, at 529:10-18.) As to the purpose of the "ratification(s)," Gould admitted that "ratification might be a litigation strategy" employed in this derivative action (in an effort to create a basis upon which to seek dismissal in advance of trial). (*See id.*, at 541:15-18.)

With respect to the December 21, 2017 SIC meeting, Codding testified that Bonner and/or Gould explained the notion of ratification with respect to the two matters later taken up at the December 29, 2017 Board meeting. Codding testified that the SIC approved "ratification," explaining that she did not distinguish between the process or fact of "ratification" and the merits of the two "ratification" decisions (that defendants claim were made at the December 29, 2017 Board meeting). (*See* **Ex. 4** hereto, at 205:24-207:4.)

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E. GT Works With Tompkins and Ellen Cotter to Effectuate the "Ratification" by "Independent" Directors

The next day, December 22, 2017, GT lawyers followed through with the ratification scheme. Ferrario's assistant sent emails, one to Tompkins' assistant and one to Ellen Cotter's assistant, regarding "call re letter for special committee meeting re ratification." (See Ex. 2 to JJC 6/8/18 Motion, at entries RDI 67258 and64872.) Tompkins responded and an email chain ensued. (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60258, 60260, 60262, 60265 and 60267.) (The "letter for special committee meeting re ratification" it appears to refer to what came to be the December 27, 2017 email from Gould purportedly on behalf of the five "independent" Directors.)

F. The December 27, 2017 Email Was Prepared by Litigation Counsel With Input From Tompkins and Probably Ellen Cotter, But Not Gould, and Not the "Independent" Directors, Who Did Not See It Before It Was Sent.

On December 27, 2017, Bonner and other GT lawyers exchanged emails with Tompkins about one or more drafts of what came to be the December 27, 2017 email[22] sent by Gould, purportedly on behalf of the five dismissed directors. Several privilege log entries describe the emails as "Communication regarding draft letter re Special Board Meeting." (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 57090, 59768, 59899, 59911, 59912, 59959, 60790, 60802 and 60810.) Also on December 27, 2017, Tompkins and GT lawyers exchanged the subjects of which were "Ratification," and which are described as "Communication[s] regarding draft letter re Special Board Meeting" or "Communication[s] regarding Special Meeting Request." (*See id.*, entries ending in 60404, 60408, 60412, 60424, 60428, 60450, 60464, 60843, 60846.)

Several of the December 27, 2017 emails with the subject "Ratification" also *were copied to Ellen Cotter*. (*See id.*, entries ending in entries ending in 60450, 60452, 60464 and 60846; Ex. 2, 5/30/18 privilege log, entries ending in RDI 68619, 68626, 70083, 70095.)

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[22] That email was marked as Dep. Ex. 527 and Ex. P-1 from the 5/2/18 evidentiary hearing. It is attached as Ex. 6 to the JJC 6/8/18 Motion.

After receiving responses from Tompkins and possibly Ellen Cotter regarding the draft of what came to be Gould's December 27, 2017 email, GT attorney Bonner on December 27, 2017 sent Gould an email, with a copy to GT attorney Ferrario, the "re" line of which read "**FW**: for Bill Gould to sign," which RDI's privilege log also describes as "communication regarding draft letter re Special Board Meeting." (*See id.*, entries ending in 59792 and 59937.) (Emphasis supplied.)

At his deposition, Gould identified the December 27, 2017 email[3] which was sent shortly before 8:00 p.m. Pacific by Marcia Wizelman, Gould's assistant, to Ellen Cotter, as the notice ("call") by the five dismissed directors for "ratification" be raised and approved at the next regularly scheduled board meeting. (*See* **Ex. 5** hereto, at 530:2-10.) Gould testified that he did not draft or edit the December 27, 2017 email, but rather that it was drafted by GT attorneys Bonner and Ferrario. (*Id.* at 530:18-25.)

However, none of the five other than Gould saw the December 27, 2017 email (Dep. Ex. 527) prior to their depositions. McEachern testified with respect to Dep. Ex. 527 that "I don't recall having seen this before, but I do recall speaking in our [December 21, 2017] special committee [meeting] with Bill Gould and Judy Codding about asking to have this done." (*See* **Ex. 7** hereto, at 544:3-8.) Codding's testimony was to the same effect. (See Ex. 4 hereto, at 231:7-232-5.) Wrotniak testified that he did not recall seeing Dep. Ex. 527 prior to preparing for his deposition. (*See* **Ex. 10** hereto, at 91:17-92:4.) Kane also testified that he had no recollection of seeing Dep. Ex. 527 prior to his deposition. (*See* **Ex. 11** hereto, at 681:14-19.)

G. The December 27 Email was the Source of the "Ratification" Agenda for the December 29, 2017 Board Meeting.

The text of December 27, 2017 email was used to prepare the corresponding portion of the agenda for the December 29, 2017 board meeting. (*See* 5/2/18 hearing tr. at 56:25-57:5; Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter dep. tr. at 485:9-486:3.) The February

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[3] Ex. 6 to JJC 6/8/18 Motion, marked as Dep. Ex. 527 and as Ex. P-1 from the 5/2/18 evidentiary hearing.

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22, 2018 privilege log also identified an email exchange between Bonner with Tompkins, Ellen Cotter, Gould, and GT litigators regarding "Draft for your review," which was described as a "Communication regarding notice and agenda for upcoming board meeting," (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60777 and 60780); *see also id.*, entry ending in 60273, described as "[c]ommunication re draft board meeting materials.")

That agenda[4] was distributed at approximately 5:30 p.m. Pacific on December 27, 2017. The draft minutes of the December 29, 2017 meeting[5] reflect that they were prepared in part by copying from the agenda, which was prepared in relevant part based upon the December 27, 2017 email.

H. "Independent" Directors Approved "Ratification" to Terminate this Action.

1. Gould

Gould testified that the key factor in his vote to ratify the termination of Plaintiff as President and CEO of RDI was that this derivative litigation already had occurred. (**Ex. 5** hereto, at 544:10-545:17.) He explained that he had voted against the termination of Plaintiff because the directors had given Plaintiff "a period of time to have his performance monitored, and then there would be an evaluation by the board. The actual termination occurred maybe a month before that. I viewed that as a mistake...[a]nd secondly, at the time I was worried... that would lead to extensive, expensive litigation, which turned out to be the case." He concluded that "the litigation has occurred, so I can take that factor out of my equation..." (*Id.*) Thus, Gould voted to "ratify" for reasons unrelated to the merits of the subjects of "ratification," and instead did so in furtherance of what he admitted was a "litigation strategy" for dealing with this derivative action. (*Id.* at 541:15-18.) Gould testified that "[m]y vote would be to terminate, to terminate the derivative action." (*Id.* at 547:17-19, 548:19-23.) He acknowledged that the reason he would vote to terminate this derivative action is that he was a defendant. (*Id.* at 548:24-549:4.)

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[4] The agenda was marked as Dep. Ex. 525, and is attached as Ex. 7 to JJC 6/8/18 Motion.

[5] The draft minutes were marked as Dep. Ex. 526, and are attached as **Ex. 21** hereto.

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2. McEachern

With respect to his support for "ratification," McEachern testified as follows:

> "And I believe we had -- I think we had a [Special Independent Committee] call [on December 21, 2017] to talk about a couple of issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and *we were trying to address them in a fashion to resolve them.*"

(**Ex. 7** hereto, McEachern 2/28/18 dep. tr. at 506:23-507:12.) (Emphasis supplied.)

When asked how the "ratification" vote would "resolve" issues remaining in this derivative action, McEachern acknowledged that the "ratification" vote was to "cure any issue anybody might think existed." (*Id.* at 507:13-508:2.) McEachern likewise testified that he would "vote to dismiss the [derivative] lawsuit. (*Id.* at 526:14-21.)

3. Codding

Codding testified that the first time she learned of "ratification" was the (telephonic) SIC meeting (of December 21, 2017). (**Ex. 4** hereto, at 206:16-207:4.) When asked if there was any discussion bearing upon the merits of the ratification decision as distinct from the fact of ratification, Codding testified there was no distinction in her mind. (*Id.* at 205:8-207:14.)

Codding identified Bonner and Ferrario and Quinn lawyers Tayback and Searcy as lawyers who have spoken to the SIC. (*Id.* at 217:24-215:3.) She testified that the SIC has never discussed engaging its own independent counsel. (*Id.*)

With respect to "ratification" of the decision to terminate Plaintiff as President and CEO of RDI, Codding admits that she does not know if the (May 21 and 29, 2015 and June 12, 2015) minutes included as part of Exhibit 525, the Board package for the December 29, 2017 meeting, are accurate. (*Id.* at 222:14-25.) She admitted that she was not present and therefore does not know when Adams, Kane and McEachern determined to vote to terminate Plaintiff as President and CEO. (*Id.*) Codding also admitted that she had never heard that Plaintiff was told at the May 29, 2015 meeting that the meeting would reconvene telephonically at 6 p.m. and that, if he had not resolved his differences

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with his sisters, they would proceed with the termination vote. (*Id.* at 229:20-230:2.)[6] Codding's understanding of what exactly she voted to ratify with respect to the termination of Plaintiff was that RDI would not hire him as the CEO; and to ratify the vote that was taken to not have him as the CEO. (*Id.* at 230:10-21.)

Prior to voting in favor of "ratification" with respect to the 100,000 share option, Codding had no discussions with Kane or Adams about what they did or did not do as Compensation Committee members in determining to authorize the exercise of the 100,000 share option. (*Id.* at 258:6 – 15.)

As to her efforts generally to make an informed decision about the matters to be "ratified," Codding admitted she has not read any deposition transcript in this case other than her own *and has not looked at any deposition exhibits other than from her own deposition. (Id.* at 230:3-9.)

In response to the question of whether she would vote to allow the derivative lawsuit to proceed, she answered "I don't think it should go forward." (*Id.* at 234:12-17.) She explained that she did not see the purpose of it or understand it. (*Id.*) *When asked if her decision to vote in favor of "ratification" reflected her view of this derivative action, Codding testified that she could not answer the question without disclosing an attorney client communication.* (*Id.* at 232:19-233:1.)

4. Wrotniak

Wrotniak first learned that "ratification" would be taken up at the December 29, 2017 Board meeting from a telephone call he and Codding had with Ferrario and Bonner. Wrotniak described the subject matter of the call as the agenda for the December 29 meeting and *"protection for Reading."* (**Ex. 10** hereto, Wrotniak 3/6/18 dep. tr. at 41:2-42:25.)

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[6] Prior to May 19, 2015, Adams and Kane (and McEachern) communicated to EC and/or between or among themselves their respective agreement to terminate Plaintiff as President and CEO. (**Ex. 13**, Ellen Cotter 6/16/16 Dep. Tr. 175:17-176:8; **Ex. 8**, Storey 2/12/16 Dep. Tr. at 96:5-97:4; 98:21-100:8, 100:14-101:11; **Ex. 2**, Adams 4/28/16 Dep. Tr. at 98:7-17, 98:18-99:22, **Ex. 3**, Adams 4/29/16 Dep. Tr. 368:15-370:5; **Ex. 9**, Storey 8/03/16 Dep. Tr. at 66:22-67:20; and **Ex. 19** hereto, Dep. Ex. 131). Kane emailed Adams in which Kane agreed to second a motion for Plaintiff's termination, if necessary. (**Ex. 16**, Dep. Ex. 81.) Meanwhile, Gould and Storey objected that the directors had not undertaken an appropriate process regarding any decision to terminate Plaintiff as President and CEO, and requested that the directors meet prior to the May 21, 2015 meeting. (**Ex. 20**, Dep. Ex. 318, and **Ex. 17** hereto, Dep Ex. 116.) Kane replied that there was no need to meet as "the die is cast." (**Ex. 18**, Dep. Ex. 117) The May 21, 2015 meeting was adjourned until May 29, 2015 at 11:00am. That meeting was then adjourned until 6:00pm that evening, and Plaintiff was told that he needed to resolve his disputes with his sister by then or he would be terminated. (**Ex. 14** hereto, JJC Decl. ¶15).

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The call lasted less than an hour and occurred in the days before the December 29 Board meeting. (*Id.* at 44:3-22.) The May 31, 2018 privilege log includes entries that appear to indicate that the call occurred on December 28, 2018. (Ex. 3 to JJC 6/8/18 Motion, at entries RDI 76466 and 76469.) Wrotniak testified that "[i]t was agreed" in that call that the December 29 Board meeting would include "ratification." (*See* **Ex. 10** hereto, at 87:7-22.)

Wrotniak received Dep. Ex. 525, the Board package for the December 29, 2017 (telephonic) Board meeting, at or about 8:30 p.m. Eastern on December 27, 2015. (**Ex. 10**, at 39:17-40:19.) That was the first time he had seen the agenda. (*Id.*)

In explaining why he voted to ratify the termination of Plaintiff as President and CEO of RDI, Wrotniak testified that he relied on the May 21 and 29, 2015 and June 12, 2015 Board minutes included in the Board package. (*Id.* at 71:18 – 72:6.) With respect to the board minutes, he testified that he recalled noting "that approximately a week had passed, giving everybody time to pause and to think[,]" but he admitted that he had no information regarding whether anyone did so. (*Id.* at 62:20 – 63:20.)

As for what actually happened in connection with the termination of Plaintiff, Wrotniak does not know. He does not recall ever learning that Adams, Kane, McEachern and Ellen Cotter had agreed prior to the May 21, 2015 meeting to vote to terminate Plaintiff. (*Id.* at 49:16 – 15:18.) For example, he testified he had never seen Dep. Ex. 81 (**Ex. 16** hereto), the Kane May 18, 2015 email to Adams that memorializes their (prior) agreement to vote to terminate Plaintiff. (**Ex. 10**, at 50:19-51:2.)

As to the May 21 and 29, 2015 and June 12, 2015 Board minutes that were the stated basis for his "ratification" vote, Wrotniak admitted that he has no basis upon which to determine whether those minutes are accurate or fairly depict what transpired. (*Id.* at 74:8–22.) (In fact, those minutes are rife with inaccuracies, as former director Tim Storey confirmed.)[7]

[7] (**Ex. 9** hereto, Storey 8/03/16 Dep. Tr. at 81:22 – 82:6; *see also* **Ex. 15** hereto, Dep. Ex. 17 (Storey Handwritten notes from meeting))

Likewise, Wrotniak never heard or learned that, when the May 29 meeting recessed to be reconvened telephonically at 6:00 p.m., Plaintiff was told that he needed to resolve his disputes with his sisters, failing which the termination vote would proceed when the meeting reconvened. (**Ex. 10**, at 65:10 – 18.)[8] Wrotniak saw that the May 29 minutes referenced an agreement in principle, but he has never communicated with anyone about that. (*Id.* at 66:3 – 13). Wrotniak does not know whether a vote to terminate Plaintiff would have occurred had Plaintiff resolved his disputes with his sisters. (*Id.* at 67:3–13.) Wrotniak likewise has no understanding how the June 12 meeting came to be scheduled. (*Id.* at 66:20–24.) Wrotniak does not recall ever talking to Gould about what happened at the May 21 and 29, 2015 and June 12, 2015 meetings. (*Id.* at 65:19–66:2.)

With respect to his "ratification"of the use of RDI Class A nonvoting stock as consideration for the exercise of the 100,000 share option, Wrotniak did not recall taking any steps to inform himself other than reading Exhibit 525, the board package. (*Id.* at 79:3-7.) Wrotniak does not recall having heard anything about a pour over will or trust, including whether it caused the 100,000 share option to be held or owned by the Trust rather than the Estate. (*Id.*, at 82:2–17.) Wrotniak testified that "that would have impacted my investigation and thought process." (*Id.* at 82:18 – 83:10.) Wrotniak had no communications with Kane or Adams about what they did in 2015 in response to the request to exercise the 100,000 share option. (*Id.* at 83:11–1.)

As for his efforts generally to make an informed decision about the matters "ratified," Wrotniak testified that he has not read any of the deposition transcripts in this derivative case and has not talked with anyone about their deposition testimony. (*Id.* at 51:17-22)

Finally, Wrotniak testified that he has no understanding of the import or significance of the two ratification votes that occurred on December 29, 2017 beyond what he was told by GT lawyers Ferrario and Bonner. (*Id.* at 88:12–23.)

[8] *See* evidence cited at footnote 3, *supra.*

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5. Kane

Kane voted to "ratify" both matters raised at the December 29, 2017 board meeting. (**Ex. 11** hereto, Kane 4/20/18 dep. tr. at 686:11-13.) In doing in doing so, he voted in favor of decisions he had made previously. (*Id.* at 686:14-16.) In voting to "ratify," Kane acknowledged that he thought he was correct when he made the original decisions and that he therefore voted for "ratification." (*Id.* 686:14-16.) With respect to how he would vote on whether this derivative lawsuit should proceed or be terminated, Kane answered "terminate it tomorrow, please sir." (*Id.*, at 686:14-16.)

I. What Was Not "Ratified" Regarding the 100,000 Share Option.

1. Ownership of the 100,000 Share Option Remains an Issue in the Case.

Plaintiff contends Kane and Adams, in breach of their fiduciary duties, authorized Ellen Cotter as an executor of the estate of James J. Cotter, Sr. (the "Estate") to exercise a supposed option to acquire 100,000 shares of RDI class B voting stock (the "100,000 share option") so that EC and MC could prevail in the event non-Cotter shareholders challenged them at RDI's 2015 Annual Stockholder Meeting ("ASM"). (*See* Second Amended Complaint ("SAC"), ¶¶ 10, 102 – 108.) More particularly for present purposes, Plaintiff claims that Kane and Adams breached their fiduciary duties by failing to take proper steps to determine ownership of that option. (SAC ¶¶10, 107.) As the Court knows from prior motion practice, Kane and Adams failed to obtain independent advice, failed to obtain a judicial decision authorizing the exercise, and failed to obtain answers to the questions Kane posed regarding whether the Estate owned the 100,000 share option.[9] Plaintiff claims that these failures constitute breaches of fiduciary duty, independent of the use of RDI class A nonvoting stock as consideration for the exercise of the 100,000 share option. (SAC ¶¶10, 102-108; Plaintiff's May 18, 2018 Pre-Trial Memo Section II.B.2)

As explained by Kane, both in emails produced in this case by defendants and in his deposition testimony, the issue(s) the compensation committee members needed resolved to authorize (or not authorize) the exercise of the 100,000 share option included

[9] *See* **Ex. 2** hereto, Adams 4/28/18 Dep. Tr. at 215:24-216:22, 218:3-219:2, 220:9-20; **Ex. 6** hereto, Kane 5/2/16 Dep. Tr. at 94:19-95:20, 100:23-102:21, 104:13-23.

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the threshold issue of whether that option was the property of the James J. Cotter, Sr. Trust (the "Trust"), as RDI's Proxy Statement in 2014 and years prior had stated and as Plaintiff contended, or whether it was the property of the Estate, as Ellen Cotter contended. In an April 17, 2015 email, Kane summarized the issue(s) as whether there was "any legal reason why Ellen [Cotter], as executor, could not exercise" the share option. (*See* E-mail from Kane to Tompkins, Ellen Cotter, Margaret Cotter, Tim Storey, and Guy Adams, Apr. 17, 2015, 22:44, Exhibit 16 to James Cotter Jr's Reply in support of Motion to Reconsider Order, at 186.) In another email, Kane identified a particular legal issue as whether, by operation of the Trust documents of James J. Cotter, Sr. (under California law), the 100,000 share option had poured over into his Trust upon his death. (*See* E-mail from Kane to Storey, Apr. 18, 2015, 12:26, Exhibit 19 to James Cotter Jr's Reply in support of Motion to Reconsider Order, at 194.)

As Plaintiff previously demonstrated and the Court found, Adams and Kane testified that the sole basis upon which they concluded that the Estate owned the 100,000 share option was the substance of the advice of counsel, including attorney Craig Tompkins ("Tompkins"), at the time a Company "consultant" (and former officer), and the law firm of GT (collectively, "Company Counsel"). (**Ex. 2** hereto, at 215:24-216:9 and 220:9-221:2); **Ex. 6** hereto, at 94:19-95:20, 100:23-102:21 & 104:13-23)

2. Only the Use of RDI Class A Nonvoting Stock as Consideration for the Exercise of the 100,000 Share Option Was "Ratified."

The December 27, 2017 email prepared by GT lawyers (and reviewed if not edited by Tompkins and Ellen Cotter) and sent by Gould's assistant on behalf of the five "independent" directors (Dep. Ex. 527), the agenda for the December 29, 2017 RDI board meeting (Dep. Ex. 525), and the minutes from that meeting (Dep. Ex. 526) each describe the "ratification" of the exercise of the 100,000 share option as concerning only the use of RDI class A nonvoting stock as a consideration. Each reads as follows:

> "The ratification of the decision of the Compensation Committee, as outlined in the Minutes of the September 21, 2015 Meeting of the Compensation Committee, to permit the estate of James J. Cotter, Sr.

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to use Class A nonvoting stock as a means of payment for the exercise of the option to purchase 100,000 shares of Class B voting stock of RDI."

III. ARGUMENT

A. The Ratification MSJ Is Untimely.

As described above, the Court previously denied the Ratification MSJ because the failure to file it in a timely manner was not shown to be excused. Nothing in the Motion provides an excuse for the failure to timely file the Ratification MSJ. The Motion does not even contend, much less show, that the very same choreography, and the same purported ratifications, could not have occurred in time to have been the subject of a timely summary judgment motion.

On the contrary, it now is clear from McEachern's testimony described above that defendants chose not to pursue "ratification" when doing so would have enabled them to file a summary judgement motion based thereon in a timely manner, but instead "tabled" it. The Motion therefore should be denied.

B. NRS 78.140 Does Not Apply to the Matters Purportedly "Ratified."

The Ratification MSJ argues that "independent" members of the RDI board "ratified" prior conduct of certain of them in terminating Plaintiff as President and CEO of RDI in 2015 and later in 2015 in authorizing the acceptance of RDI class A nonvoting stock as consideration for the exercise of the 100,000 option. NRS 78.140 is the sole authority upon which they rely.

However, under the plain meeting of NRS 78.140, it applies solely to ***transactions between*** the ***corporation and interested directors and/or officers***. NRS 78.140 provides in relevant part as follows:

> **Restrictions on transactions involving interested directors or officers; compensation of directors.**
>
> 1. *A contract or other transaction is not void or voidable solely because*:
> (a) *The contract or transaction is between a corporation and*:
>
> (1) *One or more of its directors or officers*; or

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(2) Another corporation, firm or association in which one or more of its directors or officers are directors or officers or are financially interested;

(b) A common or interested director or officer:

(1) Is present at the meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction; or

(2) Joins in the signing of a written consent which authorizes or approves the contract or transaction pursuant to subsection 2 of NRS 78.315; or

(c) The vote or votes of a common or interested director are counted for the purpose of authorizing or approving the contract or transaction, if one of the circumstances specified in subsection 2 exists.

2. The circumstances in which a contract or other transaction is not void or voidable pursuant to subsection 1 are:

(a) The fact of the common directorship, office or financial interest is known to the board of directors or committee, and the directors or members of the committee, approve or ratify the contract or transaction in good faith.

NRS.78.140 (emphasis supplied).

NRS 78.140 has no application here, as the plain language of the statute, italicized above, shows. Clearly, the purpose of NRS 78.140 is to create a path for the approval of director or officer self-interested transactions ***with the corporation*** that might otherwise be void or voidable. The specific language of subsection (1)(a) makes clear that, for the statute to apply, there must be a contract or transaction between a corporation and one or more of its directors or officers (or corporations with which they are affiliated in certain ways). Only that situation triggers the remaining provisions of Section 1, which are qualified by section (1)(a) and must be read in conjunction with section (1)(a). The "contract or transaction" in subsections (1)(b) and (1) (c) indisputably refers to the contract or transaction described in (1)(a), which is a contract or transaction between a

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corporation and one or more of its directors or officers. Such a transaction is not void or voidable, and the participation of the interested directors or officers as contemplated by subsections (1)(b) and (1)(c) is permitted, if the board or committee ratifies the contract or transaction in good faith as set forth in subsection (2).

Delaware's substantially similar counterpart, DGCL §144, likewise is limited to contracts or transactions between a corporation and its directors and officers (or other corporations in which its directors or officers have a financial interest):

> (a) **No contract or transaction between a corporation and 1 or more of its directors or officers, or between a corporation and any other corporation . . . in which 1 or more of its directors or officers, are directors or officers, or have a financial interest**, shall be void or voidable [a] solely for this reason, or [b] solely because the director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction, or [c] solely because any such director's or officer's votes are counted for such purpose, if:
>
> > (1) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or
> >
> > . . . .
> >
> > (3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee or the stockholders.

See, e.g., Cinerama, Inc. v. Technicolor, Inc., 663 A.2d 1156, 1169 (Del. 1995) (§ 144 "deals with the related problem of the conditions under which a corporate contract can be rendered 'un-voidable' solely by reason of a director interest"). There is no basis under either NRS 78.140 or the parallel Delaware statute for applying the statute other than to a contract or transaction between the corporation and one or more directors or officers.

As the Ratification MSJ itself asserts, the purported ratifications were not of a contract or transaction between RDI and the Cotter sisters (or defendant Guy Adams). The first subject of "ratification" was the 2015 board vote to terminate Plaintiff as CEO of RDI. While, of course, the Cotter sisters and therefore Guy Adams were interested in the

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outcome of the termination vote, the matter "ratified" did not involve a contract or transaction between any of them and RDI.

The same is true with respect to the purported ratification of the 2015 decision by Kane and Adams to authorize acceptance of Class A non-voting stock as consideration for the exercise of the 100,000 share option. By its terms, the "ratification" was not of the underlying option agreement (between the Company and James J Cotter, Sr.). Nor did "ratification" concern the validity (or ownership) of that assumed contractual right. Rather, the "ratification" addressed only the subject of the consideration for the exercise.

Thus, the subject of the "ratifications" was not a contract or transaction between RDI and its directors or officers. NRS 78.140 therefore is inapplicable.

Even if, *arguendo*, NRS 78.140 were to apply, that does not mean that the so-called "ratification" was effective here. First, NRS 78.140(2)(a) requires that any decision pursuant to that statutory provision be made by independent directors acting in "good faith." As demonstrated herein, there are at a minimum disputed issues of material fact with respect to whether the "ratifying" directors were independent, and whether they acted in good faith and on an informed basis.

Second, the Ratification MSJ simply assumes without explanation or authority that actionable conduct can be cured by "ratification." However, it cites absolutely no authority for such proposition. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), which it cites, is not authority for such a proposition. In *Shoen*, the Nevada Supreme Court merely cited NRS 78.140 as "governing interested director transactions." *Shoen*, 122 Nev. at 636 n. 34, 137 P.3d at 1181 n. 34. Defendants in *Shoen* did not assert ratification as a defense or rely on NRS 78.140. And, in contrast to the so-called ratification here, *Shoen* did not involve a board's "ratification" of a prior decision by the board or board committee. Rather, *Shoen* involved a web of interested business dealings and transactions between the corporation (Amerco) and the SAC entities that were controlled by certain directors of Amerco. Thus, Defendants fail to cite any case applying NRS 78.140, let alone a case applying it outside of a contract or transaction between a corporation and its director or officer

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For the reasons explained above, NRS 78.140 by its terms does not provide for curing actionable conduct; it merely provides for authorization of interested director contracts or transactions by independent directors acting in good faith on an informed basis.

C. The Moving Party Bears the Burdens of Proof.

1. The Moving Party Bears the Burden of Proving That the "Independent" Directors "Resorted in Good Faith to an Informed Decision-Making Process."

Although the actions of the "independent" directors have been depicted for litigation purposes as "ratification," they are the type of actions taken by a special litigation committee seeking dismissal of a derivative action. The reason that the Ratification MSJ does not refer to the "independent" directors as such is because their acts and omissions over the few days in which the "ratification" "process" was executed evidence a wholesale failure to perform a good faith and thorough investigation leading to good faith and informed "ratification" decisions.

Where, as here, relief is sought based on the conduct of a subset or committee of a board of directors to whom or which decision-making authority has been delegated, the movant bears the burden of proving that those directors conducted a good faith and thorough investigation. *Jacksonville Police and Fire Pension Fund v. Brokaw (In re DISH Network Derivative Litig.)*, 401 P.3d 1081, 1088 (Nev. 2017). In assessing "whether an individual director or Board of Directors acted in good faith and, in turn whether protection under the business judgment rule is available[,]" the Court may and should conduct an "inquiry into the procedural indicia of whether the directors resorted in good faith to an informed decision making process." *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 399 P. 3d. 334, 343 (Nev. 2017 (citing *WLR Foods, Inc.* v. *Tyson Foods, Inc.*, 857 F. Supp. 492, 494 (W.D. Va. 1994)). This includes, among other things, "inquiry into the identity and qualifications of any sources of information or advice sought which bear upon the decision reached, the circumstances surrounding selection of the sources [and] the general topics … of the information sought are imparted…" *Id.*

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Moreover, evidence that "the investigation [by a special committee of supposedly independent directors] has been so restricted in scope, so shallow execution, or otherwise so *pro forma* or halfhearted as to constitute a pretext or sham... would raise questions of good faith or conceivably fraud which would never be shielded by [the business judgment] doctrine." *In re DISH Network Derivative Litig.*, 401 P.3d at 1092 (citing and quoting *Auerbach v. Bennett*, 47 N.Y.2d 619, 419 N.Y.S.2d 920, 393 N.E.2d 994, 1003 (1979)).

2. The Moving Party Also Bears the Burden of Proving the Independence of the "Ratifying" Directors

A board of directors may "delegate to a committee of disinterested directors the board's power to control corporate [derivative] litigation." *Kaman v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 102 (1991). Such a committee typically is called a special litigation committee or an "SLC." *Beam v. Stewart*, A.2d 1040, 1055 (Del. 2004).

Where, as here, that has occurred, the moving party also bears the burden of proving the independence of board members whose actions and/or decisions serve as the basis for the relief sought. *In re DISH Network Derivative Litig.*, 401 P.3d at 1088, 1089. Therefore, the District Court "should not presume [a special litigation committee] to be independent nor require the derivative plaintiff to bear the burden of proof" with respect to the issue of independence. *Id.* at 1089.

Put differently, the party seeking dismissal of a derivative action based upon the actions or recommendations of a board committee "bears the burden of persuasion" and must "demonstrate that no material factual question exists regarding... independence [of the committee members]." *In re Oracle Corp. Derivative Litig.*, 624 A.2d 917, 920 (Del. Ch. 2003). The test of committee member independence is whether connections between them and the directors who are the subject of the committee's decision "would weigh on the mind of a reasonable special litigation committee member." *Id.* at 947. If so, those connections "generate a reasonable doubt about the [committee members'] impartiality because they suggest that material considerations other than the best interests of [the corporation] could have influenced the[ir] inquiry and judgments." *Id.* Thus, the District

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Court must "assess whether any improper influences prevented the SLC from impartially considering the merits of a derivative suit before recommending it be dismissed." *In re DISH Network Derivative Litig.*, 401 P.3d at 1090.

Unlike the motions for partial summary judgment, in which Plaintiff bore the burden of proof with respect to the issue of the independence of individual directors who sought to invoke the business judgment rule, here the moving party bears the burden of "establishing... independence by a yardstick that must be 'like Caesar's wife -- above reproach.'" *Beam v. Stewart*, 845 A.2d 1040, 1055 (Del. 2004).

For the foregoing reasons, this Court's prior determinations that Plaintiff had failed to raise disputed issues of material fact regarding the independence of the five directors with respect to the matters that were the subject of motions for partial summary judgment does not and cannot excuse the moving party here from satisfying its burden of proof with respect to their independence. Simply put, both the burdens of proof and the substantive standards applicable here are different than those which were applicable to the motions for partial summary judgment.

Additionally, if the Court does not deny the Ratification MSJ, Plaintiff is entitled to and hereby requests an evidentiary hearing with respect to both issues as to which defendants bear the burden of proof, namely, independence and a thorough investigation conducted in good faith. *Shoen*, 122 Nev. at 645, 137 P.3d at 1187. As the record (including from May 2, 2018 evidentiary hearing) makes clear, questions of fact and credibility, the latter on the part of both the "independent" directors and their conflicted counsel, predominate.

D. The Ratification MSJ Satisfies None of the Burdens of Proof It Bears.

As demonstrated below, the Ratification MSJ fails to satisfy the burdens of proving that there are no disputed issues of material fact with respect to both (i) the independence of the "ratifying" directors, and (ii) whether those directors who approved "ratification" as a result of a good faith, thorough investigation that enabled them to make a good faith, informed decision.

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1. Use of Company Counsel Establishes a Lack of Independence, as a Matter of Law and Fact

Courts repeatedly hold that the use of company counsel, whether by special committees or other supposedly independent directors, raises questions about the independence of the advisors and, thereby, the committee and the individual directors. *Gesoff v. IIC Industries Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006), *subsequent proceedings*, 2006 Del. Ch. LEXIS 161, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006) ("[A] special committee's decision to use the legal and financial advisors already advising the parent 'alone rais[ed] questions regarding the quality and independence of the counsel and advice received'")(citing *In re Tele-Communications, Inc. Shareholders Litig.*, 2005 WL 3642727 (Del. Ch. Dec. 21, 2005)); *see generally* William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990). Thus, courts reject determinations made by directors based on advice of counsel where such advice may be tainted by a conflict of interest. *In re Oracle Securities Litig.*, 829 F. Supp. 1176, 1189 (N. D. Cal. 1993) (a board committee reliance on the inherently biased advice of in-house counsel made the committee's determination "worthless.")

In *In re Par Pharm., Inc. Derivative Litig.*, 750 F. Supp. 641 (S.D.N.Y. 1990), the nominal defendant company moved to dismiss after a special litigation committee conducted an investigation and recommended dismissal, and the supposedly independent members of the company's board of directors accepted that recommendation and voted to dismiss. The court denied the motion to dismiss, in part because "the Committee failed to retain independent counsel," "but instead relied upon the firm [that represented the Company] and its board in th[at] litigation." *Id.* at 644, 647. The court described that counsel as having a "conflict of interest . . . ." *Id.* at 647. With respect to the jurisprudence, the Court observed that "[b]oth New York and Delaware law contemplate that a special litigation committee be represented by independent counsel." *Id.* (citing *Spiegel v. Buntrock*, 571 A.2d 767, 772 (Del. 1990); *Kaplan v. Wyatt*, 484 A.2d 501, 511 (Del. Ch. 1984), *aff'd*, 499 A.2d 1184 (Del. 1985); *Byers v. Baxter*, 69 A.D. 2d 343, 348, 419 N.Y.S. 2d 497, 500 (App. Div. 1979)).

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Here, the "independent" directors have relied entirely on "advice" from Company Counsel, who face actual, pervasive and debilitating conflicts arising from the fact that the Company that employs and pays them is controlled by the Cotter sisters.

As to Craig Tompkins, RDI's General Counsel who reports to Ellen Cotter and to whom GT attorneys report, Kane testified that he (Kane) understood that Tompkins was on the side of Ellen Cotter in her disputes with Plaintiff, as well as that he (Kane) was of the view that "Tompkins always acted in his own self-interest." (*See* **Ex. 12** hereto, Kane dep. 6/9/16 dep. tr. at 427:3-9, 428:2-9 and 432:13-25.) In the former regard, Kane at deposition explained that the words he used in an email stating "according to [Ellen Cotter], Craig is also on the 'team[,]' meant that Tompkins "was [with] Ellen and Margaret versus Jim." (*See* **Ex. 6** hereto Kane 5/2/16 dep. tr. at 176:18-177:1, and Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105))

As to GT, GT lawyers ignored the conflicts with which they are faced and consistently acted to further the interests of the individuals who control the Company and employ them as Company counsel, both in this action and in the board room.

GT as counsel of record for nominal defendant RDI has acted vigorously to terminate this case, thereby protecting and pursuing the interests of the Cotter sisters. This began with a contrived motion to compel arbitration (following the filing of a contrived arbitration) and included, among other things, motions to dismiss and motions for summary judgment asserting bases available only to individual defendants.

During the pendency of this action, GT repeatedly has "advised" "independent" directors, who have acted in reliance on GT's advice in making decisions that benefit Ellen and Margaret Cotter, who control RDI, which employs and pays GT. For example, GT in 2015 "advised" Kane and Adams, to work around rather than address the issue of ownership of the so-called 100,000 share option.

With respect to the purported "ratification," GT lawyers actually viewed their client as the Company. GT attorney Bonner testified as follows:

BY MR. FERRARIO:

Q Mr. Bonner, you currently work at Greenberg Traurig; correct?

A Yes.

Q *And is a company called Reading International a client?*

A Yes. It's a client of our firm.

Q Okay. And are you the principal contact for that client?

A Yes.

Q Okay. *And in your capacity as a lawyer for that client do you get involved with something called the special independent committee of the board of directors of Reading International, Inc.?*

A Yes.

(*See* Ex. 15 to JJC 6/8/18 Motion, 5/2/18 hearing tr. at 19:3-16.) (Emphasis supplied.)

In view of the foregoing, there can be little if any doubt that "ratification" is a "litigation strategy" hatched by GT lawyers for use in this derivative action for the benefit of defendants Ellen Cotter and Margaret Cotter. As described above, GT lawyers cleared "ratification" with Ellen Cotter, Margaret Cotter and Tompkins before "advising" SIC committee members Gould, McEachern and Codding at the (previously concealed) telephonic SIC meeting on December 21, 2017 that and how to use "ratification" as a "litigation strategy." Next, GT lawyers provided Tompkins and Ellen Cotter drafts of what came to be Gould's December 27, 2017 email on behalf of the "independent" directors requesting that the two "ratification" matters be approved at the board meeting on December 29, 2017. Presumably in an effort to avoid the open issue of the reliance of Adams and Kane on GT's 2015 "advice" as the sole basis for their conclusion regarding ownership of the 100,000 share option, the December 27, 2017 email omits that issue.

Most recently, GT lawyers have withheld evidence in discovery, the effect of which was to conceal the actual "ratification" "process." Nevertheless, the May 30 and 31 supplemental productions and (facially inadequate) privilege logs reveal that "ratification" was a "litigation strategy" approved by Ellen Cotter, Margaret Cotter and Tompkins, and that the "independent" directors simply did what GT lawyers told them to do. To that end, GT lawyers belatedly prepared the minutes of the December 21, 2017 SIC meeting, but excluded the portion of the meeting concerning "ratification." They also failed to produce or log those minutes.

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Now, the lawyers who "advised" the "independent" directors are asserting attorney-client privilege, on behalf of the Company, with respect to their communications with those directors in an effort to render the actual basis for the "independent" directors' "ratification" decisions ("advice" from conflicted counsel) undiscoverable. Tellingly, in the face of such conflicts, GT has not advised the "independent" directors to seek advice from independent counsel.

As the foregoing shows, the record before the Court shows that the "independent" directors lacked independence or, at a minimum, raises disputed issues of material fact about their independence that require denial of the Ratification MSJ.

2. Other Factors Also Show a Lack of Independence

Courts have identified a number of factors to be considered in determining the independence of directors as members of special litigation committees. Several of those factors weigh decidedly against a determination of independence.

One such factor is whether the directors were members of the corporation's board at the time of the alleged wrongdoing. *In re KLA-Tencor Corp. Shareholder Derivative Litig.*, No. C06-03445 JW Slip Op. at 5, 7 (N.D. Cal. Dec. 11, 2008) (finding a lack of independence because one of two committee members was a member of the board during the alleged wrongdoing). Gould, McEachern and Kane each were members of the Board at the time of all complained of actions, and Codding and Wrotniak were board members at the time of several of the complained of actions.

Another factor is whether the directors participated in the alleged wrongdoing. *Grynberg v. Farmer*, 1980 WL 1456, at *6 (D. Colo. Oct. 8, 1980). A similar factor is whether they approved the conduct or transaction involving the alleged wrongdoing. *KLA-Tencor*, Slip Op. at 5, 7. Here both are the case for each of the five insofar as he or she was a Board member at the time.

And, critically here, whether the committee received advice from independent counsel also is a factor. *In re Par Pharm. Inc. Derivative Litig.*, 750 F. Supp. at 644 (denying motion to dismiss the derivative action where the committee "did not obtain independent legal counsel but instead relied upon... counsel for [the nominal defendant corporation]

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and its Board in this litigation.") As discussed above, none sought or obtained the advice of independent counsel but, instead, accepted and relied on the advice of conflicted Company Counsel.

Finally, statements "conflating the SLC and the Company" also weigh against a finding of independence. *KLA-Tencor*, Slip Op. at 5, 7. Here, there are statements by Company Counsel (Bonner's testimony identifying RDI as his client in his dealings with the SIC) that do so, and statements by directors (*e.g.*, Wrotniak's "protection for Reading" statement) that do so.

In view of this evidence, there exists at a minimum disputed issues of material fact regarding their independence, which requires denial of the Ratification MSJ.

3. The Evidence Shows an Inadequate if Not Fraudulent Process Undertaken in Bad faith in Furtherance of a Preordained Result

Discovery to date, including as described above, shows that the "ratification" scheme was conceived by GT lawyers, who first obtained approval from defendants Ellen Cotter and Margaret Cotter to pursue it, and who then "advised" "independent" directors to "ratify" certain conduct the Court previously found to be actionable. Dutifully "advised," SIC members Gould, Codding and McEachern on December 21, 2017 each agreed after a brief telephonic discussion claimed privileged to approve "ratification." Next, GT attorneys worked with Tompkins and EC to draft the December 27, 2017 email Gould sent, purportedly on behalf of the "independent" directors, to approve "ratification" of two matters. With respect to that email, Gould had no input into the contents, and the other four did not even see it until their depositions in this case. Wrotniak first heard about "ratification" on December 27 or 28, 2017, when he spoke telephonically with GT attorneys Bonner and Ferrario, who told him that "ratifying" prior conduct would be on the agenda for the December 29, 2017 board meeting. Kane's agreement was foregone, because it was his decisions that were being "ratified." As Gould acknowledged at his deposition, "ratification" is a "litigation strategy." The evidence shows that the preordained purpose of that "litigation strategy," which was

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hastily carried out by "independent" directors in reliance on advice from conflicted counsel.

When combined with the ongoing efforts of defense counsel to conceal what actually transpired with respect to the purported ratifications, the evidence presents a clear picture of a sham or fraudulent exercise undertaken to reach a preordained conclusion, namely, "ratification" as a "litigation strategy" intended to bring about the dismissal of this derivative action.

Thus, defendants have failed to bear the burden of showing that the "independent" directors engaged in a good faith, informed decision-making process leading to good faith, informed, disinterested and independent decisions. The Ratification MSJ therefore must be denied, for this reason alone.

E. "Ratification" Did not Address All of the Issues Arising from the Authorization of the Exercise of the 100,000 Share Option

As described above, and as admitted by Kane at the time, a threshold issue in determining whether to authorize the exercise of the 100,000 share option was whether that option was owned by the Estate. However, the "ratification" is confined to the use of RDI class A nonvoting stock as consideration for the exercise. Thus, the purported ratification does not eliminate the authorization of the exercise of the 100,000 share option as an issue in this case.

F. Plaintiff is Entitled to Rule 56(f) Relief

Where a plaintiff properly identifies additional facts necessary to oppose a summary judgment motion and seeks additional time to obtain that discovery, summary judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.* 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Where it is "unclear whether genuine issues of material fact exists," a Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures,* 121 Nev. at 115, 110 P.3d at 60. Here, due to the delay of Responding Parties in providing court-ordered discovery, Plaintiff through no fault of his own is not yet in a position to present all "facts essential to justify the party's opposition." For the reasons set forth

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above and in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to NRCP 56(f) relief.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully submits that the Ratification MSJ should be denied.

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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: **PLAINTIFF'S OPPOSITION TO ELLEN COTTER, MARGARET COTTER AND GUY ADAMS' MOTION FOR SUMMMARY JUDGMENT (BASED ON RATIFICATION"); DECLARATION OF MARK G. KRUM,** 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 13th day of July, 2018.

By: /s/ JUDY ESTRADA

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Attorneys for Plaintiff
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **DECLARATION OF MARK G. KRUM PURSUANT TO NRCP 56(f) AND IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS** **Hearing Date: June 19, 2018** **Hearing Time: 8:30 a.m.**

I, Mark G. Krum, declare:

1. I am an attorney with Yurko, Salvesen & Remz, P.C., counsel for plaintiff James J. Cotter, Jr. ("Plaintiff"). I make this declaration based upon personal knowledge, except where stated upon information and belief, and as to that information, I believe it to be true. If called upon to testify as the contents of this declaration, I am legally competent to testify to its contents in a court of law.

2. The Motion for Summary Judgment filed on June 1, 2018 by defendants Ellen Cotter, Margaret Cotter and Guy Adams (the "Ratification MSJ") is predicated on the assumption that, because the Court found no disputed issues of material fact with respect to the disinterestedness of certain directors for the purposes of the matters raised in partial summary judgment motions argued on December 11, 2017, those directors therefore are disinterested and independent for all purposes, including for the purposes of the "ratification" on which the Ratification MSJ is based.

3. The Motion for summary judgment regarding demand futility filed on June 4, 2018 by counsel of record for nominal defendant Reading International, Inc. ("RDI") is predicated on the same assumption.

4. Because disinterestedness and independence are questions of fact, Plaintiff is entitled to discovery, including regarding the "ratification" "process," as the Court found on January 8, 2018 and ruled on May 2, 2018, when the Court ordered RDI and former defendants (the "Responding Parties") to provide additional documents and information with respect to "ratification" and matters related thereto, described below.

5. Likewise, Plaintiff is entitled to discovery regarding whether the "ratifying" directors acted in good faith and on an informed basis, which also are questions of fact. That discovery likewise concerns the "ratification" "process."

6. On or about January 12, 2018, Plaintiff issued subpoenas to the Responding Parties and document requests and interrogatories to the remaining defendants. By the end of February 2018, all but Gould purported to have produced or listed on a privilege log all responsive documents. Additionally, the remaining defendants provided

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interrogatory responses.

7. As the Court knows from prior motion practice, Counsel for Plaintiff learned for the first time at depositions of SIC members Doug McEachern, Judy Codding and William Gould of a meeting of the "Special Independent Committee" of the RDI board of directors (the "SIC") in December 2017 at which "ratification" had been discussed and "formally" approved.. As the Court also knows from prior motion practice, counsel for Plaintiff specifically requested that counsel for the Responding Parties produce minutes of that December 2017 SIC meeting.

8. Finally, on or about April 12, 2018, minutes of what turned out to be a December 21, 2017 SIC meeting were produced for the first time. However, they were produced in a wholly redacted form.

9. As a result of the foregoing, among other efforts on the part of the remaining defendants and Responding Parties to frustrate Plaintiff's ability to obtain discovery regarding the "ratification" "process," Plaintiff filed a motion for "omnibus relief." That motion was heard on April 30, 2018, at which time the Court ordered an evidentiary hearing, which occurred on May 2. At the end of the May 2 hearing, the Court granted Plaintiff's motion for omnibus relief in part, ordering that the Responding Parties produce and/or log all documents responsive to three categories of information, as follows:

> THE COURT: ... So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

10. The Court on May 2, 2018 also granted the remaining defendants motion to file what is the now filed Ratification MSJ, but instructed them not to file it until after they had complied with the Court's May 2, 2018 order and also had afforded counsel for Plaintiff sufficient time to review and analyze the documents and privilege logs ordered

produced, and to then determine whether Plaintiff needed further discovery. In this regard, the Court stated as follows:

> THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide
>
> whether he needs to take additional depositions and, if you fight about it, for me to rule on it. So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff

(5/2/18 hearing tr. at 81:6-16.)

11. On June 1 and 4, 2018, respectively, the remaining defendants filed the renewed Ratification MSJ and RDI file the renewed Demand Futility MSJ. As described below, what the Court sought to avoid has happened. The remaining defendants and the Responding Parties have slow played Plaintiff, whose counsel has not an opportunity to do what he is entitled to do and what the Court ordered he be afforded the opportunity to do.

12. On May 30 and 31, 2018, Greenberg Traurig ("GT'), for RDI and/or for the Responding Parties, made supplemental productions of thousands of pages of documents and produced two (facially deficient) voluminous, supplemental privilege logs. Dozens upon dozens of documents relating to one or more of the foregoing three categories have been withheld based on claims of attorney-client privilege, the work product doctrine, or both, as reflected by entries on those privilege logs. As demonstrated in a separate motion, Plaintiff seeks the production of those documents, asserting that those documents are not privileged and are not properly claimed to be subject to work product protection and, even if they were subject to proper claims of privilege and/or work product protection, both were waived.

13. However, even if the documents listed on the May 30 and 31, 208 privilege logs are properly withheld based on claims of attorney-client privilege, work product or both, they must be properly logged so counsel for Plaintiff is able to use the entries on the

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privilege logs for the various purposes for which they are required, including to examine witnesses (who claim not to recall) to learn what communications were had between and among the counsel for RDI, the remaining defendants and/or the Responding Parties with respect to the three subject matters of the Court's May 2, 2018 order. Because the May 30 and 31, 2018 privilege logs suffer from several facial deficiencies, including the failure to identify each sender and recipient by name, and the failure to describe the subject matter of the documents logged in terms that are not so general as to be meaningless, counsel for Plaintiff is unable to use those to logs even identify the subjects matter of dozens upon dozens of logged communication, much less examine witnesses to confirm the subject matters and/or the participants.

14. On June 6, 2018, I met and conferred telephonically with counsel for RDI and the remaining defendants and the Responding Parties (except for Gould) regarding the May 30 and 31 document productions and privilege logs. On June 8, counsel for RDI advised that the responding parties would be making supplemental productions of documents and would provide a revised privilege log.

15. On Saturday, June 9, 2018, GT made a further supplemental production of documents, producing over 2000 pages of documents. Counsel for Plaintiff has not completed the review of those documents, but it appears that they are largely if not entirely draft SEC filings and email communications regarding those drafts.

16. About the close of business on June 11, 2018, GT made another supplemental production of documents, the total volume of which is in excess of 3000 pages. The documents were password protected and counsel for Plaintiff was not provided with password until June 12. Faced with deadlines for oppositions to the recently renewed summary judgement motions, counsel for Plaintiff did not review those documents yesterday or today.

17. Last night, at approximately 8 p.m. Pacific on Tuesday, June 12, 2018, GT made another supplemental production of documents, the total volume of which appears to be over 1000 pages. Counsel for Plaintiff has not yet reviewed these documents.

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18. Also on June 12, 2018, GT attorney Kara Hendricks advised that a supplemental and/or superseding privilege log would be produced today, June 13, 2018. It has not been produced at the time of completion of this declaration..

19. Counsel for Plaintiff will need time to complete the review of documents produced on June 9, 2018, and to commence and complete the review of documents produced on June 11 and 12, 2018. Counsel for Plaintiff likewise will be time to review a supplemental privilege log, if and when it is produced. If the course of discovery is any indication, such a log is unlikely to cure all of the deficiencies from which the May 30 and 31, 2018 logs suffered. Even if it did so, Plaintiff has not had the opportunity to use the that log for any purpose, or the May 30 and 31, 2018 logs to further depose any of Ellen Cotter, Craig Tompkins, Margaret Cotter, William Gould, Judy Codding, Michael Wrotniak and/or Ed Kane, each of whom was (according to documents produced on May 30 and 31, 2018 and/or entries in the May 30 and 31, 2018 privilege logs) party to communications that concerned one or more of the three subjects of the Court's May 2, 2018 order.

20. Simply put, the remaining defendants and the Responding Parties have not complied with the Court's May 2, 2018 order, delayed compliance or both, as a result of which Plaintiff has not had an opportunity to obtain the discovery the Court ordered Plaintiff was entitled to obtain. As indicated by Plaintiff's description of certain of the documents produced on May 30 and 31, 2008, as well as by Plaintiff's description of certain entries on the May 30 and 31, 2018 privilege logs, Plaintiff reasonably expects that additional discovery (without regard to whether the Court orders the production of additional documents) will evidence the contemporaneous involvement of defendants Ellen Cotter and/or Margaret Cotter, along with RDI counsel Tompkins, in the "ratification" "process," together with extensive disclosure to Ellen Cotter and to Tompkins of matter supposedly privileged and confidential vis-à-vis at least the remaining defendants. Plaintiff also reasonably anticipates this discovery will reveal not only with whom each of the supposedly independent directors communicated about

"ratification" and the other particular matters that were the subject of the Court's May 2, 2018 order, but also will evidence what they did and did not do in determining to approve "ratification." All such evidence will go to the question of the independence of the directors whose independence is a basis for the Ratification MSJ and the summary judgment motion based on demand futility, and/or to the question of whether those directors acted in good faith and on an informed basis in approving "ratification."

Executed this 13th day of June, 2018.

Mark G. Krum, Esq.

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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: **Declaration of Mark G. Krum Pursuant to NRCP 56(f) and in Opposition to Summary Judgment Motions** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 13th day of June, 2018.

By: /s/ JUDY ESTRADA

Exhibit 1

8-K 1 rdi-20180223x8k.htm 8-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 23, 2018

Reading International, Inc.
(Exact Name of Registrant as Specified in its Charter)

Nevada	**1-8625**	**95-3885184**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

5995 Sepulveda Boulevard, Suite 300, Culver City, California	**90230**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(213) 235-2240**

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 8.01 Other Events.

Reading International, Inc.'s through its press release dated February 23, 2018, announced that the Superior Court of the State of California for the County of Los Angeles entered a statement of decision (the "Statement of Decision") in the matter regarding the James J. Cotter Living Trust ("Cotter Living Trust"), Case No. BP159755 (the "Trust Litigation") on February 14, 2018.

For more information, see the press release attached as exhibit 99.1, the charter of the Special Independent Committee attached as exhibit 99.2, and the California Superior Court issued Statement of Decision dated February 14, 2018 attached as exhibit 99.3, hereto.

Item 9.01 Financial Statements and Exhibits.

99.1	Press release issued by Reading International, Inc. providing an update on the California Superior Court's Ruling regarding the Cotter Living Trust
99.2	Reading International, Inc.'s Board of Directors Special Independent Committee Charter adopted on August 7, 2017
99.3	California Superior Court issued Statement of Decision dated February 14, 2018 in the matter In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent, Case No: BP159755

RDI-A10013

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

READING INTERNATIONAL, INC.

Date: February 23, 2018

By: /s/ Ellen Cotter
Name: Ellen Cotter
Title: Chief Executive Officer and President

EX-99.1 2 rdi-20180223xex99_1.htm EX-99.1

Reading International Announces Trial Court Decision to Appoint Temporary Trustee Ad Litem to Obtain Offers to Purchase RDI Voting Stock in James J. Cotter, Sr., Voting Trust

Culver City, California, - (BUSINESS WIRE) – February 23, 2018 – Reading International, Inc. (the "Company") today announced that the California Superior Court has issued a statement of decision (the "Statement of Decision") in the matter *In Re: James V. Cotter, Living Trust*, *Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent,* Case No: BP159755 (the "Cotter Trust Case"), relating to Mr. James J. Cotter, Jr.'s February 8, 2017 petition to appoint a temporary trustee ad litem (a "Temporary TAL") to pursue a sale of the Class B Voting-Stock owned, before his death, by Mr. James J. Cotter, Sr. These shares represent more than 66% of the outstanding voting power of our Company. In response to Mr. Cotter, Jr.'s petition, the California Superior Court has determined to appoint a Temporary TAL "with the narrow and specific authority to obtain offers to purchase the RDI stock in the voting trust, but not to exercise any other powers without court approval, specifically the sale of the company or any other powers possessed by the trustees."

In a prior statement of decision dated December 8, 2017, the California Superior Court determined Ellen Cotter and Margaret Cotter to be the sole trustees of the James J. Cotter, Sr., Living Trust (the "Cotter Trust"), and Margaret Cotter to the sole trustee of the voting trust to be created under the Cotter Trust (the "Voting Trust"). The Statement of Decision, except with respect to the limited authority granted to the Temporary TAL, leaves Ellen Cotter and Margaret Cotter in place as trustees, with all powers granted to them under the applicable trust documents, over all other matters relating to the Cotter Trust, the Voting Trust and their respective assets, including authority to vote the Class B Stock held by the Cotter Trust and/or the Voting Trust.

The Statement of Decision does not name a Temporary TAL, but provides that if the parties cannot agree on a Temporary TAL, one will be appointed at some future date by the California Superior Court.

Our Company's Board of Directors previously established a Special Independent Committee comprised of directors William Gould (our lead independent director who also serves as the Chair of the Special Independent Committee), Judy Codding and Douglas McEachern to, among other things, address any potential change of control transaction relating to the sale of the shares of Class B Voting Stock, which may now or in the future be held by the Cotter Trust.

The Charter of the Special Independent Committee includes the following statements: "Due to the fact that the Voting Stock held by the [Cotter] Trust and the [Cotter] Estate represents less than 5% of the outstanding equity of the Company, there is a risk that the interests of the person or group acquiring such a controlling block would not be consistent with the long term business strategy adopted by the Company's Board or would otherwise be inconsistent with the interest of holders of Class A Common Stock or other holders of Class B Common Stock. The Board had previously determined that it would be in the best interests of the Company and its stockholders for the Company to pursue its long-term business strategy as an independent company. Ellen Cotter, Margaret Cotter, and/or an entity in which they have a

controlling interest may be involved in the Trust Share Sale Process as a potential purchaser

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of such shares, and have advised the Board that they intend to continue with the implementation of the business strategy adopted by the Board. Mr. Cotter, Jr., voted against approval of that business strategy." A complete copy of the Special Independent Committee Charter will be attached to our filing on Form 8-K, being made with respect to this press release.

Our Company has advised the California Superior Court that it opposes the appointment of a Temporary TAL, as it believes that such an appointment is not in the best interests of our Company and our stockholders generally. Such a marketing process, conducted without the participation or support of the Board of Directors and without any protections for minority stockholders, risks an acquisition of control that does not reflect our Company's value and growth opportunities and transfers value from our stockholders to a potentially unqualified individual or group. Moreover, irrespective of who may eventually end up with control, such a process risks distracting key employees from executing our business plan and disrupting present and future business relations, valuation creation strategies and development projects.

Our Board of Directors has not changed its position that it is in the best interests of our Company and our stockholders generally to continue the independent pursuit of our Company's current business plan and that a sale of the Company at this time would not be in the best interests of stockholders generally. The Special Independent Committee and our Board of Directors will monitor further developments arising out of the Statement of Decision and determine what steps, if any, should be taken in the best interests of our Company and our stockholders generally.

As previously announced, on December 11, 2017, the District Court in Nevada in the matter *Cotter vs. Cotter, et al.,* Case No.: A-15-719860-B, Dept. No. XXVII (the "Cotter Derivative Litigation") dismissed all derivative claims against Directors Judy Codding, William Gould, Edward L. Kane, Doug McEachern and Michael Wrotniak determining that Mr. James J. Cotter, Jr., had failed to demonstrate any "genuine issues of material fact related to the disinterestedness and/or independence of those directors." On December 29, 2017, these five directors (constituting a majority of our Board of Directors) voted to ratify the actions of our Board of Directors in terminating Mr. Cotter, Jr., as President and CEO, and the actions of our Compensation Committee in permitting the Cotter Estate to use shares of Class A Non-Voting Stock to pay the exercise price of options held by the Cotter Estate to acquire Class B Voting Stock. Based on this ratification, our Company intends to seek dismissal of Mr. Cotter, Jr.'s derivative claims relating to these actions.

About Reading International, Inc.

Reading International, Inc. (NASDAQ: RDI) is a leading entertainment and real estate company, engaging in the development, ownership and operation of multiplex cinemas and retail and commercial real estate in the United States, Australia and New Zealand.

The family of Reading brands includes cinema brands Reading Cinemas, Angelika Film Centers, Consolidated Theatres, and City Cinemas; live theaters operated by Liberty Theatres in the United States; and signature property developments, including Newmarket Village, Auburn Red Yard and Cannon Park in Australia, Courtenay Central in New Zealand and 44 Union Square in New York City.

Additional information about Reading can be obtained from the Company's website: http://www.readingrdi.com.

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Forward-Looking Statements

Our statements in this press release contain a variety of forward-looking statements as defined by the Securities Litigation Reform Act of 1995. Forward-looking statements reflect only our expectations regarding future events and operating performance and necessarily speak only as of the date the information was prepared. No guarantees can be given that our expectation will in fact be realized, in whole or in part. You can recognize these statements by our use of words such as, by way of example, "may," "will," "expect," "believe," and "anticipate" or other similar terminology.

These forward-looking statements reflect our expectation after having considered a variety of risks and uncertainties. However, they are necessarily the product of internal discussion and do not necessarily completely reflect the views of individual members of our Board of Directors or of our management team. Individual Board members and individual members of our management team may have different views as to the risks and uncertainties involved, and may have different views as to future events or our operating performance.

Among the factors that could cause actual results to differ materially from those expressed in or underlying our forward-looking statements are the following:

- *Future actions, developments and decisions by one or more litigants, a temporary trustee ad litem or other trustee or guardian appointed by a court, or the courts, including appellate courts, in the above-described legal matters.*
- *Future actions by members of the Cotter family or their respective affiliates and representatives.*
- *Future actions by the Company's Special Independent Committee or the Board of Directors or any of the Company's stockholders.*
- *Future actions of third parties.*

The above list is not necessarily exhaustive.

Given the variety and unpredictability of the factors that will ultimately influence the matters covered in this press release, no guarantees can be given that any of our forward-looking statements will ultimately prove to be correct. Actual results will undoubtedly vary and there is no guarantee as to how our securities will perform, either when considered in isolation or when compared to other securities or investment opportunities.

Finally, we undertake no obligation to publicly update or to revise any of our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable law. Accordingly, you should always note the date to which our forward-looking statements speak.

Investor Contacts:

Reading International, Inc.
Dev Ghose, Executive Vice President & Chief Financial Officer
Andrzej Matyczynski, Executive Vice President for Global Operations
(213) 235-2240

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CHARTER OF THE SPECIAL INDEPENDENT COMMITTEE OF THE BOARD OF DIRECTORS OF READING INTERNATIONAL, INC.

I. PURPOSE

This Special Committee (the "Committee") is formed for the purpose set forth below with respect to the following background:

Up until his death on September 13, 2014, James J. Cotter, Sr., the father of Ellen Cotter, James J. Cotter, Jr. and Margaret Cotter, was the controlling stockholder of Reading International, Inc. ("Reading" or the "Company"), having the sole power to vote approximately 66.9% of the outstanding Class B Voting Stock ("Voting Stock") of the Company.

Since James Cotter, Sr.'s death, disputes have arisen among Ellen Cotter, James J. Cotter, Jr. and Margaret Cotter (collectively, the "Cotter Siblings') and between James J. Cotter, Jr. and the Company, including, among other things:

(A) The voting control of the Voting Stock owned by Mr. Cotter, Sr. and certain matters related thereto, which became part of the Estate of James J. Cotter, Sr. Deceased (the "Cotter Estate"), are currently being probated in the District Court of Clark County, Nevada (the "Cotter Estate Probate").

(B) Various matters regarding the living trust (the "Cotter Trust) and a voting trust to be created to hold the Class B Voting Stock held by the Cotter Trust (the "Voting Trust" and the "Trust Voting Shares", respectively) created by Mr. Cotter, Sr. which matters are being litigated in the Superior Court of the State of California, County of Los Angeles (the "California Superior Court"), captioned In re James J. Cotter Living Trust dated August 1, 2000 (Case No. BP159755) (the "Trust Case"), including, but not limited to, an Ex Parte Petition for Appointment of a trustee ad litem and of a guardian ad litem for the benefit of Cotter, Sr.'s, minor grandchildren (two of whom are the children of Margaret Cotter and three of whom are the children of James Cotter, Jr., and who are referred to herein as the "Cotter Grandchildren") (collectively, the "Trust Case").

(C) Mr. Cotter, Jr. filed a lawsuit entitled "James J. Cotter, Jr., individually and derivatively on behalf of Reading International, Inc. vs. Margaret Cotter, et al." Case No,: A-15-719860-V, Dept. XI, against our Company and each of the Company's then sitting Directors (Ellen Cotter, Margaret Cotter, Guy Adams, William Gould, Edward Kane, Douglas McEachern, and Tim Storey) in the Eighth Judicial District Court of the State of Nevada for Clark County (the "Nevada District Court"). Subsequently, Mr. Cotter Jr. added additional claims and also added as defendants Directors Judy Codding and Michael Wrotniak (the "Derivative Case"). Consequently, all of the current Directors, other than Mr. Cotter, Jr., are currently defendants in the Derivative Case. The requested relief include reinstatement of Mr. Cotter, Jr. as CEO of the Company.

(D) An arbitration matter with Mr. Cotter, Jr. (Reading International, Inc. v. James J. Cotter, AAA Case No. 01-15-0004-2384, filed July 2015)(the "Cotter Jr. Employment Arbitration").

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(E) While the Company is presently unaware of any others, it is possible that other litigation, alternative dispute resolution proceedings or other proceedings may be brought in the future by any of the above referenced parties, by third parties or by the Company directly or indirectly related to the foregoing matters, including, but not limited to, claims related to Cotter family matters, Cotter Estate Probate or the Trust Case that directly or indirectly impact the Company (collectively "Future Proceedings").

Collectively, all matters described in paragraphs A through E above, including, but not limited to, the Cotter Estate Probate, the Trust Case, the Derivative Case, the Cotter Jr. Employment Arbitration, Employment Direct Action, and the Future Proceedings, are referred to herein as "Cotter Related Proceedings").

Mr. Cotter, Jr., is also seeking to have all of the Class B voting stock currently owned by the Cotter Trust (and which may upon the rollover of the Cotter Estate into the Cotter Trust, be owned in the future by the Cotter Trust) sold to the highest bidder in a public or similar auction sale process ("Trust Share Sale Process") in which Ellen Cotter and Margaret Cotter would be prohibited from participating. If Ellen Cotter and Margaret Cotter are permitted to participate in as potential buyers, Mr. Cotter, Jr., has stated to the Court his desire to likewise be permitted to participate as a potential buyer. The public auction proposed by Mr. Cotter, Jr., could result in a change of control of the Company (the "Potential Change of Control Transaction"). Due to the fact that the Voting Stock held by the Trust and the Estate represents less than 5%[1] of the outstanding equity of the Company, there is a risk that the interest of the person or group acquiring such a controlling block would not be consistent with the long term business strategy adopted by the Company's Board or would otherwise be inconsistent with the interests of holders of Class A Common Stock or other holders of Class B Common Stock. The Board had previously determined that it would be in the best interests of the Company and its stockholders for the Company to pursue its long term business strategy as an independent company. Ellen Cotter, Margaret Cotter, and/or an entity in which they have a controlling interest may be involved in a Trust Share Sale Process as a potential purchaser of such shares, and have advised the Board that they intend to continue with the implementation of the business strategy adopted by the Board. Mr. Cotter, Jr., voted against the approval of that business strategy. The Board has an interest in the preservation of and execution on its business strategy. Bidders in the Trust Share Sale Process or any Potential Change of Control Transaction may seek the involvement of the Company in connection with due diligence or other aspects of such a Potential Change of Control Transaction.

Because of the material impact of the Cotter Related Proceedings and the Potential Change of Control Transaction on the Company, the Board, acting through the Executive Committee, has determined that it is in the best interests of the Company and the stockholders to delegate consideration of matters related to the Cotter Related Proceedings, the Trust Share Sale Process and the Potential Change of Control Transaction.,(collectively, the "Purpose").

The Committee has the authority to retain its own financial, legal and other advisors, consultants and experts in connection with the Purpose. The Company will pay or reimburse all reasonable costs, fees and expenses incurred by or on behalf of the Committee, including out-of-pocket expenses of members of the Committee, and the reasonable costs, fees and

[1] Based on 696,080 shares of Class B Common Stock held by the Voting Trust, 427,808 shares of Class B Common Stock held by the Estate, and 21,497,717 shares of Class A Common Stock

and 1,680,590 shares of Class B Common Stock outstanding on December 31, 2016.

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expenses of the Committee's financial, legal and other advisors, consultants and experts, if any.

The Committee will fulfill its purpose by carrying out the responsibilities and duties enumerated in Section IV of this Charter.

II. COMPOSITION

The Committee shall be comprised of more than one member of the Board as determined by the Board (or the Executive Committee). The members of the Committee may be appointed or replaced by the Board (or the Executive Committee) by majority action. The Committee may determine its own rules and procedures as are necessary and proper for the conduct of its business, including designation of a chair of the Committee, if determined to do so by the Committee.

Each Committee member must satisfy all of the following criteria (the "Criteria"): The Committee shall be composed of directors who are each (i) an "independent director", pursuant to the definition in section 5605(a)(2) of the NASDAQ Listing Rules; and (ii) is not a Cotter Sibling. The Committee shall be delegated authority to determine whether its members satisfy the Criteria.

The Committee shall initially be composed of [To Come], each of whom the Board has previously determined to satisfy the Criteria set forth in (i) above and none of whom is a Cotter Sibling. The Board, upon recommendation of the Compensation and Stock Options Committee, will establish compensation for service on the Committee.

III. MEETINGS

The Committee shall meet periodically, as deemed necessary or appropriate by the Committee, to carry out its responsibilities and duties and to act upon matters falling within its responsibility. Written minutes of each meeting of the Committee shall be maintained, and shall be distributed to each member of the Committee. Such meetings may be in-person, telephonically or electronically, at such locations as determined by the Committee. Additionally, the Committee may act by unanimous written consent of its members in lieu of a meeting.

IV. RESPONSIBILITIES AND DUTIES

To fulfill its responsibilities and duties, the Committee is authorized to, in its discretion:

i. Review, consider, deliberate, investigate, analyze, explore, evaluate, monitor and exercise general oversight of any and all activities of the Company directly or indirectly involving, responding to or relating to the Purpose or any directly or indirectly related proposals, agreements or transactions involving the Company, and any matters that it deems advisable with respect to the Purpose;

ii. Meet, confer and receive advice of legal counsel, advisors, management, other directors, stockholders and/or third parties in connection with the Purpose, and, instruct legal counsel representing the Company to take certain actions, including, but not limited to, file pleadings or other papers, appear in any proceedings, participate in any discovery or other proceeding of any kind, including any form of alternate dispute resolution forum, or any appellate body, and otherwise take such steps as the Committee deems to be in the best interest of the Company in any Cotter Related Proceedings or

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in connection with any Potential Change of Control Transaction;

iii. Participate in and direct legal counsel representing the Company to conduct negotiations and take actions to resolve matters related to the Cotter Related Proceedings, or any Potential Change of Control Transaction, including, without limitation, to negotiate the form of any and all requisite agreements and other documentation directly or indirectly related to the Purpose;

iv. Report to the Board, as it determines to be appropriate (subject to the maintenance of attorney-client privileges and with due regard for and the institution of appropriate safeguards in order to take into account any conflicts of interest that may exist involving other members of the Board and without limiting its delegated authority under this Charter), its recommendations and conclusions with respect the determinations delegated to it by this Charter; and

v. Take all such other actions as the Committee may deem to be necessary or appropriate in connection with the above.

In the execution of its duties, the Committee may rely upon the officers, executives and other employees of the Company, and such outside consultants as the Committee may from time to time determine to retain, including, without limitation, legal counsel.

The Committee shall have the authority to enter into or bind the Company in connection with a Cotter Related Proceedings, or any Potential Change of Control Transaction; provided, however, that the Committee shall not have any authority to issue or to obligate the Company to issue any shares of Company stock, or to approve any merger, consolidation or liquidation of the Company.

Each of the independent directors of the Company is named as a defendant in the Derivative Case. Nothing herein or in the delegation to the Committee to consider certain matters is intended to impact such directors' rights and defenses, representation by their own separate counsel or any other right in the Derivative Case. Any actions taken by the Committee in respect of the Derivative Case is intended to be taken with respect to the interests of the Company. Nothing herein in intended to limit, waive or reduce in any way such directors' rights and entitlement to defend the Derivative Case in their respective defendant capacities and to obtain all indemnification and other rights they may possess.

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Exhibit 2

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Plaintiffs,

vs.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped deposition of GUY ADAMS, held at Jeffer Mangels Butler & Mitchell, LLP, located at 1900 Avenue of the Stars, Tenth Floor, Los Angeles, California, 90067, on Thursday, April 28, 2016, at 10:13 a.m., before Lori Raye, Certified Court Reporter, in and for the State of California.

Appearances:

For Plaintiff:

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BY: MARK G. KRUM, ESQ,
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada, 89169
(702) 949-8200
mkrum@lrlaw.com

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

QUINN EMANUEL URQUHART & SULLIVAN, LLP
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Los Angeles, California 90017
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Appearances: (Continued)

For Plaintiffs-in-Intervention T2 Partners Management, LP, dba Kase Capital Management, et al.:

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BY: ROBERT NATION, ESQ.
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For Nominal Defendant Reading International, Inc.:

GREENBERG TRAURIG
BY: ERIC W. SWANIS, ESQ.
3773 Howard Hughes Parkway
Las Vegas, Nevada 89169
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For Defendants William Gould and Timothy Storey:

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BY: EKWAN E. RHOW, ESQ.
1875 Century Park East
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Los Angeles, California 90067
(310) 201-2100
eer@birdmarella.com

Also Present:

JAMES J. COTTER, JR.
BRIAN MURPHY (Videographer)

I N D E X

WITNESS: GUY ADAMS

EXAMINATION	PAGE
By Mr. Krum	8

E X H I B I T S

NUMBER	DESCRIPTION	MARKED
Exhibit 53	10-9-13 Income and Expense Declaration (JCOTTER14954-14974)	118
Exhibit 54	3-28-14 Reply Declaration in Support of Request for Order Re Spousal Support and Attorneys' Fees and Costs (JCOTTER14932-14953)	121
Exhibit 55	2-6, 2-11-15 Emails and D&O Questionnaire (RDI46282-46311)	122
Exhibit 56	Highly Confidential Agenda (GA5286)	147
Exhibit 57	8-9, 8-21-14 Emails (GA1423-1424)	155
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room with the three Cotter siblings to discuss the business issues and try to get that disentangled so they could move forward.

And Doug McEachern called me after a couple of those meetings and told me they were not going very well. They weren't very productive, excuse me.

Q. There were only a total of three such meetings; correct?

MR. TAYBACK: Objection; foundation.

If you know.

THE WITNESS: Which -- oh, I thought there was two. I don't know, is the answer.

BY MR. KRUM:

Q. But you think there were something in the range of two or three meetings where McEachern and Storey met with each of the three Cotters?

A. Yes.

Q. Okay. And when did those occur, approximately? What time period?

A. I would say --

MR. TAYBACK: Objection; foundation.

You can answer what you know.

THE WITNESS: I'm really not sure. I guess they were in the -- maybe the October/November time

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period.

BY MR. KRUM:

Q. 2014?

A. 2014, yes.

Q. So directing your attention back to your April breakfast meeting at the Peninsula with Ellen Cotter, tell me again how that came about.

A. Ellen called me.

Q. What did she say and what did you say?

A. She says, I want to talk to you and I have a lot of things to talk about so why don't we have breakfast at the Peninsula. She suggested a day or -- it came about that way.

Q. What else, if anything, did either of you say on that phone call?

A. In that phone call with Ellen? That's all I recall.

Q. Did you ask her to give you some sense as to what she wanted to discuss?

A. My recollection is that she said on her opening burst that we had a lot of things to talk about and I think we should do it in person, so if you're available, let's have breakfast. And I didn't press what the issues were.

Q. Did she say or did you ask why she was

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meeting with you personally instead of --

A. No.

Q. -- you together with other board members?

A. No.

Q. Did you think about that?

A. No.

Q. Did you tell anybody you were going to meet with her before you met with her?

A. I think I didn't.

Q. Not Ed Kane?

A. Not that I remember.

Q. So directing your attention, Mr. Adams, to the actual breakfast meeting with Ellen Cotter at the Peninsula, was it just the two of you?

A. Yes.

Q. How long did it last?

A. A little over an hour, I guess.

Q. What did she say and what did you say?

A. The purpose of the breakfast was, she said, I want you to reconsider being interim CEO. And I remarked that I already had a job and I was doing things and I really wasn't all that interested in it. She said, No, we really need you -- somebody to take the interim role. And I said, I'll do it on three conditions.

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One, I want -- I'll accept that there's a majority of the Cotter siblings that agree to it; and Number 2, I'll do it if the majority of the independent directors agree to it. And I had no idea whether they would or wouldn't, but that was a condition. And the third condition was, I agreed to be an interim -- an interim, one month, two months, I'm thinking max three. So it was a short scope of time.

Q. Why?

A. Because I didn't want to be CEO. I wanted to just to tide it over till we got a CEO in there to run the company.

Q. Okay. So at this breakfast conversation, did Ellen say that Margaret was in agreement with her that they wanted you to be interim CEO?

A. Yes.

Q. And did Ellen say anything about any discussions she had had with any other RDI board member?

A. No. No. We didn't talk about her discussions with other people, that I recall.

Q. Did you have any understanding as to whether she had had discussions with any other RDI board members about an interim CEO at that point in

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time?
A. I strongly suspected she had spoken with Ed Kane.
Q. And had either you or Ed Kane spoken to Doug McEachern about that?
A. I haven't, no. I don't know if Ed did.
Q. Okay. When was the first time you spoke with Doug McEachern about either terminating Jim Junior as CEO or about a subject of -- the subject of an interim CEO?
A. That I talked to McEachern? I would say it was maybe -- again, I can only approximately guess. Maybe two weeks before the meeting.
Q. And you're referring to the May 18th -- May 21st meeting, it was, wasn't it?
A. Yes. I don't know the exact date, but yeah.
Q. So what else did Ellen say and what else did you say during this approximate hour-plus breakfast meeting?
A. My recollection, we talked about Jim Junior and the CEO position, and Ellen, I guess, talked to other people because she was feeling that there was support for Jim Junior to be removed.
Q. What did she say that caused you to

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conclude she had talked to other people about Jim Junior being removed?
A. I don't know specifically what she said. Maybe it was innuendos that she maybe talked to McEachern, maybe. But it wasn't specific.
Q. Did you ever learn after the fact whether that was the case?
A. Considering McEachern, when I did call him, like two weeks before the vote, he said he was on board with that. I suspect she called and talked to him. I sure didn't. So I suspect -- I suspect she did or maybe Ed Kane did. I don't know.
Q. What else, if anything, did you discuss with Ellen Cotter at the breakfast meeting at the Peninsula in April?
A. Nothing further that I can remember at this time.
Q. What, if anything, did she say about why she wanted Jim Junior removed as CEO?
A. I think she felt he wasn't doing an adequate job as CEO.
Q. Excuse me. My question is, what did she say?
A. What did she say about -- I'm sorry.

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Jim --
Q. I'll ask it again.
A. Would you say it one more time, please.
Q. Sure.
What, if anything, did Ellen Cotter say to you during this breakfast meeting at the Peninsula about why she wanted Jim Junior removed as CEO?
A. I don't recall a conversation where she said this is why I want it -- want him removed.
Q. You understood that she didn't want to report to him; correct?
MR. TAYBACK: Objection; vague as to time. At that lunch?
MR. KRUM: Yes.
MR. TAYBACK: Breakfast, lunch.
MR. KRUM: Breakfast, yeah.
MR. SWANIS: Object to the form as well.
THE WITNESS: The answer is yes.
BY MR. KRUM:
Q. In fact, you understood as far back as the fall of 2014 that she did not want to report to Jim Junior; correct?
A. Yes.
Q. You also understood as far back as the

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fall of 2014 that Margaret didn't want to report to Jim Junior; correct?
MR. SWANIS: Objection to form.
THE WITNESS: I'm not sure if I had that communicated to me from Margaret. I'm not sure about that. I'd say no, I don't know. I don't recall that.
BY MR. KRUM:
Q. Well, did there come a time when you heard or learned that Margaret did not want to report to Jim Junior?
A. Yes.
Q. When was that?
A. I don't -- I have no recollection of the time when that transpired.
Q. Do you recall how you learned that or heard that?
A. Well, with Ellen, I -- she told me.
Q. Ellen told you that she --
A. Ellen told me.
Q. That she did not want to report to Jim Junior?
A. She did not, yes.
Q. When did she tell --
A. She said she didn't want to. She didn't

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stock. I didn't -- I didn't see the differentiating -- or the conflict.

Q. Did you think it made sense when she said to you in the office that she wanted to exercise a supposed option to acquire 100,000 shares of Class B voting stock and pay for it with Class A nonvoting stock, because doing so made good economic sense, or whatever words she used?

MR. SWANIS: Objection; form.

BY MR. KRUM:

Q. Did you -- did you agree with her?

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

THE WITNESS: It wasn't mine to agree or not to agree whether that was -- she was the trustee. That was her decision; it wasn't my decision.

BY MR. KRUM:

Q. I'm asking what you thought about what she said to you.

A. My personal opinion? It didn't matter, my personal opinion. I didn't give her my personal opinion. I didn't state a personal opinion.

Q. What did you think?

A. I don't -- candidly, I don't have enough facts about what's going on in the estate, the need

Page 215

of money, what's there, what's happening, where it's going. She said this is what she wanted to do. She was in charge of it, and it seemed okay to me.

Q. And did you give any thought to what reason, if any, might cause or prompt Ellen and/or Margaret to acquire Class B voting stock?

MR. TAYBACK: Objection; calls for speculation.

You can answer.

THE WITNESS: Repeating myself, she told me it was the economics associated with the stock had gone up. The options have a finite life, and she expressed her concern that if she didn't do it and the stock went down, she could be faulted for not overseeing those assets properly.

BY MR. KRUM:

Q. What was the expiration of the supposed option?

A. I have no idea.

Q. Did you ever learn that?

A. No. Again, it's not my asset; it's her asset.

Q. Did you ask her -- well, what did you do to ascertain it was her asset?

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A. I informed myself through legal counsel.

MR. TAYBACK: Don't -- don't disclose the communications with legal counsel. You can simply say you conferred with legal counsel.

THE WITNESS: I conferred with legal counsel.

BY MR. KRUM:

Q. Who?

A. Craig Tompkins, Greenberg Traurig and Bill Ellis.

Q. When did you confer with each of them?

A. There were emails about this particular thing, and Tim Storey wanted -- if I -- as I recall, he wanted a legal written opinion or something like that. And I didn't think there was a question that the shares were within the estate, and anyway, Ed Kane agreed, we should -- we should make sure we're on a firm basis that they have it and can do -- can exercise this.

So I inquired, and to my knowledge, Ed Kane inquired, and we both became of the opinion that it was an asset of the estate and they could exercise this transaction.

Q. Did either you or Mr. Kane confer with anybody that -- well, strike that.

What did -- what did Ed Kane do, if you

Page 217

know --

A. He voted for it.

Q. Okay. What did Ed Kane do, if anything, to seek advice of counsel?

MR. TAYBACK: Objection; foundation.

Whatever you know.

THE WITNESS: I'm pretty sure he talked to Craig Tompkins as well, legal counsel. I don't know if he spoke to Bill Ellis. And beyond that, I don't know what Ed Kane did.

BY MR. KRUM:

Q. Your communications were with what lawyer?

MR. TAYBACK: You okay?

THE WITNESS: Went down the wrong way.

MR. TAYBACK: Need a minute?

THE WITNESS: Just 30 seconds.

MR. TAYBACK: Why don't we go off the camera so you don't need to have a coughing --

MR. KRUM: Yeah, we'll go off the record for a couple of minutes. That's fine.

THE VIDEOGRAPHER: We are off the record. The time is 4:50.

(Recess.)

THE VIDEOGRAPHER: We are on the record. The

Page 218

time is 4:59.
BY MR. KRUM:
Q. Mr. Adams, referring to your testimony a few minutes ago that you consulted with Greenberg Traurig, with whom did you speak or communicate?
A. I didn't speak to anyone. It was a written communication.
Q. From Greenberg Traurig?
A. Yes.
Q. To you?
MR. TAYBACK: Vague as to the "you." You, Mr. Adams or --
MR. KRUM: Yeah, that's what I'm asking.
MR. TAYBACK: Okay.
THE WITNESS: No, it wasn't to me. I'm not -- I don't -- at the top, I don't know who it was to.
BY MR. KRUM:
Q. How did you come to have it?
A. It was given to me by -- the counsel of the company gave it to me.
Q. Mr. Ellis or Mr. Tompkins?
A. I don't know -- one of them, yes, gave it to me.
Q. Okay. And what was the subject matter of this document?

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MR. TAYBACK: General subject matter.
THE WITNESS: Ownership of the voting stock.
BY MR. KRUM:
Q. Was the subject matter of the memo -- did it address the subject of who had the right to vote certain stock at or in connection with the annual shareholders meeting?
MR. TAYBACK: I'm going to object to that question to the extent I think it's a little --
MR. KRUM: It's not what they said. It's a particular subject matter. It's different -- it may or may not be a different subject matter than what he just said. And he may know not know, but I'm entitled to the subject matter.
MR. TAYBACK: Could I just have the subject matter read back to me again.
MR. KRUM: Sure. Go ahead.
MR. TAYBACK: At some point it becomes so specific that it does become a disclosure. You know what -- the point I'm making, so I just want to make --
MR. KRUM: I understand.
(Record read as follows:
"Q. Was the subject matter of the memo -- did it address the subject of

Page 220

who had the right to vote certain stock at or in connection with the annual shareholders meeting?")
MR. TAYBACK: I'll let you answer the question if you know.
THE WITNESS: I'm not sure if it specified that.
BY MR. KRUM:
Q. Okay. But you relied on this particular Greenberg Traurig memo in connection with making the decision to vote as a member of the compensation committee to allow Ellen and Margaret Cotter, as executors, to exercise the supposed option to acquire 100,000 shares of Class B voting stock; is that right?
MR. TAYBACK: Objection to the extent that misstates his prior testimony.
You can answer.
THE WITNESS: Yes, in addition to Craig Tompkins and Bill Ellis.
BY MR. KRUM:
Q. Now, to your knowledge, were -- are any of those lawyers -- did any of those lawyers possess any expertise in trust and estate matters?
MR. TAYBACK: Objection; lack of foundation.

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You can answer if you know.
THE WITNESS: I have no knowledge about that.
BY MR. KRUM:
Q. Okay. And I don't want to know what was said, but was there any discussion in the Greenberg Traurig memo of what you understood to be trust and estate issues?
MR. SWANIS: Objection; form.
MR. TAYBACK: Join.
THE WITNESS: Yes, there were some --
MR. TAYBACK: You can answer yes or no.
THE WITNESS: Yes.
BY MR. KRUM:
Q. And in terms of your thinking, not what any lawyer said in a memo, did whatever discussion there was that you understood to be of trust and estate matters bear upon your decision-making?
A. I'm sorry. Would you say that question again.
Q. Sure. I'll ask it a little differently. Did you rely on a portion of the Greenberg Traurig memo that you understood addressed trust and estate matters in making your decision to vote in favor of allowing Ellen and Margaret Cotter to exercise the supposed option to

A. Yes and no. Not all of it but some, yes. And I thought also, there might be a point where I could buy it back later on.

Q. What were the proceeds, meaning how much money did you net from exercising the option and selling RDI stock?

A. I want to say I netted like $120,000 maybe.

Q. And I'm sorry. I said March or April. Do you recall when that was?

A. No, I don't. I really don't.

MR. KRUM: What's our number? Where are we?

THE REPORTER: We are on 67.

MR. KRUM: Okay. I'll ask the court reporter to mark as Exhibit 67, a two-page document bearing production numbers GA00005504 and 05.

(Exhibit 67 was marked for identification.)

THE WITNESS: I remember this.

BY MR. KRUM:

Q. What do you recognize Exhibit 67 to be?

A. An email from Ed Kane to Tim Storey, responding to Tim Storey's letter to the entire board, it looks like, the day before.

Q. Directing your attention, Mr. Adams, to

Mr. Kane's email --

A. Yes.

Q. -- do you see in the first line, it says: "We have heard from Nevada counsel via their memos"?

A. Yes.

Q. At the time, did you have any understanding to what that referred?

A. As I recall, I think Ed was referring to the memos from Nevada counsel about who could vote the stock in the various trusts or whatever.

MR. KRUM: Okay. Why don't we go off the record.

THE VIDEOGRAPHER: We are off the record. The time is 5:27.

(Discussion held off the record.)

THE VIDEOGRAPHER: This concludes the deposition of Guy Adams, Volume I, April 28, 2016, which consists of four media files. The original media files will be retained by Hutchings Litigation Services. Off the video record at 5:28 p.m.

(The deposition was adjourned at 5:28 p.m.)

CERTIFICATE OF REPORTER

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

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

That I reported the taking of the deposition of the witness, GUY ADAMS, commencing on Thursday, April 28,2016, at 10:13 a.m.;

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

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

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

LORI RAYE
CSR No. 7052

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state),

and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:
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Exhibit 3

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

FRIDAY, APRIL 29, 2016

VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER 305149

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Plaintiffs,

vs.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped deposition of GUY ADAMS, held at Jeffer Mangels Butler & Mitchell, LLP, located at 1900 Avenue of the Stars, Tenth Floor, Los Angeles, California, 90067, on Friday, April 29, 2016, at 9:10 a.m., before Lori Raye, Certified Court Reporter, in and for the State of California.

Appearances:

For Plaintiff:

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BY: MARK G. KRUM, ESQ,
3993 Howard Hughes Parkway
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For Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Douglas McEachern, Edward Kane, Judy Codding and Michael Wrotniak:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
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Appearances: (Continued)

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For Nominal Defendant Reading International, Inc.:

GREENBERG TRAURIG
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For Defendants William Gould and Timothy Storey:

BIRD | MARELLA, PC
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HERNAN D. VERA, ESQ.
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Also Present:

JAMES J. COTTER, JR.

COREY TYLER (Videographer)

I N D E X

WITNESS: GUY ADAMS

EXAMINATION	PAGE
By Mr. Krum	250
By Mr. Nation	439

E X H I B I T S

NUMBER	DESCRIPTION	MARKED
Exhibit 68	3-10-15 Email, 6-10-13 Memorandum (GA5529-5532)	301
Exhibit 69	Emails Re: Stock Option Agreement and Form 4 (GA5236-5237)	302
Exhibit 70	3-20-15 Email (GA5246)	307
Exhibit 71	4-24-15 Email, Unanimous Written Consent of Board of Directors of Reading International (GA5564-5569)	309
Exhibit 72	3-19-15 Minutes of Meeting of Board of Reading International (GA3828-3831)	316
Exhibit 73	4-18, 4-19-15 Emails (GA5473-5474)	323
Exhibit 74	5-9-15 Email (GA5482)	334

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that stand as of May 19th?
A. Ellen, Margaret and Ed and Doug McEachern were of the opinion, yes, on an interim basis.
Q. Yes what?
A. Yes to Guy Adams being the interim CEO on a short-term basis.
Q. What about Ed Kane?
A. As interim?
Q. Okay. I'm sorry.
So how did you know that each of Ellen, Margaret, Ed Kane and Doug McEachern were agreeable to you being appointed CEO on an interim -- interim CEO or a short-term basis?
MR. TAYBACK: Objection to the extent it's asked and answered.
You can answer.
THE WITNESS: My recollection -- and I can't remember if it was Ellen or Ed Kane -- one of them told me and I followed up with a phone call to Doug McEachern to confirm it. So that's how I knew.
BY MR. KRUM:
Q. Okay. When did you have the follow-up phone call with Doug McEachern?
A. Help me -- what was the date of the meeting, that meeting? We're up to May 19. What

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was the date of the meeting?
Q. I think it was May 21st.
A. 21st?
Q. Yes.
A. I called Doug either one or two days before the meeting.
Q. What did you say and what did he say?
A. I said, I understand you're going to vote for the removal of Jim Junior. He said yes. And I said, Are you comfortable with me being interim CEO for a short duration? He said yes. And I said, Okay. I'll see you in Los Angeles.
Q. That was it?
A. That was pretty much it.
Q. When did you first come to understand that Mr. McEachern had agreed or determined to vote to remove Jim Cotter Junior as president and CEO?
A. Again, either Ellen or Ed Kane informed me of that.
Q. When?
A. I'm not sure. Maybe -- I mean, I could guess.
Q. Well, if you would --
A. It was prior to this date.
Q. If you would do this, Mr. Adams, I don't

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want you to guess a date but if you can put it in context or sequence of time or point of reference to a date we can -- an event we can date.
A. My recollection would be two weeks, three weeks before May 19th.
Q. And at that point in time, it was either Ellen Cotter or Ed Kane who told you that Doug McEachern had --
A. Yes, I didn't have conversations with Ed about it.
Q. I'm sorry. Let me finish.
So you learned that McEachern --
A. I apologize.
Q. No, it's okay. It happens. I've done it, too.
You were told by one or the other of Ellen Cotter or Ed Kane that Doug McEachern had determined to vote to terminate Jim Cotter Junior as president and CEO; correct?
A. Yes.
Q. And as you sit here today, do you recall if it was Ellen Cotter or Ed Kane who told you that?
A. It may have been both.
Q. And do you recall that as happening in a

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single conversation with the two of them or separate conversations --
A. Separate.
Q. -- with each?
A. Separate conversation with each, yes.
Q. Okay. So as best you can recall, in the conversation with Ellen, was that in person or telephonic?
A. Ellen, could have been in person.
Q. Okay. And what did she say and what did you say?
A. I said, Well, if we're going to go through this stress of replacing a CEO, it's a very weighty decision. Before you have a board meeting call, you better make sure there are people that think like you do to remove him.
Q. To remove Jim Junior as president and CEO?
A. Yes.
Q. What was her response?
A. Well, she said, Well, Ed's going to vote, you're going to vote and I'm talking to Doug McEachern tomorrow. I talked to him earlier last week, or something like that. So she was clearly talking to him.

original media files will be retained by Hutchings Litigation Services.

Off the video record at 5:29 p.m.

(The deposition was adjourned at 5:29 p.m.)

CERTIFICATE OF REPORTER

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

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

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

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

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

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

LORI RAYE
CSR No. 7052

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____
Signature of Witness

_____
Name Typed or Printed

Exhibit 4

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, VS. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B Volume II

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF JUDY CODDING

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

FILE NO.: 453340-B

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of JUDY CODDING, taken on behalf of Plaintiff, at 1901 Avenue of the Stars, Suite 600, Los Angeles, California, beginning at 2:22 a.m. and ending at 4:38 p.m., on Wednesday, February 28, 2018, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

A P P E A R A N C E S

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Also Present: CORY TYLER, Videographer

I N D E X

WITNESS	EXAMINATION	PAGE
JUDY CODDING		
	BY MR. KRUM	199
	BY MR. TAYBACK	273
	BY MR. KRUM	277

(The following previously marked exhibits were referenced: Deposition Exhibits 525, 527, 176.)

Los Angeles, California
Wednesday February 28, 2018
2:22 p.m.

THE VIDEOGRAPHER: And this is the beginning of Media 2 and the beginning of deposition of Judy Codding, Volume II, in the matter of Cotter, Jr., versus Cotter, et al., held at 1901 Avenue of the Stars, Suite 1600, Century City, California, on February 28th, 2018, at 2:22 p.m.

The court reporter is Grace Chung, and I am Cory Tyler, the videographer, an employee of Litigation Services. This deposition is being videotaped at all times unless specified to go off the video record.

Would all present please identify themselves, beginning with the witness.

THE WITNESS: Judy Codding.

MR. TAYBACK: Christopher Tayback for the witness and director defendants.

MR. FERRARIO: Mark Ferrario for Reading or RDI.

MR. KRUM: Mark Krum for plaintiff.

THE VIDEOGRAPHER: And will the court reporter please swear in the witness.

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A. I don't remember that.
Q. Okay. Did the Highpoint Associates document or any information regarding Highpoint Associates make any difference to you in any decision you made or conclusion you reached?
A. It's just one small piece of knowledge.
Q. What's your understanding of what happened at Highpoint Associates?
A. Well, I haven't seen the work order. I've only read the contract, and it appears that Jim Cotter, Jr., went out and hired a group to help him, it appears, with maybe strategy. But it wasn't that clear in the contract.
The contract called for him to -- for Highpoint Associates interview directors that had access to all materials, et cetera, but it wasn't clear to me, since there wasn't a work order, what the particulars were.
Q. Other than what you've already told me, have you had any conversations or been privy to any conversations about the Highpoint Associates' document or documents or Highpoint Associates?
A. After the meeting, I asked about what -- who was Highpoint Associates and why they were hired.

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Q. Who did you ask?
A. I asked Ellen Cotter, the CEO.
Q. What did she say, if anything?
A. She said that she didn't know about it during the time and she thinks that Jim Cotter hired them to help him think about issues that had to be addressed within the company, but she wasn't sure since she didn't know anything about it. She just knew that there -- we had paid $60,000, and we had received no product as a result.
Q. The December 29, 2017, board meeting included two matters with respect to which you were asked to ratify prior decisions; right?
A. Yes.
Q. And what were those two matters, in your words?
A. One was on Mr. Jim Cotter as CEO, and the second matter had to do with a stock, with Ellen Cotter and Mark Cotter.
Q. It had to do with their request to exercise an option to acquire 100,000 shares of RDI Class B voting stock; right?
A. For one of them, yes.
Q. For the second one you just described; right?

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A. Right.
Q. For ease of reference, Ms. Codding, I'm going to refer to that as the 100,000 share option.
A. Okay.
Q. Ms. Codding, with respect to --
(Miscellaneous comments.)
BY MR. KRUM:
Q. Ms. Codding, with respect to either of the two ratification matters you just identified, when did you first hear or learn that either/or both of them would be or might be raised at the December 29, 2017, board meeting?
A. We had a discussion in the special committee about the ratification of Jim Cotter, Jr., being the CEO before that meeting -- shortly before that meeting.
Q. And by "that meeting," you're referring to the December 29th, 2017 --
A. Right.
Q. -- board meeting?
MR. KRUM: Did you hear the answer?
THE REPORTER: Yes.
BY MR. KRUM:
Q. Who was present for or a party to the special committee discussion you just referenced?

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A. Our attorney, Mike Bonner --
Q. Uh-huh.
A. -- and Bill Gould, Doug McEachern.
Q. Was this in person, by telephone, or both?
A. By telephone.
Q. Who raised the subject of ratification?
A. I don't --
MR. TAYBACK: You can just answer the question who, only because there's a lawyer present. So I'm going to make -- make objections.
So you can answer the question, though, as it was phrased.
A. I don't remember whether it was Bill Gould or whether it was Mike Bonner.
BY MR. KRUM:
Q. And without saying what was said, meaning without speaking to the substance, did one or the other of -- or both, Mike Bonner or Bill Gould, explaine the notion of ratification of these two issues?
A. Yes.
Q. At the special committee meeting, was there any discussion that you viewed as bearing upon the merits of either ratification decision as distinct from the fact of or reasons for

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ratification?
MR. TAYBACK: Object as being confusing.
A. I'm not -- I'm not sure whether there was a distinction in my mind between those two.
BY MR. KRUM:
Q. Okay. So -- and what's your best estimate of when in time -- meaning how far shortly before the December 29, 2017, board meeting -- that the special committee telephonic meeting occurred?
A. Just a couple of days.
Q. Are there minutes?
A. There are minutes that have not been approved that -- with our attorney. We haven't had a meeting with our attorney.
Q. You have minutes of every special committee meeting; is that right?
A. I think most, if not all.
Q. And when you say "our attorney," are you referring to Mr. Bonner?
A. I am.
Q. At Greenberg Traurig?
A. Yes. And on other occasions, other attorneys have joined --
Q. Who?
A. -- to explain.

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MR. TAYBACK: Let -- let her finish her answer. Just --
BY MR. KRUM:
Q. Sure. Please go ahead.
A. To -- to explain whatever issue we were dealing with at that time, and I -- because we dealt with lawyers in the special committee and we dealt with them in other kinds of discussions, basically, we have dealt with Chris and with Mark and with Marshall and with Mike.
Q. Okay. Mike is Mike Bonner of Greenberg Traurig?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. Chris being Mr. Tayback?
A. Yes.
Q. And Marshall being his colleague, Marshall Searcy?
A. Yes.
Q. And Mark being Mr. Ferrario with Greenberg --
A. Yes.
Q. -- Traurig?
Has the special committee ever discussed

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engaging its own independent counsel?
MR. TAYBACK: I'm going to -- I'm just going to admonish the witness. If you had a discussion about retaining independent counsel with counsel for the company or with counsel for any of the directors, I suppose, that would be privileged.
THE WITNESS: Okay.
BY MR. KRUM:
Q. So -- so he's instructing you not to answer insofar as the answer is yes with Quinn Emanuel lawyers or yes with Greenberg Traurig lawyers, and I'll understand that you're excluding that from your answer.
So with that understanding, meaning excluding those lawyers and those law firms, based on the instruction that Mr. Tayback just gave, has the special committee ever discussed the subject of engaging separate independent counsel for the special committee?
A. No.
Q. Do you understand that Greenberg Traurig represents RDI?
A. Yes.
Q. And that Mr. Tayback and Mr. Searcy represent you and certain other directors

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individually?
A. Yes.
Q. And you understand that they represent -- represented you in connection with this derivative lawsuit; right?
A. Yes.
Q. And you understand Mr. Tayback and any of his colleagues or anyone else at Quinn Emanuel to represent you in any context or for any purpose other than this derivative lawsuit?
A. I think that's what they represent us for.
MR. KRUM: So you weren't here this morning, Chris. I asked the minutes for this meeting be produced. And I don't know what Marshall and Mark have done, but that request stands.
Q. What did you do, Ms. Codding, if anything, other than review Exhibit 525 to prepare yourself for the December 29, 2017, board meeting?
A. For that specific meeting?
Q. Right.
A. Nothing.
Q. Now, directing your attention to the ratification decision you've identified earlier concerning the termination of Jim Cotter, Jr., as

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I can't tell you when that occurred, but over a period of time that has occurred, and I -- I just can't tell you the dates.

Q. Other than the example or -- strike that.

Other than the testimony you just gave, do you recall the substance of any conversation you've had with any other director regarding the removal of Jim Cotter, Jr., as president and CEO?

A. Yes. I spoke to Bill Gould about why he did not vote to remove Jim when at this -- over the past year I knew he believed that that decision was a mistake, but at the time he thought that it was the right decision to give Jim the time, an extra several weeks that they had agreed to. And so we spoke about that. I was interested in understanding, from Bill's point of view, why he voted the way he did.

Q. When you refer to "give Jim the extra several weeks he agreed to," to what are you referring?

A. My understanding from Bill was that they had a time frame that ended up, I guess, being pretty much what -- what the time frame was. But when this issue first came up in the discussion and they had board meetings, two board meetings in May,

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I think that Bill wanted to give Jim the time that they had agreed to for him to have the opportunity to make the changes that were necessary in order for him to continue as CEO.

Q. And by the -- by the time frame to which they agreed, who is the "they" to whom you're referring?

A. I -- I understood that it was with -- I think it was with Jim and either with a full group of directors or maybe just with the lead director. But you're asking me questions -- I have to say you're asking me questions that I wasn't present for the discussions.

Q. I'm just asking your understanding, and if you don't have any because you weren't there and you haven't learned anything after the fact, then that's the answer.

You referred to changes that were necessary in order for Jim Cotter, Jr., to continue as CEO. What did you understand those to be?

A. I think I understand those to be the same, that I have concerns about Jim, and it has to do with experience, knowledge, decision-making, leadership, temperament.

Q. And when you say "you have concerns about these," your concerns are based upon your interaction with him as a director; is that correct?

A. It is.

Q. You also referenced conversations you had had with Jim Cotter, Jr., and one of the things you considered in your December 29 vote to ratify the prior termination decision, what conversations are you referencing?

A. Jim and I had two conversations. This goes -- I -- this is covered in the deposition.

Q. The -- we covered this in your last deposition?

A. Yes.

Q. These -- so these were conversations that occurred prior to March 1 of last year?

A. Right.

Q. Well, I'm not going to ask you to repeat that. You also refer in your answer to documents you've reviewed.

Are you referring to any documents other than Exhibit 525?

A. No.

Q. Now, with respect to Exhibit 525, you referred to meeting minutes.

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Are you referring to the minutes of the meetings of May and June 2015?

A. I am.

Q. Have you ever had any discussions with anyone about those minutes?

A. Specifically about those minutes, no.

Q. Do you have any independent basis upon which to determine whether they are accurate?

A. Based on the collective conversations that I have had and my own subsequent observations, Jim Cotter, Jr., they would appear to me to be accurate.

Q. You're referring to comments that pertain to the stated reasons for terminating him?

A. Yes.

Q. Independent of those particular board meetings of the May and June 2015 minutes, do you have any basis upon which to assess whether the minutes are accurate?

A. Oh, I wasn't present, so I could not tell you other than that.

Q. So that we're clear, directing your attention, Ms. Codding, to Exhibit 525, starting with the page that -- in the lower right-hand production number ending in 7189 and going

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through 7199, you'll see that page range purports to be the minutes of the May 21, May 29, and June 12th, 2015, meetings.

Are those the minutes that you're referencing?

A. Yes.

Q. I direct your attention, Ms. Codding, to the second page of the -- what purports to be the May 21 minutes, so that's the one ending in production number 7188 in the lower right-hand corner.

Do you have that?

A. I do.

Q. I'm going to ask you a question that calls for a yes-or-no answer. You see that in the last paragraph above the subhead "Review of Operations," there's an entry saying Mr. Ellis made some statements.

And my question --

A. Excuse me. I have to find that.

Q. Okay.

MR. TAYBACK: I'm going -- I'm going to object. I believe that this document was produced as a redacted version, and I don't know if this came up in the last one --

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MR. FERRARIO: Which one? Are you looking at the September 2015?

MR. TAYBACK: He's looking at May 21.

MR. KRUM: No, I'm looking at May --

(Speakers talking simultaneously.)

A. I don't see a -- I don't see a Mr. Ellis.

MR. KRUM: Okay. I'm going to -- let me -- let me be clear here. I'm not going to ask for the substance of anything. I'm just going to ask if she has ever had a conversation with anybody about that subject matter. So this is really to assist --

MR. TAYBACK: Okay.

MR. KRUM: -- the witness. I can ask an open-ended question.

MR. TAYBACK: Okay. I'll let you ask that subject to the fact that I do believe there was a redacted version of this, and I would probably send you a clawback letter with respect to this.

MR. FERRARIO: This one too?

BY MR. KRUM:

Q. All right. So --

A. Under "Review of Operations," I see no mention --

Q. Right --

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A. -- of Mr. Ellis.

Q. Right above that, the paragraph immediately above that.

A. Yeah, I see it.

Q. So my question is: Have you ever had any conversations with anyone about the subject of whether either both Guy Adams or Ed Kane suffered from some conflict that made a difference to whether they could vote or their vote should be counted with respect to the subject of terminating Jim Cotter, Jr., as president and CEO? Yes or no?

MR. TAYBACK: Ever or at any point in time?

BY MR. KRUM:

Q. Other than with counsel in this lawsuit.

A. Could you separate out the two?

Q. Sure.

MR. FERRARIO: And you heard him. He said, "other than with counsel," just so you're clear.

BY MR. KRUM:

Q. Right. So I'll -- I'll include that expressly in the next question.

So excluding any conversations you've had counsel with connection -- had with counsel in

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connection with this derivative lawsuit, Ms. Codding, have you ever had any conversations with anyone about the subject of whether Ed Kane suffered from any conflict of interest that would make any difference to his vote or his -- the propriety or right in voting with respect to the termination of Jim Cotter, Jr., as president and CEO?

A. No.

Q. And the same question with respect to Guy Adams.

A. Without counsel present?

Q. With -- excluding counsel; correct.

A. No, not that I recall.

Q. At the bottom of the same page, you see the very last two lines read as follows: Quote, The board then proceeded to discuss at length the performance of Mr. Cotter as chief executive officer and president of the company since he was appointed in August 7, 2014.

Do you see that?

A. I do.

Q. Do you know if that's accurate?

A. I wasn't there.

Q. Okay. So you don't know?

A. No.

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A. I covered that in the last deposition about my conversations with Ellen, Margaret, and Jim in hopes that we could find a way to resolve it.

Q. And you have not had any additional conversations since your last deposition?

A. On that issue -- I've had many conversations since that last issue [sic]. On that particular issue, I'm constantly asking Ellen and Margaret. I've even asked Jim at different board meetings if there was any way that they could find a way to settle all their issues and have a family.

I come from a family where my father and his two brothers ran a business, and they ran it together. And they got along beautifully and business prospered and grew. I've seen it work. And I'm -- I was very hopeful that Ellen and Margaret and Jim could find a way to take the asset that their father had started and grow it in ways that they would all be proud of.

Q. Other than what you just said, including with respect to your personal family's business, are there any other reasons why you've continued to ask -- to raise this issue with Ellen, Margaret, and Jim?

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A. Yes, because it's in the best interest of Reading and its stockholders. That goes, to me, without saying that that's -- it -- it could be a win-win for everyone, a win for the Cotter family and a win for Reading and its stockholders. And I don't quite understand all of these lawsuits, why they're necessary.

Q. How do you -- how do you anticipate that it would be a win for Reading stockholders?

A. Because I think it would put all of the -- these issues aside. I think the money that is being spent on this is outrageous, and I think having an end to disagreements is always beneficial.

Q. Directing your attention back to the May 21, 29, and June 12, 2015, minutes that is part of Exhibit 525, you do not know what, if anything, is omitted from those minutes because you weren't there; right?

A. Right. And I also understand that minutes are not a verbatim, but they capture the essence of what happens in meeting. And so I would expect that the major issues that were dealt with would be reflected in the minutes.

Q. Accurately?

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A. Accurately.

Q. I direct your attention, Ms. Codding, to the page of Exhibit 525 that ends in production number 7193. You'll see that is the third page of the May 29, 2015 --

A. Uh-huh.

Q. -- minutes.

Do you have that?

A. I do.

Q. At the end of the last full paragraph on that page, it reads as follows: "The meeting went into recess at approximately 2:00 p.m. to permit Mr. Cotter and Madams Ellen Cotter and Margaret Cotter to continue their discussion of settlement terms," close quote.

Do you see that?

A. I do.

Q. Do you know if that's accurate?

A. I don't know.

Q. Did you ever hear or learn or were you ever told that Jim Cotter, Jr., was told, in words or substance, "We're going to reconvene this meeting telephonically at 6 o'clock, and if you do not resolve your differences with your sisters by then, we're going to proceed with the termination

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vote"?

A. I didn't hear that.

Q. Have you read any of the deposition transcripts in this case?

A. No. My own.

Q. Have you looked at any of the documents marked as deposition exhibits other than those in your own deposition?

A. No.

Q. What is it exactly that you understand that you voted to ratify with respect to the termination of Jim Cotter, Jr.?

A. That we would not hire Jim Cotter, Jr., as the CEO.

MR. TAYBACK: You're asking for her recollection, not what's written in the --

MR. KRUM: Right.

MR. TAYBACK: -- minutes?

MR. KRUM: Yeah.

A. To ratify that the vote that was taken to not have him as a CEO, that we concurred with.

BY MR. KRUM:

Q. Ms. Codding, to your right there are two other documents that have been marked previously. I'd ask that you take a look at the one that has

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been marked --
A. This one?
Q. No. Okay. It should be -- you should have one that says 526 and one that says 527.
Do you have those?
A. Yes.
Q. I'd ask you to take a look at Exhibit 527.
A. Yeah.
Q. Have you seen Exhibit 527 previously?
A. I have not seen it, but I knew that we had requested that a note be sent to Ellen.
Q. How did you know that?
A. I knew it from discussion, asking with the special committee that Bill Gould was going to ask Ellen for a discussion of these matters.
Q. Okay. And by the special committee and Bill Gould, are you referring to the December 27, 2017, special committee meeting about which you've testified earlier today?
A. Whatever date that was. I don't remember. Earlier, as I said, I didn't know whether it was 26th, 27th, 28th. I don't remember.
Q. Okay. But whatever the date was --
A. Whatever the date --
Q. -- the same reference --

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A. Yeah.
Q. Okay. Did you have any discussions with anybody about the phraseology of either Items 1 -- either Item 1 or 2 of Exhibit 527?
A. Not the phraseology. The intent, yes.
Q. What was your personal understanding of the -- of the purpose for which you were going to be doing this?
A. My understanding was that since the judge made the decision that myself and Bill Gould and Doug McEachern and Ed Kane and Michael were now declared definitely independent, that we would have the opportunity to ratify a decision if we so chose.
Q. What was your understanding of why you would do so?
A. To make sure that the court knew where we stood about Jim Cotter, Jr., being the CEO.
Q. Was your decision to vote in favor of ratification based in any respect on your view of this derivative lawsuit?
MR. TAYBACK: Objection. Vague.
And if you can answer the question without divulging attorney-client communications, you can answer it.

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A. I can't answer it.
MR. TAYBACK: If her understanding, with respect to the relationship of this issue to the lawsuit, came from a conversation with a lawyer, I'd instruct her not to answer.
MR. KRUM: Right.
Q. Is that the case, Ms. Codding?
A. It is.
Q. Okay. So independent of that conversation or those conversations with lawyers, with respect to the ratification or otherwise, do you have an independent view of this derivative lawsuit?
MR. TAYBACK: Object to the form of the question. Does she have a view of the derivative lawsuit?
MR. KRUM: Yes.
MR. TAYBACK: She can answer that question.
MR. FERRARIO: Other than what she's already testified to that she thought it was a waste and all that.
MR. KRUM: I'm not asking her to repeat it.
MR. FERRARIO: Okay. All right.
MR. KRUM: I mean, I don't think that's a

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fair characterization. Well, it doesn't matter whether it is. She can answer.
A. I don't really understand the lawsuit as it exists today. I -- I really don't understand it. I don't understand how it's a derivative lawsuit, and I've asked for an explanation of it from our attorneys. And it's hard for me to understand why there is this derivative lawsuit.
And the attorneys can verify that I've asked that question many times.
BY MR. KRUM:
Q. So if you were able to vote on whether this derivative lawsuit should proceed or not, would you -- how would you vote, if at all?
A. Well, I don't think it should -- I don't think it should go forward. I don't see the purpose of it. I don't understand it.
Q. Ms. Codding, take a look at Exhibit 526. You have that in front of you as well. And take such time as you need to review it.
My first question is, have you ever seen Exhibit 526?
A. I have.
Q. When did you first see it?
A. I don't remember the date.

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You had the CFO saying it was fine. And you had the compensation committee back then who reviewed it thoroughly, and so it appeared, to me, that everything was in order -- correctly in order for this to happen.

Q. Let's take a look at the page ending in 7213 as part of Exhibit 525. You'll see that's the first page of the compensation stock option committee, September 21, 2015, minutes.

A. Uh-huh.

Q. Do you have that?

A. I do.

Q. First of all, are you aware, independent of reading these minutes, that committee member Tim Storey was not a participant in the meeting of the vote.

A. I only know it reading the minutes that he wasn't -- he was preoccupied.

Q. Do you know why the meeting proceeded on September 21, 2015?

A. I think that in reading the minutes, Ed Kane had said that they had dealt with Jim's request in an expeditious manner, and that he wanted to treat Margaret and Ellen the same as he had treated Jim.

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Q. What's your understanding, as you sit here today, Ms. Codding, about when the compensation of stock option committee first considered a request by Ellen to exercise the 100,000 share option?

A. I don't know.

Q. Have you ever heard or learned or been told that that request was made in or before April of 2015?

A. I don't know.

Q. You think you've ever heard that?

A. You know, I wasn't there at the time. The sequence of events, you know, aren't with me because I wasn't there at the time, so for me to vote on this, I had to believe that people thought this was legitimate and right.

And that was what I was concerned about. I wasn't concerned about the sequence of events, what happened, when, by whom. I just wanted to know: Legally was it all right, and did the CFO support it? And once I was convinced that it was legally correct, I was very willing to ratify it.

So --

Q. Did you --

A. -- the sequence makes no -- it doesn't sit with me.

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Q. It doesn't sit with you, meaning it makes no difference?

A. Well, I -- I didn't live it, so I can't say whether I heard it before April, before May, before September. It doesn't -- this is not my -- in my recollection.

Q. Did you make any efforts to determine whether the estate was the owner of the 100,000 share option?

MR. TAYBACK: Other than reviewing the materials she's already testified about?

A. I've already -- I've already told you what I knew.

BY MR. KRUM:

Q. Okay. So the answer is: Other than what you've already said, the answer is no?

A. Right.

Q. Take a look at the top of page 2 of the September 21, 2015, meeting minutes. That's 7214 in Exhibit 525.

Do you see the -- there's a phrase that reads, "Including whether the committee can rely on the records of the company in determining who was the owner of the options."

A. Where is that?

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Q. It's the first two lines of page 2 of the September 21, 2015, compensation meeting minutes.

A. Up here.

When I read this, it appeared to me that everything was in order.

Q. Prior to voting in favor of ratification with respect to the 100,000 share option on December 29, 2017, did you have any discussions with Ed Kane or Guy Adams about what they did or did not do as compensation committee members in connection with the request to exercise the 100,000 --

A. No.

Q. -- share option?

A. No.

Q. Did you ever hear or learn or were you ever told that Bill Gould had suggested that Ellen Cotter or the company or both seek some sort of judicial determination regarding whether the -- whether Ellen on behalf of the estate could exercise the 100,000 share --

A. No.

Q. -- option?

Did you ever talk to Bill Gould about the --

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, GRACE CHUNG, RMR, CRR, CSR No. 6246, a Certified Shorthand Reporter in and for the County of Los Angeles, the State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction;

That the dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificate null and void.

I further certify that I am not interested in the event of the action.

In witness whereof, I have hereunto subscribed my name.

Dated. March 14, 2018

_____
GRACE CHUNG, CSR NO. 6246
RMR, CRR, CLR

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ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state),

and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:
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ERRATA SHEET

Page	Line	Should read:	Reason for Change:
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Date: _____ _____
Signature of Witness

_____
Name Typed or Printed

Exhibit 5

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants, _____and _____ READING INTERNATIONAL, INC., a Nevada Corporation, Nominal Defendant.	)	Case No. A-15-719860-B Coordinated With: Case No. P-14-082942-E Volume 3 Pages 496 to 578

VIDEOTAPED DEPOSITION OF

WILLIAM GOULD

Thursday, April 5, 2018

9:32 A.M. TO 11:34 A.M.

Century City, California

Job No. 461424

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

Case No. A-15-719860-B

MARGARET COTTER, et al.,

Defendants,

Coordinated With:

Case No. P-14-082942-E

_____and _____

READING INTERNATIONAL, INC., a Nevada Corporation,

Nominal Defendant.

Videotaped Deposition of
WILLIAM GOULD,
taken at the offices of Sheppard, Mullin, Richter & Hampton, LLP, 16th Floor Conference Room, 1901 Avenue of the Stars, Suite 1600, Century City, California, on Thursday, April 5, 2018 at 9:32 A.M., before Lori Byrd, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, Realtime Systems Administrator, Kansas Certified Court Reporter 1681, Oklahoma Certified Shorthand Reporter 1981, and Certified Shorthand Reporter in and for the State of California 13023.

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INDEX OF EXAMINATIONS

WITNESS: WILLIAM GOULD
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INSTRUCTION BY COUNSEL NOT TO ANSWER
None

RECORD MARKED PER REQUEST OF COUNSEL
None

STIPULATIONS
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ratifications?
A. I believe that the first contact I had was either in mid-November, or late November of 2017.
Q. With whom?
A. Counsel.
Q. Who?
A. Mike Bonner and Mike Ferrario of Greenberg Traurig.
Q. Was this contact in person or telephonic?
A. This was a telephonic contact.
Q. And it was just the two or three of you, meaning you and one or both Bonner and Ferrario?
A. Yes. I was the chairman of the special committee and they were discussing it with me in my capacity as the chairperson of that committee.
Q. Okay. I'm not going to ask you who said what.
A. Okay.
Q. Let me ask you about all the logistics. Was this call a scheduled call?
A. I don't recall.
Q. Do you recall who placed or initiated the call?
A. No.
Q. Okay. When the subject of ratification was

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raised by Bonner or Ferrario or both of them, as the case may be on this call, was that literally the first time you had heard the concept, or notion?
MS. BANNETT: Assume --
MR. KRUM: In the context of RDI business.
MS. BANNETT: Assumes facts not in evidence.
A. In the context of RDI business, I believe it is. I was vaguely aware that Nevada law had a provision that was kind of unique, but I had never operated under it before, so I wasn't intimately familiar with it.
BY MR. KRUM:
Q. What was the next -- strike that. Did you have any understanding, exclusive of something you acquired from talking to Bonner and/or Ferrario, about how or why the notion or concept of ratification was raised in mid to late November of 2017?
A. No. It came solely from Bonner and Ferrario.
Q. Okay. What was your next communication with respect to the notion or concept of ratification at RDI?
A. My next communication was to notify the

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members of the committee, which was Judy Codding -- Judy Codding and Doug McEachern, that I had had this conversation with Mark and Mike, and that I wanted to explain to them what the concept was and why it was important.
Q. And when did that occur?
A. I would think sometime early December.
Q. Was that in person or by telephone?
A. That would be by telephone.
Q. Was anyone else, other than you, McEachern and Codding, party to that conversation?
A. My recollection is that Mike Bonner was on that call.
Q. So excluding anything Mike Bonner said, or excluding anything anyone else said that repeated something Bonner said, who said what about ratification?
MS. BANNETT: Objection. I don't think that adequately --
MS. HENDRICKS: I'm going to object here, Mark. I think we need to be very careful. He also said he talked to Mr. Ferrario. And to the extent any of the discussions were related to anything from counsel, they're protected by attorney-client privilege.

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MR. KRUM: Okay.
MS. HENDRICKS: Other than that, he can answer.
MR. KRUM: Go ahead, Ms. Bannett.
MS. BANNETT: I just would like to add to the extent that anyone asked a question that reflected a request for attorney-client advice, that should also be encompassed in the scope of the attorney-client privilege.
MR. HELPERN: Can we have maybe a stipulation that the defendants will join in each other's objections? We don't have to verbally join every single time?
MR. KRUM: Yes.
So let me rephrase the question.
BY MR. KRUM:
Q. During this conversation in early December with the other Special Committee members, McEachern and Codding, to which Mike Bonner was party, excluding anything that Bonner said, and excluding anything that anyone else said that came from or repeated something a lawyer had said, what was said about ratification?
MR. HELPERN: Can you do that one more time? I just want to make sure -- I'm not sure that

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this easier for you and me to not be asking about your personal life.

Did you travel over the year-end holidays?

A. No.

Q. Well, that doesn't help, then.

Two prior witnesses did and said they were in different places and it helped them place things in time, is why I asked.

A. Uh-huh. Uh-huh.

Q. So what was the next communication or action you had or did with respect to ratification?

A. The next action was a meeting of the Special Committee to request that the board consider the ratification.

And we sent that out -- after it had been approved, that notice was then sent to Ellen Cotter and the company.

Q. When was this -- and by the "Special Committee" you're referring to you, McEachern and Codding, correct?

A. Yes.

Q. And was Mr. Bonner there or on the phone, as the case may be?

A. He's on the phone for every meeting of the Special Committee.

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Q. For the entire meeting?

A. Unless we have to meet with him, we have a session in camera, but that's it.

Q. When did this Special Committee meeting occur?

A. I would have to think it would be the week immediately -- right around Christmas. Right around that time.

Q. Christmas was on Monday. The notice, I think, you're calling it, was set on Wednesday, the 27th. And the meeting was on Friday, the 29th.

Does that chronology sound right?

A. That sounds right to me, yes.

Q. Okay. With that in mind, can you identify the date of the Special Committee meeting as the week of Christmas or the week before?

A. I can't identify it with accuracy, but I think it was certainly in that range, either the week before or the week of Christmas.

MR. KRUM: So I don't know what lawyers should be handling this. I previously asked that the minutes of the Special Committee be produced.

So I'll ask it again. And we don't need to talk about whether it's Greenberg Traurig, or whoever else.

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I just ask that the lawyers at this deposition do what the lawyers previously didn't, which is follow through and tell me they're going to be produced or they're not.

MS. HENDRICKS: Mark, I don't think anybody's made that request to RDI, at least that I've been told. I'll look into it.

MR. KRUM: Well, in my view, the documents are responsive to our written requests. And it was raised, Kara, at a deposition that you did not attend. I think Mark was at that deposition for RDI.

All right. So, by the way --

MS. BANNETT: I haven't been present at any other depos --

MR. KRUM: You haven't been there, no. That's why I didn't ask you. And you're not in the litigation, so --

MS. BANNETT: Correct.

MR. KRUM: -- although I think it's responsive to the request, let me help you out.

BY MR. KRUM:

Q. Have you received the minutes, or draft minutes of that meeting? Presumably yes. It's now April.

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A. Yes.

Q. Have they been approved?

A. Yes, I believe they have.

Q. Okay.

A. I believe they have, yes.

Q. Okay.

MR. KRUM: All right. So anyway, I'll reiterate my request for those minutes.

BY MR. KRUM:

Q. So to clarify, Mr. Gould, did the Special Committee formally take some action with respect to ratification?

A. Yes.

Q. And what was that?

A. It requested that the company include the subject on the agenda for its next meeting, and call for a special meeting if there was not a regular meeting being scheduled.

Q. What was the next communication or action you personally had or did with respect to ratification after that Special Committee meeting?

A. Then we had the December 29th board meeting. And I gave a report at that meeting about the ratification and why it was being requested.

Q. What did you say about why it was being

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to anybody else on those things, or the people you mentioned.

But I think on the day of the board meeting, during the early parts of the board meeting, there were conversations going on about this, but they were very fleeting.

They were not -- we were sitting in a room and Jim, Jr., was either on the phone or there, so the conversations were obviously not totally candid.

Q. When you say they obviously were not totally candid, that's because Jim was there?

A. Well, because it was an adversarial lawsuit, and so we weren't like we were all on the same team.

Q. Well, what difference did that make to this particular subject, ratification?

A. Because -- because the ratification might be a litigation strategy.

Q. Did you have any discussions with Judy Codding about the termination of Jim Cotter, including any and all of the matters referenced in the May 21 and 29, and June 12, 2015 board minutes, in this time frame from mid December up to December 29 board meeting?

A. No. Judy -- Judy made it clear that she

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had done a pretty good diligence review of what had happened, and seemed to be pretty much up to speed on what had occurred. So she and I never had a conversation about the details of what went on during that period back in 2015.

Q. When she said -- when you said she made it clear, was this comments that she made at the December 29 board meeting?

A. No, comments at the Special Committee meeting.

Q. What did she say that she had done?

A. She didn't say what she had done, but it was clear from her -- the extent of her comments at that meeting that she was very well aware of what had happened, how it happened, read the minutes, and felt very comfortable that she knew what the facts were.

Q. What did she say that -- from which you draw the conclusion that you just described?

A. She said I looked into this and I feel I'm comfortable that I understand what happened at that time. Words to that effect.

It's not a direct quote, obviously.

Q. Prior to the December 29, 2017 board meeting, had you had any conversations with Michael

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Wrotniak about the termination of Jim Cotter, Jr.?

A. I don't believe I had, no.

Q. Did you have any communications with Ellen Cotter about ratification, being either the concept or notion generally, or ratifications that were the subject of the December 29 board meeting, other than what -- the conversation you've already described this morning, at any time prior to the board meeting on December 29?

A. No.

Q. Did you have any conversations with Margaret Cotter about ratification, either generally, conceptually or particularly as raised on the 29th of December, prior to the December 29th board meeting?

A. No.

Q. Why did you vote to ratify item 1 on Exhibit 527?

A. Because I thought it was in the best interest of the company to do so.

Q. As of December 29, 2017?

A. Yes.

Q. Why?

A. Well, going back to -- you know, I feel sort of like I could be called John Cary, because I

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voted against it before I voted for it.

But you remember that, back in 2015, I was one of two directors who voted against the termination of Jim Cotter, Jr.

And things had changed, in my mind, from that date to the date, December -- whenever it was -- December 29, '17, where my decision was now made on a whole different set of assumptions and factors that weighed into the equation.

Q. Was one of those factors the decision by the Los Angeles Superior Court in validating the 2014 trust documentation?

A. No.

Q. Was one of those factors the effect that the ratification might have on the pending derivative lawsuit?

A. No -- well, let me take that back. I'm sure it had some bearing in my mind, but that was not one of the key factors.

Q. What were the key factors?

A. The key factors, in my mind, were at the time, back in 2015, you recall that Jim, Jr., was terminated when -- at a time when we were -- I thought, in my opinion, we gave him a period of time to have his performance monitored, and then there

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would be an evaluation by the board.
The actual termination occurred maybe a month before that.
I viewed that as a mistake, first of all, because I thought we had kind of had a schedule, I didn't see any reason to change that schedule.
And, secondly, at the time, I was worried that if we did that, it would cause a very strong emotional reaction in Jim, Jr., feeling he had been -- he would feel he had been wronged by this process, and that would lead to extensive, expensive litigation, which turned out to be the case.
So looking at it a few years later, that's already happened, the litigation has occurred. So I can take that factor out of my equation, because what I was fearful of at that point back in '15, has then since ensued.
The other thing that bothered me was, in Jim, Jr.'s handling of this litigation -- I'm not meant to be, you know, getting into litigation strategies or things like that.
I felt that, in my mind, he was actually putting his own interests -- personal interests above those of the company, and needlessly causing the company to spend a lot of money on the legal

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fees, and really distracting a number of members of management from what they should be doing in operating the company.
I think that this was a litigation strategy he employed that disappointed me.
Q. Did you just describe your view of this derivative lawsuit?
A. Did I just describe it?
Q. Yeah.
A. In some respects, yes.
Q. So I'll let you -- I'll ask the question, then: What's your view of this derivative lawsuit?
MR. HELPERN: Object to form.
A. Well, you know, I think it's a -- it's been a bad thing for the company, expensive, time-consuming.
I'm not so sure -- and I'm a lawyer, I'm not trying to lay -- trying to play lawyer here -- but I'm not so sure that Jim's termination is actually a derivative claim.
And I'd be interested to see what the Nevada Supreme Court says about it, if it already hasn't spoken to that, because I can't imagine a person getting fired, claiming there's a derivative going. Seems like it's a personal claim to me.

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And I think the company was very willing to try to find a way to settle it out without having a lot of costs and expense.
So that's my view of the derivative litigation.
BY MR. KRUM:
Q. Well, you understand there are other matters raised in the case?
A. Yes.
Q. Do those factor in, in terms of your view of the case?
A. I think they could factor in. I can see how it's a legitimate question that can be raised.
But, to me, I always looked at the termination as being the key thing that started the litigation, and that's what I've been focusing on.
Q. So if you were to vote for the derivative case to go forward or be terminated, what would your vote be?
MS. HENDRICKS: Object to form. Calls for speculation, beyond the scope of this deposition.
MS. BANNETT: I was --
MR. KRUM: Well, it's not --
MS. BANNETT: I was going to ask how that relates to the ratification.

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MR. KRUM: It relates to demand futility.
MS. BANNETT: But what does that have to do with the rati -- I understand that --
(SIMULTANEOUS SPEAKING)
MS. BANNETT: -- of these particular decisions.
MR. KRUM: It doesn't. Well, maybe it does. I don't know. But it doesn't matter. I'm entitled to ask about matters relating to demand futility as well.
MR. HELPERN: Demand futility with relation to what demand?
MR. KRUM: Demand futility rising from -- well, I didn't frame it. Greenberg Traurig filed the motion. Recall that was one of two motions that were denied with respect to which discovery was allowed, the other one being a ratification motion.
BY MR. KRUM:
Q. Okay. So let me ask the court reporter to read the question back, Mr. Gould.
(REPORTER READ FROM THE RECORD)
A. My vote would be to terminate, to terminate the derivative action.
Q. Are the reasons any different than what you just said? And if so, would you say them?

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A. Well, if I'm a defendant in the case and you're asking me, would I like that suit against me to be terminated or go forward, what can I say? I mean, there's no other answer.

Q. Directing your attention, Mr. Gould, back to the subject of the exercise of the 100,000 share option, did you ever have any communications with Judy Codding and/or Michael Wrotniak about the subject of the -- of what entity or person owned or held the 100,000 share option?

A. No, I didn't have that conversation.

Q. Did you ever have any communications about that with Doug McEachern?

A. I don't believe I did, no.

Q. Did you ever have any communications with Judy Codding and/or Michael Wrotniak about the events of May 29, 2015 that we discussed earlier today, by which I'm referencing what Jim Cotter was told when the first session of that meeting adjourned about what would happen or might happen when it reconvened at -- telephonically at 6:00?

A. I didn't have any conversations about that aspect of it with any one of those persons.

Q. Did you ever have any conversations with either Judy Codding or Michael Wrotniak or both,

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about whether any or all of, Ed Kane, Guy Adams and Doug McEachern, had decided and agreed prior to the May 21, 2015 meeting, to vote to terminate Jim Cotter, Jr., as president and CEO?

A. I might have early on, explaining my position about why I opposed the termination of Jim Cotter, Jr.

Q. Early on, meaning --

A. Like, maybe when they first came on the board.

MR. KRUM: Mr. Gould, I show you what has been marked as Exhibit 530. It's a document that bears the production number WG0000506.

THE WITNESS: Yes.

(DEPOSITION EXHIBIT 530 MARKED FOR IDENTIFICATION)

BY MR. KRUM:

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. It's an e-mail from Doug McEachern to me, asking me if we're going to have a -- a telephonic meeting of the Special Committee.

Q. Was there one on or about December 1?

A. There wasn't one on that date, I don't

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believe. I believe what happened there is that I was trying to set up a call with some advisors, and we just ended up not pulling it together for that particular day.

But I think there was a call later, but there were no advisors on the line. It was not -- it ended up being a non-event.

Q. Did that call have anything to do with ratification?

A. You know something, I don't think it did.

It might have, but I don't remember that. I remember some other topic we were considering.

(DEPOSITION EXHIBIT 531 MARKED FOR IDENTIFICATION)

MR. KRUM: Mr. Gould, I show you what has been marked as Exhibit 531.

Among other things at the top it says: "Gould's Privileged Log dated March 29, 2018."

A. (Perusing document)

BY MR. KRUM:

Q. Have you seen this document previously?

A. No.

Q. And without having the documents that are listed on it in front of you to reference, can you figure out what any of them are here?

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A. Very difficult. These look like my conversations -- conversations I may have had with Mark Ferrario or Mike Bonner concerning the Special Committee, but it's difficult to tell what it is.

Q. Okay. Then I'm going to ask you to focus on the last two, which I understand to indicate an e-mail from you to McEachern -- I understand each of them to indicate an e-mail from you to McEachern on December 27th. And the description is: "Forwarding attorney-client e-mail regarding a director conference call."

Can you recall -- can you tell what that is?

A. Not with total certainty, but I think it refers to the -- what I would call the notice, or the request for special meeting. I think that's what it refers to.

Q. Exhibit 527?

A. Yeah ...

Q. I'll show it to you. Here. (Indicating)

A. Yes, Exhibit 527.

MR. KRUM: Let's take a break.

THE WITNESS: Okay.

THE VIDEO OPERATOR: And we're off the record at 10:38 A.M.

A. Correct.
Q. I direct your attention to the middle of the Ed Kane e-mail at the top. There's a sentence that reads as follows: "Bill suggested we ask Ellen to seek judicial approval for the exercise."
Do you see that?
A. I do.
Q. Does that refresh your recollection?
A. A little bit, yes.
Q. And how so? What do you now recall?
A. Well, again, as I said, I do remember quite clearly when I did talk to Ed, he first was just calling me because I have had experience with this area as a lawyer. And I told him that I would -- I didn't see a problem with it, but that to be safe here, given the litigation -- or the controversies -- that he should have counsel -- independent counsel give him an opinion on it.
Q. Well --
A. But I also -- I might have mentioned if it was possible -- practical to get approval, that it would be obviously the best way to go, and that would eliminate any question.
Q. Did you ever have any communications with any or all of -- well, strike that.

Did you ever have any communications with Judy Codding and/or Michael Wrotniak about either the notion of obtaining a legal opinion, as you just described, or the notion of obtaining a court order as you just described, with respect to the exercise of the 100,000 share option?
A. I don't believe I ever had a conversation with either one of them about that.
Q. Did you ever have a conversation of that nature with Doug McEachern?
A. I might have, yes.
Q. Okay.
As you sit here today, what's your best recollection? Did you?
A. I don't have any -- my best recollection is I somehow believe that I did, but I don't recall anything, when it was, or what was said.
I do remember specifically the conversation with Ed Kane.
Q. Okay.
MR. KRUM: I don't have any further questions at this time.
Mr. Gould, thank you for your time.
THE WITNESS: Thank you.
MR. KRUM: So we can go off the record?

Kara?
MS. HENDRICKS: Okay with me.
THE VIDEO OPERATOR: This concludes the deposition of William Gould, volume 3, on April 5th, 2018.
Off the video record at 11:34 A.M.
(Off video record)
THE REPORTER: Did you have a stipulation from before?
MS. HENDRICKS: 'Bye, everybody.
THE REPORTER: Do you have a stipulation that you would like to use from a prior deposition for this witness?
MR. KRUM: Yes, the same as we've been doing.

(DEPOSITION OF WILLIAM GOULD,
SIGNATURE NOT WAIVED,
CONCLUDED AT 11:34 A.M.)

REPORTER'S CERTIFICATION

I, Lori Byrd, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, Realtime Systems Administrator, Kansas Certified Court Reporter 1681, Oklahoma Certified Shorthand Reporter 1981, and Certified Shorthand Reporter 13023 in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name on this date: April 19th, 2018

Lori Byrd

Lori Byrd, CSR 13023

Exhibit 6

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION OF: EDWARD KANE

TAKEN ON: MAY 2, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

DEPOSITION OF EDWARD KANE, taken on behalf of the Plaintiffs, at 3043 Fourth avenue, San Diego, California, commencing at 10:12 A.M. on May 2, 2016, before PATRICIA L. HUBBARD, CSR #3400, a Certified Shorthand Reporter in and for the State of California, pursuant to Notice.

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James J. Cotter, Jr.

Kristy Pittman, Videographer

I N D E X

WITNESS	PAGE
EDWARD KANE	
(By Mr. Krum)	8

E X H I B I T S

PLAINTIFFS'	DESCRIPTION	PAGE REFERENCED
Exhibit 60	Email dated October 14, 2014 from Gould to Adams and Storey (Previously marked)	71
Exhibit 61	Email dated October 14, 2014 from Ellen Cotter to Adams and Storey (Previously marked)	124
Exhibit 76	Email dated May 9, 2015 from Kane to Adams (Previously marked)	183
Exhibit 94	Email dated October 1, 2014 from Kane to Storey (Previously marked)	53
Exhibit 99	Email date 2/10/2015 from James Cotter, Jr. to McEachern, et al.	83
Exhibit 100	Email dated 2/25/2015 from Kane to Gould and Storey	88
Exhibit 101	Email dated October 16, 2014 from Kane to Gould and McEachern	119

E X H I B I T S (Continued)

PLAINTIFF'S	DESCRIPTION	PAGE REFERENCED
Exhibit 102	Email dated November 5, 2014 from Kane to Adams, et al.	126
Exhibit 103	Email dated January 28, 2015 from Kane to McEachern	144
Exhibit 104	Email dated February 6, 2015 from McEachern to Kane, et al.	149
Exhibit 105	Email dated March 1, 2015 from Adams to Kane	170
Exhibit 106	Email dated March 16, 2015 from Kane to Gould and Storey	177

INFORMATION REQUESTED:
(NONE)

WITNESS INSTRUCTED NOT TO ANSWER:
(NONE)

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"Question: Did you ever reach a conclusion at any time in 2015, conclusion or conclusions at any time in 2015, about where any class B voting stock that was either owned legally and/or beneficially by Jim Cotter, Sr., or a trust that he had controlled as trustee was held, whether it was in a trust, a voting trust, an estate or someplace else?")

MR. SEARCY: Same objections. Vague and lacks foundation.

THE WITNESS: I left that -- I think I had conversations with attorneys over at -- and asked for an opinion as to the ability to vote certain shares.

BY MR. KRUM:

Q. So, is it your testimony that you came to no conclusion independent of any conclusion offered to you by attorneys?

A. Yes.

Q. And was any conclusion offered to you by any attorneys?

MR. SEARCY: And that's a -- that's a

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"yes" or "no" question.

MR. FERRARIO: Yeah.

THE WITNESS: Say that again.

BY MR. KRUM:

Q. Did any attorneys proffer to you any conclusions regarding the subject of who had the right to vote any class B voting stock? Yes or no?

A. Yes.

Q. When did that happen?

A. I think -- I think in September of 2015.

Q. And who was the attorney or who were the attorneys?

A. I think there was an opinion from Neal Brockmeyer -- Brockmeyer, which he sent to the independent committee. I think that was in there. And there was corporate counsel in Nevada. And there was opinions from them.

Q. Corporate counsel being Greenberg Traurig?

A. Yes.

Q. And there were -- there was more than one opinion from them?

A. I can only recall one.

Q. And the one that you recall, Mr. Kane, when was that provided approximately?

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MR. SEARCY: And again he's only asking for the date. Don't get into the substance of any legal advice.

THE WITNESS: No. That would have been in September of 2015.

BY MR. KRUM:

Q. To what use, if any, did you put the Greenberg Traurig memo or opinion?

A. To what use?

MR. SEARCY: Objection. Vague.

MR. FERRARIO: Can you -- hang on for just one second. I need to counsel --

(Off-the-record discussion.)

MR. KRUM: Gentlemen, it does not -- indisputably does not call for the disclosure of privileged information. I have not asked --

MR. FERRARIO: It's the next question.

MR. KRUM: -- Mr. Kane what the substance was and I'm taking this at, as you can see it, nice small incremental steps so that he doesn't get ahead of us and speak to that.

MR. FERRARIO: We appreciate that. It's this question, though -- I don't want to say how he could answer it and not take the next step.

But if he goes -- he gives the wrong, I

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think we have now gone into that. We've crossed the line.

I mean I think that you've done a fine job. I'm not -- I'm not in any way critiquing how you proceed --

MR. KRUM: Look, I wasn't asking to be credited or blamed. I just want to move the process forward.

So let's do this. Let's have the court reporter read the question for him.

I'm going to make sure -- and he's done a good job of allowing you to interpose objections if I ask another question that you think calls for privileged information.

So let's just do it the way we've been doing it one step at a time.

Can you read the question for him, please.

(Whereupon the question was read as follows:

"Question: To what use, if any, did you put the Greenberg Traurig memo or opinion?")

MR. SEARCY: I'll object as vague.

MR. FERRARIO: I'm going to object. I

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think we're now starting to invade the attorney-client privilege. Because you're reading -- you're asking him did he read it?

MR. KRUM: I'm asking him to what use, if any, did he put it. Not what it said.

BY MR. KRUM:

Q. Mr. Kane, directing your attention to the Greenberg Traurig memo or opinion, to what use, if any, did you put that?

MR. FERRARIO: I'm going to object to that, because I do think this invades the attorney-client privilege.

MR. SEARCY: Join.

BY MR. KRUM:

Q. Go ahead, sir.

MR. FERRARIO: I don't --

BY MR. KRUM:

Q. Don't tell me about the substance. Just tell me, did you rely on it for any purpose?

MR. FERRARIO: That's where the problem comes, Mark.

MR. KRUM: Well, it might be a problem for you guys.

MR. FERRARIO: It's not a problem for me.

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MR. KRUM: The answer --

MR. FERRARIO: It depends on what -- it depends on what position the company -- or that Mr. Kane wants to take. And that's -- that's what I'm -- that's where I think this is an issue at this point in time.

MR. KRUM: It's not an issue.

MR. FERRARIO: Yes, it is.

MR. KRUM: It may be, but --

MR. FERRARIO: I'll tell you what, we'll deal with it down the road. I'm going to tell him -- I'm going instruct him to not answer based upon --

MR. KRUM: On what basis?

MR. FERRARIO: -- the privilege. Just what I just said.

MR. KRUM: Okay. Can we mark this part of the transcript. We're going to come back to it presumably over the lunch break.

MR. FERRARIO: Yeah. And I'll visit this with Marshall over the break, but at this point in time we're going to assert the attorney-client privilege.

BY MR. KRUM:

Q. Mr. Kane, who provided the Greenberg Traurig document to you; that is, the opinion to which you have just referred?

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MR. SEARCY: You can answer that question.

THE WITNESS: I'm trying --

MR. SEARCY: Again, don't get into the substance. Just --

THE WITNESS: No. I understand. And my question is I don't know that I can answer his question in the sense that I may have received it directly from Greenberg.

BY MR. KRUM:

Q. Did you ask them to provide it to you?

A. I think I did, yes.

Q. With whom did you communicate? Not what was communicated, just with whom did you communicate?

A. I don't recall whether it was Mark or whether it was someone else in the firm that I communicate with.

Q. Was it orally or in writing?

A. I don't recall.

Q. Was anyone else party or privy to that communication?

A. I think Guy Adams was. That's -- he would have been if I was, because it was a compensation committee question. And Tim Storey may well have been.

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Q. And it is your best recollection -- strike that.

Is it your best recollection as you sit here today, Mr. Kane, that the first time you had communications of the type you're describing now was in September of 2015?

MR. SEARCY: Objection. Vague and lacks foundation.

THE WITNESS: There may have been some communication with them earlier also.

BY MR. KRUM:

Q. Earlier being when? Either in time or relative to any other particular events that you recall?

A. It was a particular event having to do with the exercise of voting share options by Margaret and Ellen Cotter.

Q. And approximately when was that?

A. I don't recall. I think -- I don't recall.

Q. Do you recall it relative to any other developments or events?

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A. Well, there was a fight between Jimmy and his sisters, and I did not on behalf of the committee want to get in the middle of it.

So, I required -- I required an opinion of counsel.

I didn't care who won. It's just that we wanted to do the right thing, the committee did.

Q. The compensation committee?

A. Right.

Q. With respect to requests by Ellen and Margaret to exercise options?

A. That was one issue, yes.

Q. What were the other issues?

A. There was the issue of exercising the options that were granted to Jim Cotter, Sr.

Q. What was the issue there or what were the issues, as best you can recall?

A. Mr. Cotter, Jr., was saying those options belong to the trust, that they had been transferred to the living trust, and that they could not exercise that option on behalf of the estate.

Q. Did you ever come to a conclusion whether Ellen and Margaret Cotter could exercise the option you just referenced?

A. The one that was in Jim Cotter, Sr.'s

Page 103

estate?

Q. Well, let's do this. Let's -- instead of not knowing if we're referring to the same one, let me back up and ask a couple questions.

Do you recall there came a time when Ellen and Margaret Cotter purporting to act as executives of the estate of Jim Cotter, Sr., undertook to exercise a supposed option to acquire 100,000 shares of class B voting stock?

A. Yes.

MR. SEARCY: Objection. Argumentative.

BY MR. KRUM:

Q. So I'm just going to call that the 100,000 dollar -- excuse me. I'm going to call that the 100,000 share option. We can drop the word "suppose" so we have a handy short point of reference.

Does that work for you, Mr. Kane?

A. Yes.

Q. Now, did you ever -- what did you do to come to a conclusion -- strike that.

Did you ever come to a conclusion whether Ellen and Margaret Cotter as executors of the Estate of Jim Cotter, Sr., had the right to exercise the 100,000 share option?

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A. The committee did.

Q. When did that occur?

A. I'm having difficulty, because there's two sets of options, their personal options and the estate and which came when, because there were both issues presented to the committee.

And I think -- I know there was some meeting in September of 2015, and I don't -- I think those were the Estate's options.

Q. By which you mean what we're going to call the 100,000 share option?

A. Yes, yes.

Q. Well, as to you personally, Mr. Kane, what did you do to reach a conclusion with respect to the question of whether Ellen and Margaret Cotter as executors of the estate of Jim Cotter, Sr., had the right to exercise the 100,000 share option?

A. I asked for a legal opinion.

Q. And I don't want to repeat everything you've already told me.

You're referring to the Greenberg Traurig opinion you discussed earlier?

A. I believe that's correct, yes.

Q. And you also mentioned Mr. Brockmeyer.

Did you seek his advise with respect to

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the 100,000 share option?

A. I think -- I may be confused, but I think his advice had to do with -- I may have turned it around, but I think his advice had to do with their exercise of their own B options.

Q. Did you understand in September of 2015 that Greenberg Traurig was counsel of record in this case, the derivative case for the company?

A. Yes.

Q. Did you ever hear or learn or were you ever told that Greenberg Traurig had previously provided an opinion, the subject matter of which was who had the right to vote what shares at the 2015 annual shareholders meeting?

A. I can't recall.

Q. Do you recall ever hearing or learning or being told that that was an issue or a potential issue?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yeah. Repeat that, please.

BY MR. KRUM:

Q. Were you ever -- did you ever hear or learn or were you ever told that there was a question or were questions regarding who, if anyone,

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contingency plan if they win the lawsuit. But if Tim has been offered something, he cannot continue on the independent committee, as it would taint the committee and their position."

Do you see that?

A. Yes.

Q. To what does that refer?

A. What it refers to is if Tim really was interested in becoming C.E.O., then he should have gotten off the committee, because we would make that decision. And it would be inappropriate for him to be on the committee of non-Cotter directors.

That was my view.

Q. And what did Ellen say that she had done, if anything, with respect to Tim or anyone else serving as interim C.E.O.?

MR. SEARCY: Objection. Vague.

THE WITNESS: I don't think Ellen -- I don't know if I ever had a discussion with Ellen about it.

BY MR. KRUM:

Q. To what does the term "contingency plan" refer in the sentence I read?

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Or I guess I should say to what does "contingency plan if they win the lawsuit" refer to?

MR. SEARCY: Objection. Vague.

THE WITNESS: I'm not 100 percent sure what I had in mind.

BY MR. KRUM:

Q. How many times did you ask Ellen whether she had -- she or Margaret had discussed with Tim Storey his becoming interim C.E.O.?

MR. SEARCY: Objection. Assumes facts, misstates testimony, is vague.

THE WITNESS: This was probably the only time.

BY MR. KRUM:

Q. Well, I refer your attention, Mr. Kane --

A. Uh-huh.

Q. -- to the third line that's not redacted which begins,

"I did talk with Ellen to ask again whether she or Margaret had discussed with Tim his becoming interim C.E.O." --

A. I see that, but I don't think I had more than one discussion with her.

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Q. You don't think you had more than one -- one discussion with Ellen regarding the subject of Tim Storey becoming interim C.E.O.?

A. I don't think so.

Q. You have discussions with her about the subject of an interim C.E.O. other than that what you believe to be one discussion about Tim Storey?

MR. SEARCY: Objection. Vague.

THE WITNESS: I don't think so.

BY MR. KRUM:

Q. Did you ever have any communications with Ellen Cotter about Guy Adams serving as interim C.E.O.?

MR. SEARCY: Objection. Vague.

THE WITNESS: I may have. I just don't recall.

BY MR. KRUM:

Q. Three lines from the bottom of your March 1 email on Exhibit 105, it reads,

"According to Ellen, Craig is also on the 'team';"

Do you see that?

A. Yeah.

Q. What team are you referencing there?

A. I think it was Ellen and Margaret versus

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Jim.

Q. Was that word "team" used by Ellen? Is that why you put it in quotes?

A. No.

MR. SEARCY: Objection. Lacks foundation.

THE WITNESS: No.

BY MR. KRUM:

Q. That was just your usage?

A. Yes.

Q. Why was that, if you recall?

A. That's the kind of writer I am. I don't know.

Q. Okay.

A. I don't have a secretary. I make this stuff up myself.

MR. KRUM: I'll ask the court reporter to mark as Exhibit 106 a one-page document bearing production number GA5123.

(Whereupon the document referred to was marked Plaintiffs' Exhibit 106 by the Certified Shorthand Reporter and is attached hereto.)

///

I -- I said to him at one point, "Take it. You have nothing to lose. You're going to get terminated if you don't. If you can work it out with your sisters, it will go on and I will support you. I'll even make a motion to see if the company will reimburse the legal fees."

I did not want him to go.

And you, I'm sure, see emails in there to that effect. Even though I voted -- was voting against him, I wanted him to stay as C.E.O.

BY MR. KRUM:

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

A. Right.

Q. -- why did you vote against him?

A. Because I wanted him to stay as C.E.O., working with his sisters who were work -- willing to work with him for the benefit of the company.

And to me it was a wonderful solution, and it had no adverse impact. If it didn't work out, then we would deal with it. But he would work with them and -- as an executive committee.

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

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

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

MR. SEARCY: Objection. Vague.

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

After all they were the operating executives of this company.

BY MR. KRUM:

Q. And did you understand that -- strike that.

But that resolution did not come to pass because Jim Cotter, Jr., rejected it, correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: He rejected it, yes.

(Whereupon Ms. Bannett left the deposition proceedings at this time.)

BY MR. KRUM:

Q. And he got himself terminated, right?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yes.

MR. KRUM: Marshall, you wanted to quit at 4:30, and I see it's 4:29. So --

Let me be clear.

You advised me we were going to quit at 4:30 to accommodate Mr. Kane, and we're going to do that.

So, it's 4:30, we'll go off the record.

MR. SEARCY: Appreciate that.

VIDEOTAPE OPERATOR: This concludes the deposition of Edward Kane, volume one on May 2, 2016, which consists of four media files. The original media files will be maintained by Hutchings Litigation Services.

Off the video record.

The time is 4:30 P.M.

(Whereupon at 4:30 P.M. the deposition proceedings were concluded.)

* * *

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

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

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

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

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

IN WITNESS WHEREOF, I have subscribed my name this 4th day of May, 2016.

PATRICIA L. HUBBARD, CSR #3400

Exhibit 7

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, VS. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B Volume 4

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

JOB NO.: 453340-A

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of DOUGLAS McEACHERN, taken on behalf of Plaintiff, at 1901 Avenue of the Stars, Suite 600, Los Angeles, California, beginning at 11:02 a.m. and ending at 12:52 p.m., on Wednesday, February 28, 2018, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

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Also Present: CORY TYLER, Videographer

I N D E X

WITNESS	EXAMINATION	PAGE
DOUGLAS McEACHERN		
	BY MR. KRUM	499

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 525	Email from Laura Batista, dated December 27, 2017, with attachment	501
Exhibit 526	Minutes of the Board of Directors Meeting, December 29, 2017	522
Exhibit 527	Email from Marcia Wizelman to Ellen Cotter	543

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE	LINE
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Los Angeles, California
Wednesday February 28, 2018
11:02 a.m.

THE VIDEOGRAPHER: This is the beginning of Media 1 in the deposition of Douglas McEachern, Volume IV, in the matter of Cotter, Jr., versus Cotter, et al., held at 1901 Avenue of the Stars, Suite 1600, Century City, California, on February 28, 2018, at 11:02 a.m.

The court reporter is Grace Chung, and I am Cory Tyler, the videographer, an employee of Litigation Services.

This deposition is being videotaped at all times unless specified to go off the video record.

Would all present please identify themselves, beginning with the witness.

THE WITNESS: Douglas McEachern.

MR. SEARCY: Marshall Searcy for Mr. McEachern, Ed Kane, Margaret Cotter, Ellen Cotter, Guy Adams, Judy Codding, and Michael Wrotniak.

MR. FERRARIO: Mark Ferrario for RDI or Reading.

MR. KRUM: Mark Krum for plaintiff.

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Q. And do you see that the meeting actually occurred on Friday, December 29?

A. Yes.

Q. Okay. And I'm not asking you what the document says. I'm not asking you for the purposes of this question to look at the document. What were the subjects raised and addressed at that December 29, 2017, board meeting?

A. I think there were four items that were addressed, and there is an agenda, I think, in the second page here. One was an approval of a minimum level of bonuses for executives for 2017. One was an approval of a payment to individual members of a special committee that had been set up, I think in August -- July or August of 2017. One was a reconfirmation -- I may have the wrong word -- of an action the board took to terminate Jim Cotter, Jr., as CEO of the company in June of 2015.

And the other was to re -- I'm not sure if approved originally, but to approve or reapprove a transaction that the compensation committee approved in 2015 or 2016, for the exercise of an option by either the Cotter Estate or the Cotter Trust -- I couldn't tell you which one it was -- to purchase 100,000 shares of voting stock in the

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company in exchange for a set number of nonvoting shares. I think those were the four items.

Q. When did you first learn or hear that either/or both of the third and fourth items were to be part of the December 29, 2017, board meeting?

A. I don't want to be cute. I don't remember what third and fourth were on my list.

Q. Okay. So I will -- I will ask it differently. It will require two questions but we have the time. When did you first hear or learn that approval of the compensation committee decision that you referenced in your answer a moment ago was to be taken up at the December 29th, 2017, board meeting?

A. Sometime in early to mid-December.

Q. What did you learn at that time?

A. That the compensation committee had -- I was aware of this -- had approved the use of stock, nonvoting stock, to exercise an option in the company's voting stock.

Q. What else, if anything, did you learn about that in early to mid-December?

A. That it was an issue that had been raised by Jim Cotter, Jr., in his lawsuit against the company, that it was somehow inappropriate, which I

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still, to this day, don't understand what the issue is.

Q. What is it -- what's your understanding of what the board voted to ratify or approve at the telephonic December 29, 2017, board meeting with respect to the compensation committee's prior decision?

A. Can -- can I just go back and give some history of what -- what I think happened here?

Q. Sure.

A. So at some point -- and I think this was in -- it was either in the fall of 2015, more likely the fall of 2016 -- had to be '15 because Tim Storey was around -- there was a desire on the part of Ellen Cotter and Margaret Cotter, trustees of the Cotter Estate or the Cotter Trust, whichever one had the option to purchase voting shares in the company, they were going to use Class A nonvoting shares to exercise the option and pay whatever the option price was.

I don't know why, but at that time, Tim Storey wanted a legal opinion that that was okay to do, as I recall. I don't know why, Mr. Krum, in retrospect that that was needed. This estate or the trust, whichever it was, held the option. They held

Page 506

the stock. They could easily have sold the stock in the marketplace to get the cash to exercise the option.

Our plan permitted the submission of stock that was held by an individual or the trust to submit that stock to buy the voting share exercise and option. And I don't know why -- why it became an issue. That was the transaction that we were ratifying in December of 2017.

Q. You voted in favor of ratifying that; correct?

A. Yes, I did.

Q. And as of the December 29, 2017, meeting, did you have any understanding of what issue or issues Mr. Storey had raised previously beyond what you just said?

A. No, I don't.

Q. What was the basis or what were the bases of your decision to vote in favor of ratifying the decision of the compensation committee from September of 2015?

A. What was my basis for doing it?

Q. Yeah. On December 29, 2017, you voted in favor of ratifying or approving --

A. Sure.

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Q. -- to the prior compensation committee decision or decisions. On what basis or bases did you do so?

A. Number one, I didn't think there was an issue here at all for the board to deal with. It was delegated to the compensation committee to handle this type of matters. We were approving this. And I believe we had -- I think we had a call to talk about a couple of issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and we were trying to address them in a fashion to resolve them.

Q. When you say you were trying to address them in a fashion to resolve them, what does that mean? Does that mean you were trying to moot the issues?

A. I don't know what "moot" means. I'm sorry. I'm not an attorney.

Q. Okay. Well, when you say you were trying to address them in a fashion to resolve them, resolve them how?

A. To say that the -- the corporation ratified these, and that -- that there was no -- no issue or concern that we approved them. If anybody in the past thought that there was an issue, our

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action there was to cure any issue anybody might think existed.

Q. What did you do, meaning what documents did you review, with whom did you have conversations, or anything else, to inform yourself to make the decision you made to vote in favor of ratifying or affirming the prior compensation committee decision?

A. I reviewed whatever documents were handed out, Mr. Krum, in this -- this package. But I had been there at the time that this transaction took place. I was aware of what went on. At the time, I couldn't understand why this was an issue. I still couldn't understand why it was an issue. And it seemed to me to be pretty perfunctory to approve.

Q. Directing your attention, Mr. McEachern, to Exhibit 525, that's the board package for the December 29 meeting; correct?

A. I believe so, yes.

Q. Now, this is not intended to require you to look at every page, but if you think you need to do so, you are welcome to do so.

A. Uh-huh.

Q. My question is: Was there anything in

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particular in Exhibit 525, the December 27 board package, that you considered or valued in making the decision you made to vote in favor of ratifying the September 2015 compensation committee decision?

A. Uh-huh. And did you say the December 27th board meeting or the December 29th?

Q. I called the package -- the package December 27 because it has a December 27 transmission date. But -- so I'm not confusing you, I am referring to the December 29 board meeting and your vote there.

So with that clarification, let me ask: Is there anything in Exhibit 525 that made any difference to your vote on December 29 to vote in favor of ratifying or approving the 2015 decision by the compensation committee that's the subject of -- one subject of this package?

A. No.

MR. SEARCY: Objection. Vague.

A. And no.

BY MR. KRUM:

Q. Okay. Directing your attention back to your prior testimony to the effect that you first heard or learned in early to mid-December that the ratification or approval of the prior compensation

Page 510

committee decision might or would be taken on the December 29 board meeting, was that -- did you learn that by speaking to somebody, by receiving an email, or otherwise?

A. I just couldn't tell you, Mr. Krum.

Q. Okay. What was the next communication you had with anybody, after that initial one, with respect to the possible ratification or approval of the September 2015 compensation committee decision regarding the 100,000 share option, at any time prior to the December 29 board meeting?

A. I could have been involved in discussions that predated this. I just can't remember. I'm generally aware that it was raised as an issue. As I said, I still don't understand why. I know that we had a call with Mike Bonner, maybe Mark Ferrario, and maybe somebody from Greenberg, I'm not certain, to discuss this --

MR. SEARCY: Let me just caution you. When you start to get into attorney-client privileged discussions, I want you to be able to answer the question, but I don't want you to get into the specifics of any particular discussions you may have had with Mr. Ferrario or Mr. Bonner.

THE WITNESS: Okay.

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MR. SEARCY: I can't answer for you on that.

A. I don't know the answer. I just don't know if we approved the minutes.

BY MR. KRUM:

Q. Let me direct your attention to page 5 of Exhibit 526 and, in particular, Mr. McEachern, the subhead B in the middle of the page. Let me know when you've reviewed subhead B.

A. Uh-huh. Subhead B continues until the "Adjournment" comment?

Q. Sure. Go ahead.

A. Yes. It's a pretty good summary of what took place in that discussion.

Q. Okay. And you are referring to subhead B and the text that follows down to "Adjournment"?

A. Yes, I am.

Q. Does it comport with your recollection that what was ratified, what you voted to ratify in December 29, the compensation committee decision to permit use of Class A nonvoting stock as the means of payment for the exercise of the 100,000 share option?

A. Yes.

Q. Now, you see here, in both the subhead B

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itself and the paragraph that follows, it refers to the estate being the entity that exercised the option?

A. Okay.

Q. With that having been brought to your attention, was there any discussion at the December 29, 2017, board meeting of whether it was the estate or the trust or any other entity or person that held or owned the option?

MR. SEARCY: Objection. Vague.

A. Not that I recall.

BY MR. KRUM:

Q. The bottom of page 5, top of page 6, the document reads as follows: Director McEachern also noted his view that the allegations made by Mr. Cotter in this regard had caused a waste of company's resources, as it was perfectly clear that neither the Cotter Estate nor Ellen and Margaret Cotter would gain an advantage from the transaction, given that the Cotter Estate could have sold Class A shares in the market and used the cash to exercise the option in question, close quote.

Do you see that?

A. Yes, I do.

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Q. Does that fairly describe the comment or comments you made?

A. Generally describes what I said. Whether I said "Cotter Estate" or not, I don't recall, but the entity that exercised it, yes, I -- I'm in concurrence with this.

Q. When you say -- did you use words to the effect of "wasted company resources"?

A. Absolutely.

Q. So was it one of the reasons you voted to ratify the compensation committee's September 2015 decision to authorize the exercise of the 100,000 share option, your view of this derivative lawsuit, in any respect?

MR. SEARCY: Objection. Vague.

A. I don't think it had anything to do with the derivative lawsuit. It had to -- had to do with whether this was an issue, and I didn't see an issue. I saw this as a perfectly normal transaction that would be executed by a company.

BY MR. KRUM:

Q. What is your view of this derivative lawsuit?

A. Of the derivative lawsuit?

Q. Yes.

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A. I'm baffled.

Q. What does that mean?

A. What does that mean?

Q. Why are you baffled? Why do you say you are baffled?

A. I don't understand the issues being raised by Jim Cotter, Jr.

Q. If you were to vote on whether this derivative lawsuit should proceed, how would you vote?

A. Against the company?

Q. As framed.

A. Huh?

Q. So if -- if you were, as a member of the RDI board of directors, given an opportunity to vote on whether the derivative lawsuit is presently pending, should continue or not, how would you vote?

A. Absent somebody presenting some other additional information to me, which I'm not unaware of, I would vote to dismiss the lawsuit.

Q. Why?

A. As I understand this derivative lawsuit, Jim Cotter, Jr., wants to be reinstated as CEO of the company and believes that the company was

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MR. KRUM: Well, I gave him a birthday present also; right?
MR. FERRARIO: That's right, you did.
BY MR. KRUM:
Q. So I --
A. You gave him wine?
Q. No, I didn't give him wine, I -- I told him he didn't -- I told counsel that Mr. Kane did not need to appear for further depositions. So I'm sure he appreciated that.
MR. KRUM: Why don't we take a short break.
MR. SEARCY: Sure.
THE VIDEOGRAPHER: We are off the record at 12:07 p.m.
(Recess taken from 12:07 p.m. to 12:21 p.m.)
THE VIDEOGRAPHER: We are back on the record. The time now is 12:21 p.m.
MR. KRUM: I will ask the court reporter to mark as Exhibit 527 a single-page document bearing production number RDI63918.
(Deposition Exhibit 527 was marked for identification by the reporter and is attached hereto.)

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(Miscellaneous discussion.)
BY MR. KRUM:
Q. Mr. McEachern, take such time as you need. My question is: Have you seen Exhibit 527 before?
A. I don't recall having seen this before, but I do recall speaking in our special committee with Bill Gould and Judy Codding about asking to have this done.
Q. When was that conversation with the special committee to which you just referred?
A. Sometime in mid to late December.
Q. Who said what?
A. Generally, I believe it was a special committee meeting. I can't remember if Mr. Kane and Michael Wrotniak were part of it or not, with Michael Bonner of Greenberg Traurig referring again to the law that he wrote for the state of Nevada on ratification matters by the board of director -- directors.
Q. Was this meeting scheduled for that purpose, or was the meeting scheduled for other purposes as well?
A. The meeting of the special committee?
Q. Yeah.
A. I don't recall if there were any other

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topics at the meeting.
Q. Does the special committee take or maintain meeting minutes?
A. Yes, they do.
Q. Are there minutes of the meeting you just described?
A. I believe they are drafts. I don't think we have done anything to approve -- I take that back. I'm not sure if the committee's approved them or not. I know they have not been presented to the board.
MR. KRUM: Okay. Mark and Marshall, I would ask getting special meetings minutes that referred to these matters also be produced.
Q. What was the conclusion, if any, reached at that meeting with respect to the subject of ratification?
A. That we would pursue that activity and -- and present it to the board of directors.
Q. Who first raised the subject?
A. I believe Mike Bonner.
Q. Is Mr. Bonner ordinarily at the meetings of the special committee?
A. I believe he's attended all of them. He may have missed one or two.

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Q. Now, the special committee in question, which committee -- which special committee is that, Mr. McEachern?
A. It's a committee that was put together by the board in the summer of 2017 to deal with the litigation matters, and specifically the derivative lawsuit, and/or reacting -- figuring out what our reaction would be given actions that may or may not be taken with respect to the trust and the estate case.
Q. And the actions that may or may not be taken with respect to the trust and estate case, do those include the appointment of a trustee ad litem with responsibilities with respect to the controlling block of RDI Class B voting stock?
A. Can you restate that again? I'm sorry.
MR. KRUM: I will ask the court reporter to read it.
A. That's fine.
(Reporter read back the requested text.)
A. I don't know that we have anything to do with the appointment of a trustee ad litem. But in reacting to whatever takes place in that, that's what the committee is of, to react to. I believe we have a charter that was approved by the board

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that one could get and see what our charter is.
BY MR. KRUM:
Q. Has the committee directed counsel, Greenberg Traurig, or anybody else, to take action? And by "committee," I'm referring to the same special committee about which you are testifying.
MR. FERRARIO: I'm going to object. Overbroad.
A. I remember sometime in the fall of 2017, Mike Bonner was -- and when I say "Mike Bonner," I'm not sure if it was Mike Bonner and Bill Gould, who is the chairman of the committee.
MR. FERRARIO: Don't -- don't divulge attorney-client communications. Okay. So that's what I'm trying to get. If somebody directs a lawyer to do something, that to me implicates attorney-client communication, because it could be reflective of advice or a scope of litigation, something like that. I don't want to impede this because it's been going very smooth, but that's my admonition. I don't really understand the question, but go ahead without divulging any attorney-client communication.
THE WITNESS: Can I ask a question? So if we asked Mike Bonner to participate with Bill Gould

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in doing something, that's attorney-client privilege?
MR. FERRARIO: If you're asking -- if you are asking him, Bill Gould, to the grocery store and pick up sodas for a meeting, I don't care. If you are asking him to do something that would encompass the giving of legal advice that is going be reflective of what -- you know, what was being discussed between the lawyer and the client, I would instruct you not to answer that.
A. Then I won't answer that question.
BY MR. KRUM:
Q. All right. Well, let me weigh in on this. What I'm attempting to ascertain is the scope of the actions with respect to the special committee. So let me just ask you about a couple of subjects.
Has the special committee taken any steps to communicate any positions in any action, whether the derivative action or the California trust action?
A. No, not to my recollection.
Q. Directing your attention, Mr. McEachern, specifically with respect to the subject of ratification, as best as you can recall, sir, when and how did that subject first arise before the special committee?

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A. Ratification of what? The actions by the compensation committee or the ratification of the termination of Jim Cotter, Jr.?
Q. Either or both.
A. I think it's in late fall sometime of 2017. But there was nothing that could be done, I don't think, until such time as -- as I recall, the judge in the derivative case took some action with respect to dismissing directors from the lawsuit.
Q. So the subject was raised in the late fall of 2017 and, in effect, it was tabled for the time being?
A. I believe that's correct.
Q. What did you say, if anything, about that subject in the late fall of 2017?
A. I do not recall.
Q. What about did Bill Gould say?
A. I do not recall.
Q. What did Judy Codding say?
A. I do not recall.
Q. Did it concern the ratification of the termination decision or the decision to authorize the exercise of the 100,000 share option by way of Class A voting stock or both?
A. I believe the main focus was on the

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termination of Jim Cotter, Jr.
Q. What was said, if anything, at that time about the subject of Guy Adams' disinterest in this independence or both?
A. With respect to what?
Q. The vote to terminate Jim Cotter, Jr., in 2015.
MR. SEARCY: Let's have the question read back.
THE WITNESS: I'm sorry?
MR. SEARCY: I was asking if we could have the question read back.
(Reporter read back the requested text.)
MR. SEARCY: And you're asking about -- involved 2017?
MR. KRUM: Right.
MR. FERRARIO: It's to non-lawyers.
A. I don't recall, but the judge dismissed five directors from the case, and the case still has Ellen Cotter, Margaret Cotter, and Guy Adams as defendants. And I believe the discussion was as long as he was a defendant in the case, he couldn't vote on this type of matter. I don't recall a discussion about his independence at that -- in connection with that.

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____

Signature of Witness

_____

Name Typed or Printed

Exhibit 8

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Job Number 291961

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Also Present:
WILLIAM SLOGGATT, Videographer
ELLEN COTTER
DOUG McEACHERN
JAMES J. COTTER, JR.

I N D E X

WITNESS: TIMOTHY STOREY

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E X H I B I T S

EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
EXHIBIT 1	Document with production numbers TS 1289 to 91	19	19
EXHIBIT 2	Document with production numbers TS 272 to 274	24	24
EXHIBIT 3	Document with production numbers TS 280 and 281	30	30
EXHIBIT 4	Document with production numbers TS 462 and 463	33	33
EXHIBIT 5	Document with production numbers TS 464 to 467	37	37
EXHIBIT 6	Document with production numbers TS 294 and 295	39	39
EXHIBIT 7	Document with production number 169	49	49
EXHIBIT 8	Document with production numbers TS 157 to 160	50	50
EXHIBIT 9	Document with production numbers 1169 and 1170	54	54
EXHIBIT 10	Document with production number TS 121	63	63
EXHIBIT 11	Document with production numbers TS 246 to 250	73	73

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MR. RHOW: -- we'll defer to the company.
MR. FERRARIO: It's privileged as to him. He has a point on him.
MR. KRUM: Yeah, the two plaintiffs are not similarly situated.
Q. So all I'm asking, Mr. Storey, is sort of the Dragnet questions. I'm not asking for you to relate to me any of the substance of what was communicated to you by Mr. Tompkins, Mr. Ellis or both. So with that --
A. So as I said, I do recollect receiving something in writing.
Q. And what was it? Was it a memo? Was it an e-mail?
A. I think all correspondence was by e-mail.
Q. And was it from Tompkins or Ellis?
A. I don't recollect.
Q. Okay.
And tell me what the subject matter was. Not what it said, just what the subject matter was.
A. The import of names on the share register.
Q. The import of those names relative to the issue of the exercise of options?
A. Voting rights of shares.
Q. Okay.
Directing your attention back to Exhibit 16, do you

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have that?
A. Yes.
Q. Second page, item 11, it reads, quote, "Discussion re special committee's continuing role," closed quote.
A. Yes.
Q. Do you understand that to be a reference to your role as the ombudsman?
A. Yes.
Q. And was there any -- Was there a -- Well, okay.
That never happened at the May board meeting; correct?
A. That's my understanding.
Q. Point of fact, the May board meeting as envisioned by Mr. Gould in Exhibit 16 never occurred; correct?
A. Correct.
Q. And it was preempted by a special board meeting called by Ellen Cotter; correct?
A. That's my recollection.
Q. So when did you first hear or learn or were you first told that some of the non-Cotter directors -- any of the non-Cotter directors had concluded that Jim Cotter, Jr. should be removed as CEO?
MR. FERRARIO: Can you read that question back? I

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got lost.
MR. KRUM: I'll just repeat it.
MR. FERRARIO: Yeah.
MR. KRUM:
Q. When did you first hear or learn or when were you first told that any of the non-Cotter directors had concluded that Jim Cotter should be removed as CEO?
A. About a week before the meeting, I would say, mid- -- around about the 15th of May, I got a phone call from Doug McEachern, who informed me that there had been various discussions. It was intended to remove Jim at the board meeting. That he had been in discussions with Guy Adams, and that Guy Adams was -- my recollection, was leading the charge or was involved with it.
I made some commentary on the procedure. And Mr. McEachern said he was aware of that, but that's where things stood. And the next day, I got a phone call -- the next day, I had a phone call from Guy Adams, who basically affirmed that.
Q. And what did Mr. Adams say, in sum and substance, unless you actually remember the words?
A. I think he said, in substance, that the time had come for the matter to be dealt with, that they had the legal advice that they could do that, that it shouldn't be an issue. My recollection is, it was a

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pretty short conversation.
Q. And when you say "the matter" should be dealt with, what was "the matter"?
A. The removal of the CEO.
Q. Did he indicate from whom they had received legal advice?
A. No.
Q. Did you ever subsequently learn who that was?
MR. FERRARIO: Object that --
MR. KRUM: I'm not asking for the substance. I'm asking --
MR. FERRARIO: Assumes he got any legal advice.
MR. KRUM: Okay. He testified that Adams said he had legal advice. So I'm not doing anything other than following on that testimony.
Q. So did you ever hear or learn or did you ever otherwise develop an understanding as to whom Mr. Adams was referring when he talked about legal advice?
A. I don't recollect.
Q. Was it Akin Gump?
A. I don't know.
Q. It's just an appropriate follow-up question.
MR. RHOW: The reason I have a problem with the question, sometimes when you say, "Did you ever subsequently learn," first, I don't know if what his --

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what the relevance is of his current knowledge, but I understand why you're asking.

MR. KRUM: I just want to know who it was.

MR. RHOW: My other concern in general is, if he's learning from me or other sources, that's not necessarily something I can object to, since I'm not sure if he currently knows. But anyway, that question is fine.

MR. KRUM: Well, I assume you prepared him, but let me make it clear.

Q. Mr. Storey, when I ask questions that in any respect call for anything touching on legal advice, I'm not asking you to disclose the substance of any legal advice, whether it was provided to you as a director of the company by in-house or outside counsel representing the company, whether it was provided to you by your own counsel. If the question calls for information of that type, all I want to hear is the identity of the lawyer and the subject matter of the advice, not the substance.

A. Thank you.

Q. So the call with Adams was -- when in time was it relative to the -- to your receipt of the notice from Ellen Cotter of the special meeting?

A. From recollection, prior to.

Q. And the call from Adams was the day after you

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spoke to McEachern; correct?

A. Correct.

Q. And in the McEachern call, he told you that he, Adams, and Kane had determined to vote to remove Jim Cotter, Jr. as CEO; is that correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: For some reason, my recollection of the conversation is that it was going to be -- that the time had come to remove the CEO, or to that effect.

MR. KRUM:

Q. Well, when you hung up from the call with Mr. McEachern that you just described, did you understand that he had communicated to you that he had decided to vote to remove Jim Cotter, Jr. as CEO?

A. Yes.

Q. The next day when you hung up the call from Mr. Adams, did you understand that Mr. Adams had told you that he also had decided to vote to remove Jim Cotter, Jr. as CEO?

MR. SEARCY: Objection. Lacks foundation.

THE WITNESS: Yes.

MR. KRUM: Okay.

Q. And as best you can recall, what were the words Mr. Adams used that led you to that conclusion?

A. I don't recollect specific words.

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Q. Okay.

Then in substance, what did he say?

A. That the time had come to remove the CEO.

Q. And what was the substance of what Mr. McEachern had said to you the day before that -- from which you concluded that he had determined to vote to remove Jim Cotter, Jr. as the CEO?

A. Similar comment.

Q. Okay.

Now, did either of those two gentlemen in either of those calls indicate to you anything about what Ed Kane intended to do or had decided to do?

A. I don't recollect.

Q. Did you have any impression, after either or both of those calls, of what Ed Kane had decided to do, if anything?

A. Did I have any impression of what Ed Kane had decided to do. I think prior to that point, I was aware that Ed Kane was of the view that a change should be made.

Q. And how did you develop that awareness?

A. I think that was just the outcome discussed earlier -- as I mentioned earlier, it was the outcome of where things had got to by late April, early May.

Q. Did there come a time when either Mr. Kane told

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our somebody else told you that Mr. Kane had decided to vote to remove Jim Cotter, Jr. as president and CEO?

MR. SEARCY: Objection. Vague.

THE WITNESS: You'll have to repeat the question.

MR. KRUM: Sure.

Q. When did you first learn or were you first told that Ed Kane had decided to vote to remove Jim Cotter, Jr. as president and CEO?

A. I don't recollect.

Q. Okay.

A. Obviously, prior to those discussions.

Q. Right. Now, during your call with Mr. McEachern about what you've testified already, what did you say to him?

A. I don't recollect that I said much. I think I talked about adopted process, and looking at the matter properly as a board. As I said earlier, my recollection is that Mr. McEachern said "yes," he understood that position.

I didn't see it as my position, at that point or at any point, to be an advocate one way or another. My concern was around adopting a robust procedure to go through that process.

Q. Did you say to Mr. McEachern, in words or substance, that there had not been to that point in time

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an adequate process or procedure to make a decision regarding whether to terminate Jim Cotter, Jr. as the president and CEO?

MR. SEARCY: Objection. Vague. Assumes facts.

THE WITNESS: I don't recollect that. I don't recollect that either way.

MR. KRUM: Okay.

Q. And the conversation you had the next day with Mr. Adams, did you ever --

A. I don't --

Q. -- communicate that notion?

A. I don't recollect that either way.

Q. And did you say to either of Mr. McEachern during the call with him, or to Mr. Adams during the call with him the day following, in words or substance, "We haven't even finished" -- "I haven't even finished the ombudsman process we commenced in March"?

MR. SEARCY: Objection. Vague. Assumes facts.

THE WITNESS: I don't recollect that.

MR. KRUM: Okay.

Q. Prior to the special board meeting that occurred on -- It occurred on May 20th; correct?

A. Around about that time, yes.

Q. Okay.

So prior to the special board meeting that occurred

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on or about May 20th, what other conversations, if any, did you have with any other non-Cotter director with respect to a decision or a possible decision, or a process with respect to a decision, to vote to terminate Jim Cotter, Jr. as president and CEO?

A. I don't recollect.

Q. So at the board meeting that occurred on or about May 20, 2015, the first matters taken up were votes about what lawyers would be allowed to attend the meeting; correct?

A. Correct.

Q. And there was a vote about whether Jim Cotter, Jr.'s lawyer would be allowed to attend the meeting; correct?

A. Correct.

Q. And then there was a separate vote about whether if the Akin Gump lawyer was allowed to attend the meeting, then both the Akin Gump lawyer and Jim Cotter, Jr.'s lawyer would be allowed to attend; correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: I don't recollect.

MR. KRUM: Okay.

Q. Do you recall that?

A. I don't recollect. I recollect the meeting.

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Q. But do you recall that there was a -- there was a seven-to-one vote against Mr. Cotter's lawyer attending the meeting?

A. I don't recollect. I would need to look at the minutes.

Q. Do you recall that one or the other of you or Bill Gould said that if the Akin Gump lawyer was allowed to attend, then Jim Cotter, Jr.'s lawyer should be allowed to attend?

MR. SEARCY: Objection. Lacks foundation.

THE WITNESS: It was my view, it would be unusual for lawyers to be at the board meeting. But it was my view, and it is my view, that if -- in the circumstances, if lawyers were going to be there, I didn't see the harm in having Mr. Cotter's lawyer there, was my view.

MR. KRUM:

Q. And do you recall that Mr. Adams interjected that it was not appropriate to vote on the motion that if one lawyer stayed for -- the Akin Gump lawyer stayed, Mr. Cotter's lawyer should stay as well because there had already been a vote with respect to Mr. Cotter's lawyer staying?

MR. SEARCY: Objection. Vague. Argumentative.

THE WITNESS: I don't recollect.

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MR. KRUM: Okay.

Q. Do you recall what the -- Okay. So at the -- at the May 20 -- at the directors meeting on or about May 20, 2015, was there a motion to terminate Jim Cotter, Jr. as president and CEO?

A. Yes.

Q. Who made that?

A. The chair.

Q. Was the motion seconded?

A. From recollection, yes.

Q. Was there a vote?

A. It was a very tumultuous period. I don't recollect the vote happening, a formal vote being taken.

Q. Do you recall that the meeting was adjourned for a period of time?

A. I do.

Q. And how did that happen? What happened to cause the meeting to be adjourned?

A. I don't recollect in detail.

Q. Do you recall if there was any discussion about giving Jim Cotter, Jr. on one hand and Ellen and Margaret Cotter on the other hand time to attempt to resolve their differences before the vote was taken?

A. Yes.

Q. And what was discussed in that respect?

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

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

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

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

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

____ The changes made by the witness are appended to the transcript.

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

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

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

WITNESS my hand this 3rd day of March, 2016.

_____
Teckla T. Hollins, CSR 13125

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____
Signature of Witness

_____
Name Typed or Printed

Exhibit 9

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, VS. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF TIMOTHY STOREY

Wednesday, August 3, 2016

Wednesday, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

Job No.: 323867

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of TIMOTHY STOREY taken on behalf of Plaintiff, at 3993 Howard Hughes parkway, Suite 600, Las Vegas, California, beginning at 9:39 a.m. and ending at 12:19 p.m., on Wednesday, August 3, 2016, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

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Also Present: BRIAN MURPHY, Videographer
JAMES COTTER

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EXHIBITS

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Exhibit 416	Minutes of the Meeting of the Board of Directors of Reading International, Inc.	75
Exhibit 417	E-mail from Ed Kane, dated October 19, 2014	82

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in this note, is to say we need to act as a board, and we need to act properly to come to a decision. And we need to address ourselves to the appropriate question. So, yes, my view was, at times, Mr. Kane was of the view that we would simply -- we should just simply be acting as director -- well, acting in a manner consistent with what he believed the shareholder required.

BY MR. KRUM:

Q. And by the shareholders -- shareholder, you are referring to Ellen and Margaret?

MR. SEARCY: Objection. Argumentative and vague. Lacks foundation.

A. Well, he -- I think he took that view, but as I say here, there remains uncertainty as to the ultimate identity of some shareholders. It seemed to me that it was a difficult proposition to do, even if that was an appropriate response. At this point, given litigation, we didn't know who the -- we didn't know for certain who the shareholder was.

BY MR. KRUM:

Q. Mr. Storey, I show you what previously was marked at Exhibit 131.

A. Yes, I have read the document.

Q. Did you send Exhibit 131 on or about the date it bears, May 20, 2015?

A. I did.

Q. At the end of the first paragraph, you refer to Guy's apparent view that no discussion is necessary. Do you see that?

A. I do.

Q. To what does that refer?

A. I think the sequence here is that I spoke to Doug McEachern, and as I said earlier, he proffered his view, and I said to him, "You should talk to our lawyer to understand our duties as directors," which is why I have given him Neil -- Neil's number.

And, secondly, I assume or I suspect that this e-mail follows the discussion I had with Guy, that I discussed earlier, about Guy's -- about his view, even as both Ed and Guy were of the view that there was no point in any discussion at all, that the matter was simply going to be put, and that was that.

Q. Let me show you what previously has been marked as Exhibit 98.

A. You wish me to read this document?

Q. Let me ask you a question first, and you can take such time as you wish to read it.

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A. Uh-huh.

Q. Have you ever seen Exhibit 98 before?

A. I don't believe so, but I show it is the document prepared following the -- our previous negotiation between the three Cotters.

Q. Well, do you recall, Mr. Storey, that at a -- on a telephone call among the directors of RDI, at or about 6 p.m. on a Friday evening, that Ellen Cotter reported that she and Margaret had reached some agreement with Jim Junior?

A. I do.

Q. And you recall what she read -- stated she read portions of the document and then did so?

A. That is my memory.

Q. And I apologize for the memory test nature of this question. But if you would take a moment and look at Exhibit 98, and tell me if, over a year later, you recognize any of that as what she read or part of what she read?

A. Well, I read the first part of the draft agreement -- and this obviously follows the meeting with Ellen -- read out terms she said would be generally -- would affect the company. And this largely confirms my recollection of what was stated, the formation of the executive committee.

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Q. Do you recall one way or the other, Mr. Storey, whether Ellen Cotter read or summarized the information contained on the third page of Exhibit 98, in the box to the right of the left-hand box that reads, "Reading Voting Stock Class B"?

MR. SEARCY: Objection. Lacks foundation. Calls for speculation.

A. I don't recollect that. I think that what Ellen said was that they had come to tentative arrangements about how matters would be -- could be resolved between them. It was subject to documentation, but that the issues that would affect the company, from memory, were along the lines that were set here on the -- in the first box, page 1 and 2 of the draft confidential settlement agreement.

BY MR. KRUM:

Q. I will show what previously was marked as Exhibit 33.

MR. KRUM: And while you are reading that, I'm going to ask the court reporter, do you have the next exhibit number, by any chance?

THE REPORTER: No, I don't.

A. Yes, I have read the document.

BY MR. KRUM:

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document, not the final, as best we can tell. It does, in fact -- second, it does, in fact, have a redaction. And, obviously, if someone wants to -- send a clawback letter with respect to portions of this, we will be happy to comply.

MR. SEARCY: With respect to this document, Mr. Krum, this was produced by your client, so to the extent it might be clawed back, I believe it would be you and your client.

MR. KRUM: Well, what we will do is what we have done every time a request has been made previously, which is if somebody wants us to redact part of it, just send us a letter telling us that, and then we will send a clawback letter that does so.

MR. SEARCY: That may be the case, and I am sorry to interrupt Ms. Hendricks on this, but it certainly -- I want to reiterate my point, which by allowing you to use this document and not going through the whole rigmarole of it, we are not waiving any rights to send you a letter like that.

MR. KRUM: That's perfectly fine.

MS. HENDRICKS: And the only thing that I would add to that, too, is we will certainly do our review of it, but with Mr. Cotter, Jr., being on

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the board of directors, he has a right to maintain the confidentiality and obligation when it comes to work product and attorney-client privilege that he may be subject to.

We have some concerns of this production without any kind of redactions, when it does appear that there are some attorney-client references, and I don't think that's client's obligation. I think Mr. Cotter, Jr., has his own obligation to do a review and to redact information before it's produced in this case.

MR. KRUM: Well, we are well into the gratuitous comment category at this point. We used this document because we couldn't find one produced by the company. So send whatever letters you want to send, and we will do, as I said, what we will do, which is what we have done in the past.

Q. Okay. Mr. Storey, when you refer to the May 21 and 29, and June 12 and June 30, 2015, draft minutes as having been reviewed by legal counsel, what was the import of that comment?

MR. SEARCY: Objection. Vague.

A. Well, I think that -- my preference in these things is to have minutes quite soon after the meeting so that we can all -- all members can

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recollect what was said. And a fair amount of my objection, on a number of occasions, was that we were getting minutes a long time after the event. And that they -- as I have been told, I think it -- the reasons they were being delayed was because they were going through a lengthy approval process.

BY MR. KRUM:

Q. With respect to the approval process, did you understand that counsel was reviewing them for litigation purposes as well?

MR. SEARCY: Objection. Calls for attorney-client privileged information.

MS. HENDRICKS: Join.

BY MR. KRUM:

Q. It's a yes or no.

MR. SEARCY: Well, no, but you are asking him whether it was intended for litigation. So you are getting into the substance of the attorney-client advice.

BY MR. KRUM:

Q. Well, did you have a -- let me back up. Did you have any communications with counsel for the company with respect to the preparation of the minutes of the supposed meetings of May 21, 29, and June 12, 2015?

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A. You mean internal counsel or external?

Q. Either one.

A. My recollection is that I spoke -- I think I spoke to Craig Tompkins to see where are the minutes, or maybe Bill Ellis, I guess. But my recollection is that the reason the minutes weren't being distributed was that they were going to --

MS. BANNETT: I'm just going to interrupt to the extent that it reflects any conversation that you had with counsel, don't reveal any attorney-client communications.

THE WITNESS: No. No. You can -- you can jump in.

A. Anyway, so I was told that the reason that I wasn't seeing, or the minutes weren't available promptly, is that they were going through an approval process and equally, I think so, was going to the chairman.

THE REPORTER: Going to?

THE WITNESS: The chairman, chairperson.

BY MR. KRUM:

Q. So did you look at the draft minutes for the meetings of May 21, and 29, and June 12, 2015?

A. Yes, I recollect I looked at them, and I thought that it would take me a considerable amount

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of time to try and make them reflect what I thought had been said. And it seemed to me that I could do all that and probably get nowhere. And it was going to be a pointless exercise for me, sitting on the airplane for three hours or whatever, and that it seemed better to simply abstain.

MR. KRUM: I will ask the court reporter to mark as Exhibit 417 a one-page document bearing production number GA 1439. It purports to be an October 19th e-mail from Ed Kane.

(Deposition Exhibit 417 was marked for identification by the reporter and is attached hereto.)

A. Yes, I have read that.

BY MR. KRUM:

Q. Do you recognize the subject matter of Exhibit 417?

A. Yes, I do.

Q. What's your recollection as to, if any, independent of Exhibit 417, as to how it came -- whether and how -- whether it came to pass that Ellen Cotter was paid an extra $50,000 on account of matters referenced in Exhibit 417?

A. My recollection is that it was a view that the company had given incorrect advice on various

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things, and to rectify that, the payment was made.

Q. Do you know whether similar payments had ever been made to any other RDI executive?

MR. SEARCY: Objection. Vague. Lacks foundation.

A. I don't recollect at this point, no.

BY MR. KRUM:

Q. Was there, to your recollection, any discussion that this was a one-time payment for Ellen Cotter alone, that no other executives, even if similarly situated, would be treated the same way?

MR. SEARCY: Objection. Vague and argumentative. Lacks foundation.

A. My recollection is this was a one-off event which we were asked to approve and did so.

BY MR. KRUM:

Q. Did you ever hear or were you ever told that Jim Cotter, Jr., was similarly situated, meaning the supposed -- instead of stock options, that it, in fact, gave rise to some sort of taxable event?

MR. SEARCY: Objection. Lacks foundation. Assumes facts. Calls for speculation.

A. I don't recollect that at this point.

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BY MR. KRUM:

Q. As you sit here today, would you know of any basis upon which to have distinguished the treatment received by Ellen Cotter with respect to this issue of instead of stock options and the $50,000 from any other executive who also had, or were supposedly incentive stock options, but were not treated for that -- not treated that way on account of some of tax issues?

MR. SEARCY: Objection. Lacks foundation. Assumes facts. Calls for speculation and calls for an opinion and incomplete hypothetical.

A. I'm comfortable my view would be that everybody should be treated the same. So if other executives were in the same position, then my view would have been that we should have treated them the same.

MR. KRUM: I don't have any other questions at this time. Mr. Storey, I thank you for your time.

MR. SEARCY: A quick follow-up.

EXAMINATION

BY MR. SEARCY:

Q. Mr. Storey, you testified earlier today,

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and I believe also in your prior deposition, about an exercise of options by Margaret and Ellen Cotter in September of 2015?

A. Yes.

Q. And you received an opinion from Greenberg Traurig who was the company -- or counsel for the company; correct?

A. Right.

Q. And at the time that you received that opinion, Jim Cotter, Jr., had sued you personally; correct?

MR. KRUM: Objection. Assumes facts not in evidence.

A. You have to remind me, but I assume -- I assume you can do that easily. I assume I had been sued by them, yes.

BY MR. SEARCY:

Q. In September of 2015?

A. I don't recollect.

Q. But at some point time, Mr. Cotter, Jr., had sued you personally; correct?

A. Yes.

Q. And in September of 2015, in addition to the Greenberg Traurig opinion, you wanted additional advice on the exercise of the options;

correct?

A. Correct. I sought advice from my lawyer about the circumstances in which the subcommittee was asked to approve the matter.

Q. When you say you sought advice from your lawyer, that was from Bird and Marella; correct?

A. Correct.

Q. And Bird and Marella is your personal litigation counsel in litigation brought by Mr. Cotter, Jr.; is that right?

A. Correct.

MR. SEARCY: No further questions.

MS. HENDRICKS: No questions.

MR. KRUM: Okay.

THE VIDEOGRAPHER: This concludes the deposition of Timothy Storey, Volume 1, August 3rd, 2016, which consists of two media files. The original media file will be retained by Litigation Services. Off the video record at 12:19 p.m.

THE REPORTER: Counsel, would you like to order a copy of the transcript?

MR. SEARCY: Yes.

MS. BANNETT: Yes.

MS. HENDRICKS: Yes, please.

MR. KRUM: I would like a rough as soon as

you can send it, please. Thank you.

MS. HENDRICKS: If you could send me a rough as well.

MR. SEARCY: Me, too.

(Proceedings adjourned at 12:19 p.m.)

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

I, GRACE CHUNG, RMR, CRR, CSR No. 6246, a Certified Shorthand Reporter in and for the County of Los Angeles, the State of California, do hereby certify:

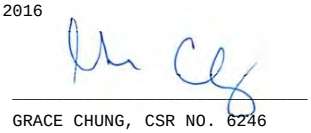
That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction.

I further certify that I am not interested in the event of the action.

In witness whereof, I have hereunto subscribed my name.

Dated: August 10, 2016



GRACE CHUNG, CSR NO. 6246
RMR, CRR, CLR

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:
___	___	_____	_____
		_____	_____
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Exhibit 10

DISTRICT COURT
CLARK COUNTY, NEVADA

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

PLAINTIFF,

Case No: A-15-719860-B

DEPT. NO. XI

-against-

Consolidated with

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

Case No: P-14-082942-E

DEPT. NO. XI

DEFENDANTS.

DATE: March 6, 2018

TIME: 9:17 A.M.

VIDEOTAPED DEPOSITION of the Non-Party Witness, MICHAEL WROTNIAK, taken by the Plaintiff, pursuant to a Notice and to the Federal Rules of Civil Procedure, held at the offices of Lowey, Dannenberg, Bemporad & Selinger, PC, 44 South Broadway, White Plains, New York 10601, before Suzanne Pastor, RPR, a Notary Public of the State of New York.

JOB NO.: 455310

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ALSO PRESENT:

CONNOR EICHENBERG, Videographer

* * *

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

THE VIDEOGRAPHER: This is tape 1. We are now on the record at 9:17 a.m., Tuesday, March 6th, 2018.

This is the deposition of Michael Wrotniak in the matter of Cotter, Jr., versus Cotter, et al. This deposition is being held at the offices of Lowey, Dannenberg, Bemporad & Selinger, PC, located at 44 South Broadway, White Plains, New York.

The court reporter is Sue Pastor with Diamond Reporting and Legal Video. I'm the legal videographer, Connor Eichenberg, also with Diamond Reporting and Legal Video.

Would counsel please introduce themselves and state whom they represent.

MR. KRUM: Mark Krum on behalf of plaintiff.

MR. SEARCY: Marshall Searcy for the witness, for Ed Kane, Doug McEachern, Judy Codding as well as Ellen Cotter, Margaret Cotter and Guy Adams.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

M I C H A E L W R O T N I A K, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. KRUM:

Q. Please state your name for the record.

A. Michael Wrotniak.

Q. Good morning, Mr. Wrotniak.

A. Good morning.

Q. Would you spell your last name for us, please.

A. W-R-O-T-N-I-A-K.

Q. Thank you.

Have you ever been deposed before?

A. Yes.

Q. On how many occasions?

A. Once.

Q. When was that?

A. 2002, 2003, sometime in that time frame.

Q. Were you a party to a legal proceeding?

A. Company I worked for had a shipping problem, and the company was.

Q. What did you do to prepare for your deposition today?

A. I read the documents that my counsel provided to me and I met with my counsel yesterday.

Q. That's Mr. Searcy?

A. Yes.

Q. For how long?

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don't specifically recall if I read those or not.
Q. At any point in time between around the time you were nominated and put on the board and reading board minutes concerning the termination or possible termination of Jim Cotter in preparation for the December 29, 2017 meeting, did you read or review such minutes?
A. I'm sorry, repeat that.
Q. Yes. At any time between when you were nominated and put on the board of RDI, at which time you may or may not have read the minutes, and when you did read these minutes in anticipation of the December 29, 2017 meeting, did you read any minutes that concerned the termination or possible termination of Jim Cotter, Jr.?
A. I don't recall.
Q. And when you say you don't recall, you have no recollection of doing so, or do you have no recollection one way or another? Or is that the same for you?
A. Would you clarify what the difference is?
Q. I don't mean to make this is an epistemology course, Mr. Wrotniak. I don't mean to be a pointy-headed lawyer. If you have no recollection whatsoever about reading any minutes in that time frame,

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then say you have no recollection. If you just don't recall whether you read these particular minutes, then I'd say you don't recall these particular minutes. If that distinction doesn't make sense to you, then you can say so.
A. "Whatsoever" in the legal term is a very important word. So I hesitate to use such a word. I have read a lot of minutes and I don't recall when was the first time I read those specific minutes.
Q. All I'm trying to do, sir, is get your best recollection. I'm not embedding any legal gotchas in the questions. Thank you for your patience.
A. I understand.
Q. Let's take a look at --
MR. KRUM: Did you bring yours?
MR. SEARCY: No, I didn't bring mine.
MR. KRUM: I'm going to give the witness what previously was marked as deposition Exhibit 525. It bears production number DM 00007142 through 7251.
Q. Mr. Wrotniak, I'm first going to ask you if you recognize Exhibit 525. So take such time as you need, sir, to familiarize yourself with the document. I will give you more time any time I ask you about any particular pages or portions of it. So the threshold question is, do you recognize Exhibit 525?

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A. The entirety of this is document 525?
Q. That's correct.
A. I do recognize it.
Q. What do you recognize it to be?
A. The documents which were prepared for the board for our December 29th, 2018 meeting.
Q. This is the so-called board package for that meeting, correct?
A. Yes.
Q. Did you receive it on or about the date and time reflected at the e-mail on the first page, 5:30 p.m. Pacific time on Wednesday, December 27th?
A. Yes.
Q. When did you first learn that there was going to be a board meeting on December 29th?
A. In late December, prior to this.
Q. Was Exhibit 525 the first time you had seen an agenda for the December 29 board meeting?
A. Yes.
Q. And you see on the agenda, which is the second page of Exhibit 525, paragraph 3, subparagraphs A through C have some matters that are referred to as ratification matters. Do you see that?
A. You're referring to this?
Q. Yes.

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A. Yes, I do see it.
Q. When was the first time you heard or learned that the board ratifying any prior conduct would be taken up at the December 29 board meeting?
MR. SEARCY: Objection; vague.
A. We had an advice from counsel.
Q. Was that written or oral?
A. Oral.
Q. When was that?
A. Specifically, I don't know.
Q. How did you receive it? Was it a telephone call?
A. Yes.
Q. Who else was on the call?
A. Our Reading corporate counsel, Judy Codding.
Q. Who was the Reading corporate counsel?
A. Mark Ferrario. And Bonner.
Q. Mike Bonner?
A. Yes.
Q. Both from Greenberg Traurig.
A. Yes, Greenberg Traurig. There are a few of you.
Q. How was this call scheduled? If it was.
A. I don't know.

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Q. How long did it last?
A. I don't specifically recall.
Q. Who initiated the call?
A. Greenberg Traurig.
Q. I'm not asking you to tell me about who said what. I'm just asking about the subject matter, or the substance in the most general way.
During that call, one or both of Mr. Ferrario and Mr. Bonner explained to you and Ms. Codding the ratification matters?
MR. SEARCY: I'm going to object to that. Maybe there's a way that you can come at it a little more generally.
MS. HENDRICKS: I'm going to join in that objection. I have a concern about attorney-client privilege here. So if you can ask it a different way, Mark.
Q. Well, what was the subject matter of the call?
MR. SEARCY: He's asking you at a very general level. I'll let you answer it at a very general level about the subject matter. But I don't want you to get into any specifics.
A. The general matter was the agenda and protection for Reading.

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Q. Prior to this telephone call that you and Ms. Codding had with Mr. Ferrario and Mr. Bonner, had you had any communications with anyone about the same subject or subjects?
MR. SEARCY: Objection; vague.
A. Can you clarify?
Q. Well, the reason I phrased it as "same subject or subjects" is so that I didn't characterize your testimony. But I guess no good deed goes unpunished, so let me attempt to quote it.
MR. SEARCY: I think the term he used was the agenda and protection of the company.
Q. Okay, so prior to the call with Mr. Ferrario and Mr. Bonner, had you had any communications with anyone else about the same subject or subjects, the agenda and protection of the company, or however you'd characterize it?
A. No.
Q. Did you have any communications with Ellen Cotter about those subjects or any other subjects in anticipation of or preparation for the December 29, 2017 board meeting?
A. I don't recall.
Q. At the time of the call that you and Ms. Codding had with Mr. Ferrario and Mr. Bonner, had

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you received the board package, Exhibit 525?
A. I don't recall.
Q. How long did that call last?
A. Specifically, I don't recall.
Q. Well, can you give it a range? Was it five to ten minutes, three to five hours, something else?
A. Less than an hour.
Q. Where were you when you took that call?
A. In Florida.
Q. When were you in Florida?
A. I go there frequently.
Q. When were you there in the time frame of this telephone call?
A. I flew on the 26th from New York to Florida.
Q. So the 26th was a Tuesday, obviously the day after Christmas for a lot of people. And the 29th, the day of the telephonic board meeting, was a Friday. So it was sometime in that time frame that you had this call with Mr. Ferrario and Mr. Bonner and Ms. Codding?
A. Yes. Must have been.
Q. Other than reviewing the board package, Exhibit 525, what, if anything, did you do to prepare for the telephonic board meeting of December 29, 2017?

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A. I thought a lot.
Q. About what?
A. The contents of the board package.
Q. How much time did you spend reviewing Exhibit 525?
A. I don't recall.
Q. When did you review it?
A. We had a compensation committee meeting prior to the board meeting, the day before. And I had to prepare for that. And much of what was contained in here was in that, and I was ready for that meeting.
Q. So what had happened is the compensation committee approved certain matters on the 28th, and those same matters were submitted to the full board on the 29th, right?
A. Yes.
Q. So setting aside the compensation committee matters, meaning the subjects that you prepared for and discussed at the compensation committee meeting on the 28th and again at the telephonic board meeting on the 29th, how much time did you spend looking at Exhibit 525, meaning with respect to the ratification matters?
A. I don't recall.
Q. Let's go to page production in the lower

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right-hand corner 7179 of Exhibit 525. Let me know when you have that.

A. 7179.

Q. Right. It's entitled "documents to be reviewed for December 29, 2017 meeting of the board of directors, agenda item 3." Do you have that?

A. Yes.

Q. Item number 1, excerpts from plaintiff Jim Cotter, Jr.'s motion for summary judgment, that's pages 7181 through 85. Did you review that?

A. I read everything.

Q. Did you see that particular portion had a discussion, the point of which was to assert that Guy Adams receives most, if not substantially all, of his income from RDI and other companies controlled by Ellen and Margaret Cotter?

A. Yes, I see that.

Q. Had you seen or heard or been told that previously?

MR. SEARCY: Objection; vague.

A. Guy has spoken at board meetings about his income from Cotter assets.

Q. At board meetings you attended?

A. Yes.

Q. What has he said?

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A. He has said a substantial portion of his income comes from Cotter related assets.

Q. How did it come to pass, meaning what was the conversation or context that gave rise to him making those comments?

A. I don't recall.

Q. Have you ever been party or privy to any discussion about whether Mr. Adams is conflicted in terms of voting with respect to any matters of personal interests to Ellen and/or Margaret Cotter, whether it be compensation or something else?

A. I'm sorry, will you repeat that?

Q. Have you ever been party or privy to any discussion about whether Mr. Adams is conflicted in terms of voting about any matters of personal interest to Ellen or Margaret Cotter, whether it be their compensation or any other matters?

A. Guy has addressed that issue. As I mentioned.

Q. Anything else?

A. I think that Bill Gould has addressed the issue of Guy with regard to the compensation committee.

Q. Anything else?

A. No.

Q. What has Bill Gould said?

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MR. SEARCY: Objection, vague.

Q. What has Bill Gould addressed with respect to Guy having conflicts or not with respect to the compensation committee?

A. I believe that Bill mentioned that he should not be on the compensation committee.

Q. Did he say why?

A. I don't recall.

Q. I direct your attention, Mr. Wrotniak, to the document bearing production number DM 7187 through 90 as part of Exhibit 525. Do you see that purports to be minutes of a May 21, 2015 board meeting? 7187 through 7190.

A. Yes.

Q. You read these minutes, these purported minutes, in preparation for the December 29 meeting, right?

A. Yes.

Q. Now, I'm not going to ask you to read them again. You're free to do so if you wish, but I'm asking for your memory. And if you don't have any, you can tell me that.

Do you remember anything in particular from this particular document, 7187 through 90?

A. Yes.

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Q. What do you recall in particular?

A. I recall that point X on the agenda was specifically requested by Jim prior to the meeting. And it struck me as interesting that Jim then declined to speak about that point but rather spoke about his father's wishes.

Q. Anything else? Meaning is there anything else from DM 7187 through 90 as part of Exhibit 525 that you recall in particular?

A. Yes.

Q. What?

A. A significant amount of deliberation made regarding Jim's performance and his status.

Q. Anything else?

A. No.

Q. Have you ever heard or learned or have you ever been told that Guy Adams had agreed prior to the May 21, 2015 meeting to vote to terminate Jim Cotter, Jr. as president and CEO?

MR. SEARCY: Objection; vague.

A. Repeat that.

MR. KRUM: Would you read it back for me.

(Whereupon, the referred to question was read back by the Reporter.)

A. I don't recall.

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Q. Had you ever heard or learned that about Ed Kane?
MR. SEARCY: Objection; vague.
A. I don't recall.
Q. Now, when you say you don't recall, does that mean you may have heard or learned that but you don't recall whether you did, or that you do not recall having learned that?
A. I do not recall having learned that.
Q. That's true with respect to both Mr. Kane and Mr. Adams?
A. Yes.
Q. Same question for Mr. McEachern.
MR. SEARCY: Objection; vague.
A. I don't recall.
Q. Would your answer be the same -- well, same question for Ellen and Margaret Cotter.
A. I don't recall.
Q. Mr. Wrotniak, I'm going to show you a document that previously has been marked as Exhibit 81 in depositions in this case. It's only a couple lines but take such time as you need to review it and let me know when you've reviewed it to your satisfaction.
A. (The witness reviews the document.)
Okay.

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Q. Have you ever seen Exhibit 81?
A. No.
Q. You see it's dated May 18, 2015 and purports to be an e-mail from Ed Kane to Guy Adams?
A. Yes.
Q. Do you understand what they're discussing?
MR. SEARCY: Objection; lacks foundation.
A. They're discussing a vote.
Q. Do you know what vote?
A. I suppose you could ask them.
Q. Well, I'm asking you. You're the deponent today. I've asked them already.
A. I could guess.
MR. SEARCY: Don't guess.
A. I don't know.
Q. Have you read any of the deposition transcripts in this case, the derivative action?
A. No.
Q. Have you talked to anyone about their testimony?
A. No.
Q. I just skipped one. I'm trying to be efficient here, Mr. Wrotniak.
A. Take your time.

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Q. I'll do what I need to do but I won't take any of your time that I don't need to take.
I'm going to show you Exhibit 85, which you'll see is a continuation of the e-mail chain that was Exhibit 82. Take such time as you need to review that and let me know when you reviewed it to your satisfaction.
A. (The witness reviews the document.)
Q. Have you reviewed it to your satisfaction?
A. I've read them.
Q. Have you seen Exhibit 85 before?
A. No.
Q. Have you ever heard or learned prior to reading it any of the information set out in it?
A. Prior to reading it, 1 and 2 look like they made it into the minutes.
Q. 1 and 2, motion for a new interim CEO and to reorganize the executive committee?
A. I believe so, yes.
Q. But otherwise, everything in Exhibit 85 is information and material you've not seen or been told before?
A. Other than seeing in here Guy mentioning Ed is trying to help the children, which I mentioned

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earlier.
Q. Otherwise it's all news to you?
A. Yes, correct.
Q. It's a matter of how much time we spend on it. We've just covered it. That's why I asked that.
So directing your attention back to December of 2017, when did you decide to -- well, on December 29 at the telephonic board meeting you voted to ratify the termination of Jim Cotter, Jr. as president and CEO, correct?
A. Yes.
Q. When did you decide to do that?
A. Between receiving the board book, after reading it and after considering it very carefully.
Q. And by the board book you're referring to Exhibit 525?
A. Is that the name of this exhibit?
Q. Yes.
A. How you keep those numbers straight is beyond me, but okay.
Q. Well, actually, Mr. Wrotniak, ordinarily we have a stamped copy for you but we just marked it at a deposition last week, so we don't. But Mr. Searcy and I both know that is what it is. And that's why I call it that.

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understanding --
A. That's good.
MR. SEARCY: -- if that helps you with that question.
A. The income that he receives could cause a conflict to him.
Q. How's that, as you understand it?
A. For some people that could present a problem. In Guy's case it does not.
Q. Why not?
A. He's an independent thinker in my assessment.
Q. What's the basis for that assessment?
A. My time on the board with him.
Q. What discussions, if any, have you had with Guy Adams about his financial dealings with Jim Cotter, Sr. or Ellen and Margaret Cotter as executors of the Jim Cotter, Sr. estate?
A. I don't recall any.
Q. I direct your attention, Mr. Wrotniak, to what purports to be the May 29, 2015 meeting minutes. That's pages 7191 through 94 of Exhibit 525. Do you have that?
A. 91, 2, 3 -- yes, I have it.
Q. Was there anything in particular from

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these purported minutes that you recall as you sit here today noting in terms of your review of them in preparation for the December 29, 2017 board meeting?
A. (The witness reviews the document.) Yes.
Q. What?
A. I recall firstly that approximately a week had passed giving everybody time to pause and to think.
I also recall seeing that it was reconfirmed that the board had the right with or without cause to terminate Jim Cotter, Jr.
I also see that they discussed solutions, resolutions that would make the board comfortable, and Jim declined those. And also noticed an agreement in principle between the Cotter siblings.
Q. When you refer to time to pause and think, do you have any information regarding whether anyone did so? Meaning thought about it or not.
A. No.
Q. Did you see that these purported minutes on page 3 of them, that's production number 7193, in the third full paragraph beginning "Ms. Ellen Cotter then informed the board," that a lawyer representing Ellen and Margaret had contacted a lawyer representing Jim

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Cotter, Jr. about resolving their trust and estate disputes?
A. Did I see this paragraph?
Q. Right.
A. Yes, I did see that paragraph.
Q. Had you ever heard or learned anything about that previously?
A. No.
Q. What's your understanding as to what communications Ellen and Margaret Cotter had with Jim Cotter about those matters, meaning their disputes, including in particular in the trust case on May 29, 2015?
MR. SEARCY: Objection; vague.
A. I don't have any knowledge of that.
Q. Have you ever heard or learned or been told that on the morning of May 29, 2015, before the meeting that's the subject of these purported minutes commenced, Ellen and Margaret Cotter communicated in words or substance to Jim Cotter, Jr. that the proposals their lawyer had made to his lawyers were take it or leave it, that he had to accept them or face a termination vote?
MR. SEARCY: Objection; lacks foundation. Argumentative.

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A. I have no knowledge of that.
Q. Did you note when you reviewed these purported minutes of May 29, 2015 as part of Exhibit 525 that the meeting recessed at approximately 2 p.m. in the afternoon and reconvened telephonically at 6 p.m. that night? I'm just asking if you noted that previously. I'm not asking you to read it and tell me what they say.
A. I recall that in one of these sets of minutes there was that break, yes.
Q. Have you ever heard or learned or been told that at or about the time the meeting recessed that Jim Cotter, Jr. was told in words or substance you need to resolve your disputes with your sisters, failing which when we reconvene telephonically at 6 we're going to proceed with a vote to terminate you?
MR. SEARCY: Objection; lacks foundation.
MS. HENDRICKS: Join.
A. No.
Q. Have you ever met or spoken with Tim Storey?
A. No.
Q. Have you ever tried to contact him?
A. No.
Q. Have you ever talked with Bill Gould about what happened at any or all of these meetings of

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May 21, May 29 and June 12, 2015?
A. I don't recall.
Q. But you saw, I take it, in these purported minutes of May 29 that when the meeting reconvened telephonically at or about 6 p.m., Ellen Cotter had reported that an agreement in principle had been reached by her and Margaret with Jim, Jr.?
MR. SEARCY: Objection; lacks foundation.
A. According to the minutes, they had an agreement in principle.
Q. Have you ever had any communications with anybody about that?
A. No.
Q. Do you have any understanding independent of anything you would read in the purported minutes of June 12, 2015, and that's production numbers 7195 through 99, how that meeting came to be scheduled and occur?
A. I'm sorry, repeat that.
Q. Independent of reading something in the purported June 12, 2015 meeting minutes that are part of Exhibit 525, do you have any understanding as to how that meeting came to be scheduled and had occurred?
A. No.
Q. Is it your understanding as you sit here

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today that Jim Cotter, Jr. would still be president and CEO of RDI -- strike that.
Is it your understanding, Mr. Wrotniak, as you sit here today that no vote to terminate Jim Cotter, Jr. as president and CEO of RDI would have occurred had he resolved his disputes with his sisters Ellen and Margaret?
MR. SEARCY: Objection; lacks foundation, argumentative, calls for speculation.
A. I don't know.
Q. Have you ever discussed that with anybody?
A. No.
Q. Was Mr. Cotter rude when the subject of making Margaret a senior executive at the company with responsibility for development of its New York City real estate was considered by the board?
A. I don't recall.
MR. KRUM: Why don't we take a break.
MR. SEARCY: Sounds good.
THE VIDEOGRAPHER: Off the record at 11:16 a.m.
(Whereupon, a short recess was taken.)
THE VIDEOGRAPHER: This is tape 3 of the deposition of Michael Wrotniak. We're now on the record

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at 11:28 a.m.
BY MR. KRUM:
Q. Mr. Wrotniak, have you ever heard or were you ever told that one of the matters in dispute between Jim Cotter, Jr. on one hand and either or both Margaret and Ellen Cotter in or about May of 2015 was whether Margaret Cotter would become an employee of RDI?
A. No.
Q. Without regard to timing, did you ever hear or learn that there were issues in dispute between Margaret Cotter on one hand and Jim Cotter, Jr. on the other hand about Margaret's role or position at RDI?
A. Margaret became an employee during the time that I was on the board. And there were discussions regarding that at the board level.
Q. What discussions were there? Meaning who said what, in words or substance?
A. Audit committee discussion where it financially made sense for Reading to consider this opportunity.
Q. "This opportunity" being what?
A. To have Margaret become an employee and obtain some rights to Stomp fees that we were not before that entitled to.
Q. How much money was that?

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A. I don't recall.
Q. Did you understand at the time that Margaret's compensation was a function of net revenues of the live theater operations that she oversaw including the Orpheum Theater including Stomp?
A. Please repeat that.
Q. Did you understand at the time that Margaret's compensation was a function of the net revenues of the live theater operations she oversaw, which included the Orpheum Theater where Stomp was performing?
A. Yes.
Q. Did you understand at the time what those numbers were, either gross revenues at the Orpheum or net revenues?
A. I read them. Yes.
Q. As you sit here today, do you recall what they were, even in terms of the magnitude?
A. No.
Q. Do you recall whether they were six figures?
A. I don't recall.
Q. Did you ever hear or learn or were you ever told that in 2015, prior to being terminated as president and CEO of RDI, Jim Cotter was leading up a

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search for a senior executive with commercial real estate development experience?

A. I'm sorry, repeat the question.

Q. Have you ever heard, learned or been told that in 2015, prior to his termination as president and CEO of RDI, Jim Cotter was leading up a search at RDI to hire a senior executive with commercial real estate development experience?

MR. SEARCY: Objection; lacks foundation.

A. When I reviewed the minutes I saw that was on the agenda for the -- one of the meetings in 2015.

Q. Other than what you just testified, have you ever heard or learned anything about a search at RDI to hire a senior executive with commercial real estate development experience?

A. No.

Q. The position Margaret Cotter was given is the senior executive at RDI responsible for overseeing development and predevelopment activities with respect to its New York City real estate, correct?

A. Yes.

Q. She has no prior real estate development experience, correct?

MR. SEARCY: Objection; vague, lacks

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foundation.

A. I don't know.

Q. When you voted yes on December 29, 2017 to ratify the prior decision to terminate Jim Cotter, Jr. as president and CEO of RDI, were you aware that his termination did or might or could have had something to do with Margaret Cotter being employed or not being employed at RDI?

MR. SEARCY: Objection; argumentative, lacks foundation.

A. I'm sorry, please repeat that.

Q. When you voted on December 29, 2017 to ratify the prior decision to terminate Jim Cotter, Jr. as president and CEO of RDI, did you consider any issues or disputes between him and Margaret with respect to her being or not being an RDI employee?

A. No.

Q. Would you have voted affirmatively to ratify the decision to terminate Jim Cotter, Jr. as CEO, as you did on December 29, 2017, if you had not reviewed the May 21, May 29 and June 12, '15 meeting minutes as they are included in deposition Exhibit 525?

MR. SEARCY: Objection; calls for speculation. Lacks foundation.

A. If those minutes didn't exist -- I'm not

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sure I follow the question.

Q. What difference, if any, did those minutes make to your decision to vote in favor of ratifying the decision to terminate Jim Cotter, Jr. as president and CEO of RDI?

A. I relied on the minutes.

Q. And you testified to that earlier and I'm not going to ask you to repeat that.

Did you ever hear or learn or were you ever told that there was any process in place in May of 2015 that was ongoing that was in any respect terminated or pre-empted by the vote to terminate Jim Cotter, Jr.?

MR. SEARCY: Objection; vague. Lacks foundation.

A. I'm sorry, I'm going to have to ask you to repeat that.

Q. Has Bill Gould or anybody else ever told you in words or substance that the vote to terminate Jim Cotter, Jr. ended or pre-empted or interrupted a preexisting process that was supposed to continue into June 2015?

MR. SEARCY: Objection; vague, lacks foundation. Argumentative.

A. No.

Q. Let me show you what previously has been

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marked as deposition Exhibit 116, which is a two-page document bearing production numbers GA 00005417 and 18.

Take such time as you wish to review that, Mr. Wrotniak, and let me know when you reviewed it to your satisfaction.

A. (The witness reviews the document.)

Would you like it back?

Q. No, no. Have you read it to your satisfaction, Exhibit 116?

A. I've read it, yes.

Q. Have you seen Exhibit 116 before?

A. No.

Q. Have you ever had any conversations with anybody about any of the subjects set out in 116?

A. I've heard the term "kangaroo court" before. I don't know to what degree. Who knows.

Q. Have you heard the term "kangaroo court" used with respect to the Reading board of directors?

A. I don't recall.

Q. Do you see at the bottom of the first page of Exhibit 116, the very last paragraph, that Mr. Storey says on May 19th, the day date of the document, that they would review Jim's progress as CEO in June of 2015? That's the very last paragraph on the first page.

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A. I see that.
Q. Prior to reading that or hearing a question from me about it, have you ever heard about that before?
MR. SEARCY: Objection; vague, lacks foundation.
A. No.
Q. Directing your attention back to deposition Exhibit 525, and I see you still have it open, and to those three sets of purported board minutes from May 21, 2015, May 29, 2015 and June 12, 2015 found on pages bearing production numbers DM 00007187 through 99, you don't have any independent information that would enable you to determine whether those minutes fairly and accurately depicted what actually transpired, correct?
A. I relied on the minutes as were placed in the minute book.
Q. But you don't have any independent basis upon which to determine whether they're accurate or fairly depict what transpired, do you?
A. I do not.
Q. Did you ever hear or learn or were you ever told anything to the effect that Jim Cotter, Jr. had been told that he needed to resolve his disputes

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with his sisters, failing which a vote to terminate him as president and CEO would occur?
MR. SEARCY: Objection. Asked and answered and lacks foundation, calls for speculation. It's argumentative.
Q. Go ahead.
A. No.
Q. Have you ever expressed the view that the Cotter siblings should resolve their disputes?
A. I don't recall.
Q. Was your decision to vote in favor of ratification of either of the matters with respect to which you voted affirmatively on December 29, 2017 based in any part on your view of this derivative lawsuit?
MR. SEARCY: Objection; vague.
A. Can you clarify that, please?
Q. Okay. Well, you voted in favor -- strike that.
On December 29, 2017 you voted in favor of ratifying the prior decision to terminate Jim Cotter as president and CEO of RDI, right?
A. Yes.
Q. And you also voted in favor of a prior compensation committee meeting decision with respect to accepting Class A non-voting stock as consideration for

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the exercise of the so-called 100,000 share option, right?
A. Yes.
Q. With respect to either or both of those decisions, was your view of this derivative lawsuit part of your decision-making?
MR. SEARCY: Again, object as vague.
A. I don't know.
Q. Well, do you have a view of this derivative lawsuit?
A. Yes.
Q. What is it?
A. That the board had a right to terminate Jim Cotter and made an informed decision and took it.
Q. Do you have any other views of this derivative lawsuit? Including whether it should proceed or be dismissed.
A. Nothing that I can --
Q. Nothing beyond what you just told me?
A. Yes. Other than the fact that it's quite expensive.
Q. And when you say the board had a right to terminate Jim Cotter and made an informed decision and took it, that view is based on your review of the May 21 and 29 and June 12, 2015 meeting minutes and

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Mr. Cotter's employment contract, right?
A. Yes.
Q. Some of these questions help us move the process forward.
What difference, if any, did the -- well, strike that.
Do you recall that Exhibit 525, the board package, has some information regarding a company called Highpoint Associates?
A. Yes.
Q. What did you understand that information to be? What difference, if any, did it make?
A. I believe that Highpoint was a consultant hired by Reading.
Q. What's the basis for that understanding?
A. I reviewed the invoice.
Q. That's part of Exhibit 525?
A. Yes.
Q. What difference did the hiring of Highpoint make, if any, to your decision to vote in favor of ratifying the decision to terminate Jim Cotter, Jr. as president and CEO of RDI?
A. I don't recall.
Q. Who said what, if anything, at the December 29 board meeting about Highpoint?

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A. I don't recall.
Q. Directing your attention, Mr. Wrotniak, to your vote on December 29, 2017 to ratify the compensation committee decision authorizing the use of non-voting stock as consideration to pay for the exercise of the 100,000 share option, on what basis did you vote in favor of that?
A. I relied on the board book materials that were provided to us.
Q. At the December 29, 2017 meeting, who said what, if anything, about the subject of whether the estate actually owned the 100,000-share option?
A. I don't recall anyone.
Q. You took no steps prior to voting in favor of ratification with respect to the 100,000-share option on December 29, 2017 to determine whether the estate in fact owned that option, correct?
MR. SEARCY: Objection; vague, lacks foundation.
A. I relied on the board materials that were provided.
Q. Do you recall if any of those board materials actually addressed the subject of whether the estate owned the 100,000-share option?
A. I did not see anything in Jim's e-mail,

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nor in Dev's e-mail that would suggest that there was an issue.
Q. What steps, if any, did you take to inform yourself with respect to the ratification vote regarding the 100,000-share option, if any, other than reviewing Exhibit 525, the board package?
A. I don't recall any.
Q. I direct your attention, Mr. Wrotniak, to the page in Exhibit 525 that has the production number 7213 at the lower right-hand corner. You'll see that purports to be the first page of four pages of minutes from a September 21, 2015 compensation and stock option committee meeting. Do you have that?
A. Yes.
Q. In particular I direct your attention to the second full paragraph on that page. You'll see that five lines from the top it begins with the word "held by the estate to acquire 100,000 shares of the company's Class B common stock." So if you work down the left-hand margin of the paragraph that begins with Chairman Kane --
A. Held, yes.
Q. Do you recall -- well, first of all, did you review these minutes in preparation for the December 29, 2017 meeting?

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A. Yes.
Q. When you did, did you notice it used the word "held"?
A. I do not recall.
Q. Does that mean anything to you that it says "held"?
MR. SEARCY: Objection; vague. Lacks foundation.
A. I don't know.
MR. SEARCY: Mark, I think that last night Noah, or someone from our office, sent out one of the properly redacted versions of these. I don't know if you're getting into any of the stuff that's been redacted. I certainly reserve my rights on that.
MR. KRUM: Okay.
MR. SEARCY: I don't want to slow down your examination, but I also don't want to get into anything privileged.
MR. KRUM: Well, you're not waiving anything is what you're telling me. And I acknowledge that.
MR. SEARCY: Appreciate it.
Q. Do you own securities of public companies other than RDI?
A. Yes.
Q. Are they in your name or -- well, strike

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that. Do the proxy materials come directly to you or do they come through the brokerage company through which you hold the securities?
A. Both.
Q. Do you understand the distinction between being a legal and beneficial owner of securities?
A. As opposed to?
Q. Well, the difference between being a legal and beneficial owner.
A. I wouldn't want to have that conversation with you.
Q. Have you ever looked at -- do you know what a NOBO list is?
A. No.
Q. Have you ever looked at any RDI books and records that purport to identify the holders or owners of RDI stock?
A. Have I looked at any books or records. I don't recall. Doug McEachern suggested that we look at the list of the major shareholders. I've looked at that.
Q. For what purpose?
A. General background.
Q. By "major shareholders," you're talking about Class A, Class B or both?

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A. Both.
Q. Have you ever heard or learned or been told anything about a pour-over will or a pour-over trust executed by Jim Cotter, Sr.?
A. I have heard the term.
Q. What have you heard?
A. The term.
Q. You don't recall anything else?
A. No.
Q. "No" meaning correct?
A. No, I have not heard anything else.
Q. In particular, have you ever heard or learned that anyone raised a question about whether the pour-over will or trust or whatever it is caused the 100,000-share option to be held or owned by the trust rather than the estate?
A. No.
Q. If you had heard or learned or been told at or prior to the December 29, 2017 board meeting that a question had been raised, whether by Jim Cotter, Jr. or anybody else, about whether the trust or estate owned the 100,000-share option, would that have made any difference to your decision on December 29, 2017 to vote to ratify what you voted to ratify with respect to the 100,000-share option?

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MR. SEARCY: Objection, lacks foundation. Calls for speculation.
A. Can you repeat that, please.
(Whereupon, the referred to question was read back by the Reporter.)
A. That would have impacted my investigation and thought process.
Q. How so?
A. I would have had the -- had to find out more about the issue and understand it.
Q. What discussions or communications have you had, if any, with either or both Ed Kane and Guy Adams about what they did in 2015 in response to the request to exercise the 100,000-share option?
A. I have not had any.
Q. Mr. Wrotniak, I show you what previously was marked as deposition Exhibit 36 in this action. Take such time as you would like to review that and let me know when you've reviewed it to your satisfaction.
A. (The witness reviews the document.)
Q. Ready?
A. As ready as I'm going to be.
Q. Have you seen Exhibit 36 before?
A. No.
Q. You see that it's an e-mail exchange

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dated April 18, 2015?
A. Yes.
Q. Do you see that it relates to the request to exercise the 100,000-share option?
A. Yes.
Q. Prior to looking at Exhibit 36, had you ever heard or learned or been told the request had been made and considered by the RDI board of directors compensation committee in April of 2015?
A. No.
Q. And as you sit here today, you have no understanding or information as to why it was not acted on at that time, correct?
A. Correct.
Q. As you sit here today, Mr. Wrotniak, you have no information why the RDI compensation committee did not act on the request to exercise the 100,000-share option prior to September of 2015, right?
MR. SEARCY: Lacks foundation.
A. I believe there was a note in the minutes in the board book here that said Ed said they've been wanting to exercise for a while.
Q. Did you note in the minutes of -- September 21, 2015 meeting minutes that Mr. Storey was a member of the compensation committee but that he did not

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participate in the meeting at which Adams and Kane voted to authorize the exercise?
A. Yes.
Q. Did you ever hear or learn or were you ever told independent of anything you read in the September 21, 2015 meeting minutes that Mr. Storey had expressed any concerns, questions or reservations with respect to the --
A. No. Excuse me, I apologize.
Q. -- with respect to the request to exercise the 100,000-share option?
A. My answer remains no.
Q. Directing your attention back to Exhibit 36, and in particular to the first paragraph that has a portion of it redacted, do you see that the balance of the paragraph reads as follows: "There is also the issue of whether the certificates belong to the pour-over trust even though they have not been turned over by the estate, at least that's Jim's position," and then there's a closed quote, and then there's another sentence. Do you see that?
A. I don't see the closed quote --
Q. No, I say that so the transcript reflects that I'm reading something.
A. Yes, I see that paragraph.

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Q. And prior to seeing that, you've never heard or learned that Jim Cotter raised any question about the ownership of the 100,000-share option, correct?

A. That's correct.

Q. Do you intend to ask Guy Adams or Ed Kane about this subject; that is, the ownership of the 100,000-share option?

MR. SEARCY: Objection; vague, calls for speculation.

A. I don't know.

Q. I'm going to show you what previously has been marked as Exhibit 526. This document bears production number RDI 0063804 through 09. It purports to be -- I guess these are draft, right?

MR. SEARCY: Correct.

Q. Draft minutes of the December 29, 2017 meeting.

If I recall correctly, you saw these minutes yesterday for the first time, Mr. Wrotniak.

A. Yes.

Q. How much time did you spend reviewing them?

A. I read them twice I believe.

Q. Did you read them for the purpose of

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assessing whether they were accurate and/or complete?

A. Yes.

Q. What did you conclude in that regard, if anything?

A. I find them to be a good representation of the meeting.

Q. Did you request that the December 29, 2017 meeting address or include the ratification matters?

MR. SEARCY: Objection; vague.

A. Yes.

Q. When and how did you make that request?

A. It was agreed in the meeting with Mark Ferrario.

Q. When did that meeting occur?

A. Prior to the compensation committee, when we were advised of the Nevada law.

Q. When you say the meeting with Mark Ferrario, Mr. Wrotniak, are you referring to the telephone call you and Ms. Codding had with Mark Ferrario and Mike Bonner?

A. Yes.

Q. When you say prior to the compensation committee meeting, you're talking about the compensation committee meeting of December 28th?

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A. Yes.

Q. And when you say prior to that, you mean prior to that the same day?

A. I don't recall.

Q. How many conversations did you have with Mark Ferrario and Mike Bonner the week of Christmas, which was Monday, December 25?

A. One that I recall.

Q. And it's the one that you and Ms. Codding had with Ferrario and Bonner?

A. Yes.

Q. What is your understanding of the import or significance of the two ratification votes that occurred on December 29, 2017?

MR. SEARCY: I'm going to object to the extent it calls for attorney-client privilege. If you have information beyond that, Mr. Wrotniak, you're welcome to testify in that regard.

A. I don't have any further information about that.

Q. Meaning you don't have an understanding beyond what you learned from counsel?

A. Correct.

Q. I direct your attention, Mr. Wrotniak, to Exhibit 526, and in particular the page that has the

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production number ending in 63807 in the lower right. Let me know when you have that page.

A. We're going backwards?

Q. We could be, yes.

MR. SEARCY: What was the page number again, Mark?

MR. KRUM: 807 are the last three digits. It's also numbered 4, page 4 of the draft minutes.

A. Oh, I'm sorry.

Q. It's approximately where we were I think.

A. So you said --

Q. I'm sorry, it's Exhibit 526. We're looking at a different document. You're looking at 525.

MR. SEARCY: You're looking at the board package. He's asking about the minutes.

A. These minutes.

Q. Yes.

A. Okay.

Q. Okay, now that we're squared away with the document, I direct your attention, Mr. Wrotniak, to page 4 of Exhibit 526.

A. One moment while I fix my mic, please.

Q. Of course.

A. 4, okay.

Q. The last full paragraph on that page

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begins with the words "Mr. Wrotniak also expressed his views." Do you have that paragraph?

A. Yes.

Q. Let me know when you've finished reading it.

A. (The witness reviews the document.) Yes.

Q. Does that fairly summarize comments you made?

A. Yes.

Q. When you said in words or substance that the board has attempted to work with Mr. Cotter but had no alternative to take the action it did, termination, what were you referencing when you said "work" with him?

A. They offered him a position as president working under a CEO.

Q. When you say they had no -- in words or substance, had no alternative but to vote to terminate him, what exactly were you saying or referencing?

A. That if they concluded based on his performance that he was not fulfilling his responsibilities, that he needed to be terminated.

Q. I direct your attention to page 6, the last page of Exhibit 526. Do you have that?

A. Yes.

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Q. The first full paragraph on that page reads as follows: "Upon motion duly made by Director McEachern and seconded by Dr. Wrotniak, the following resolution was adopted." Do you see that paragraph?

A. I do.

Q. Is that correct, that you seconded the ratification motion with respect to the 100,000-share option?

A. Yes.

Q. How did that come to pass?

A. I don't understand the question.

Q. Had you had any discussions about seconding that motion --

A. No.

Q. -- prior to doing so?

A. No.

Q. Mr. Wrotniak, I show you what previously has been marked as Exhibit 527. It bears production number RDI 0063918.

Have you seen Exhibit 527 previously?

A. Yes.

Q. When?

A. I don't recall when the first time I saw it was.

Q. You saw it yesterday, correct?

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A. Oh, I did see it yesterday.

Q. Do you recall whether you saw it prior to yesterday?

A. I don't recall.

Q. Do you see that you're not identified as either a -- well, you're not identified on the from, to or cc section.

A. Correct.

Q. Does that refresh your recollection that the first time you saw Exhibit 527 was yesterday?

MR. SEARCY: Objection; lacks foundation.

A. I don't recall when I saw it.

Q. Did you ever see a draft of Exhibit 527?

A. I don't recall.

Q. Did you ever have any discussions with anybody about Exhibit 527, excluding any you had with Mr. Searcy yesterday?

A. Yes.

Q. When and with whom?

A. In my conversation with Mike Bonner and Mark Ferrario.

Q. This is the telephone call you and Ms. Codding had with Bonner and Ferrario?

A. Correct.

Q. Have you had any other communications

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regarding Exhibit 527?

A. No.

Q. In your call with Bonner and Ferrario, did you have 527 or a draft of that in your hand or in front of you at the time of the call?

A. No.

Q. Had you seen it at that time?

A. No.

MR. KRUM: Let's go off the record.

THE VIDEOGRAPHER: We are now off the record at 12:16 p.m.

(Whereupon, a short recess was taken.)

THE VIDEOGRAPHER: This is tape 3, part 2 of the deposition of Michael Wrotniak. We are now on the record at 12:25 p.m.

MR. KRUM: Marshall, there was a particular document that was mentioned at the last two depositions that you were going to check on. Were you able to do that?

MR. SEARCY: Oh, that was something that Ferrario was going to look into. I'll follow up with him.

MR. KRUM: Okay.

MR. SEARCY: That had to do with special committee meeting minutes, is that right?

MR. KRUM: I believe that was, yes.
MR. SEARCY: I'll follow up with him on that.
MR. KRUM: I don't think there's any reason to take Mr. Wrotniak's time about that.
MR. SEARCY: He's not even part of that committee, so.
MR. KRUM: I don't have any further questions. All rights are reserved.
Thank you, sir, for your time and off we go to the next one I guess.
MR. SEARCY: Thank you. No questions from me.
THE VIDEOGRAPHER: This concludes today's deposition of Michael Wrotniak. We are now off the record at 12:25 p.m.
(Whereupon, at 12:25 P.M., the Examination of this witness was concluded.)

° ° ° °

D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

_____
MICHAEL WROTNIAK

Subscribed and sworn to before me
this _____ day of _____ 20___.

_____
NOTARY PUBLIC

E X H I B I T S

(None)

I N D E X

EXAMINATION BY PAGE
MR. KRUM 5

INFORMATION AND/OR DOCUMENTS REQUESTED
(None)

QUESTIONS MARKED FOR RULINGS
(None)

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF WESTCHESTER)

I, SUZANNE PASTOR, a Notary Public for and within the State of New York, do hereby certify:
That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.
I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March 2018.

Suzanne Pastor
_____
SUZANNE PASTOR

Exhibit 11

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VOLUME V
(Pages 664-695)

VIDEOTAPED DEPOSITION OF EDWARD KANE, defendant herein, noticed by Lewis, Roca, Rothgerber, Christie, LLP, taken at Litigation Services, 655 West Broadway, Suite 880, San Diego, California, on Friday, April 20, 2018, at 9:26 a.m., before Marc Volz, CSR 2863, RPR, CRR, crc

Job No.: 465069

APPEARANCES OF COUNSEL:

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Also Present: Alex Payam, videographer

I N D E X

WITNESS: EDWARD KANE

EXAMINATION BY:		PAGE
Mr. Krum		667

E X H I B I T S

PLAINTIFF	DESCRIPTION	PAGE
EXHIBIT 525	Email: Batista to Adams, Codding, Cotter, Jr., Margaret Cotter, Gould, Kane, McEachern, Wrotniak, cc: Ellen Cotter, Craig Tompkins; Agenda for meeting, December 29, 2018 (Previously marked.)	673
EXHIBIT 527	Email: Ellen Cotter from Marcia Wizelman, cc: Tompkins Bonner (Previously marked.)	683

THE VIDEOGRAPHER: Good morning. This is the beginning of media number 1 in the deposition of Edward Kane in the matter of James J. Cotter, Jr. versus Margaret Cotter, et al. and related actions, held at 655 West Broadway, Suite 880 in San Diego, California, on April 20th 2018 at 9:26 a.m.

The court reporter is Marc Volz. I am Alex Payam, the videographer, on behalf of Litigation Services. This deposition is being videotaped at all times unless specified to go off the video record. Would all present please identify themselves beginning with the witness.

THE WITNESS: Edward Kane.

MR. SEARCY: Marshall Searcy for defendants, Doug McEachern, Guy Adams, Judy Codding, Michael Wrotniak, Margaret Cotter, Ellen Cotter and for the witness Ed Kane.

MR. FERRARIO: Mark Ferrario for RDI -- or Reading.

MR. KRUM: Mark Krum, appearing telephonically, for plaintiff.

THE VIDEOGRAPHER: Thank you. Would the court reporter please swear in the witness.

EDWARD KANE,

defendant herein, having been sworn, testifies further as follows:

-EXAMINATION-

BY MR. KRUM:

Q. Good morning, Mr. Kane.

A. Morning.

Q. Is there any reason that you cannot provide truthful, accurate and complete testimony today?

A. No.

Q. You're not taking any medication or anything of that nature that would impair your ability to do so?

A. No.

Q. I'm going to remind you of a couple ground rules that we will need to follow today to make this go as efficiently as possible. First, please afford me the time and perhaps an extra breath to finish my questions before you begin to answer. In turn, I will attempt to do the same. That way we will not be speaking over each other and we'll have a better, more comprehensible transcript. That's particularly true today, because if we talk at the same time, one or both of us will not hear the other. You recall that, right?

A. Yes.

Q. And of course, that was a segue to the next admonition. It's particularly important today that you provide audible responses in words because I may not understand an "uh-huh" or a "yeah" even if the court reporter does. And the court reporter may not. And

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that will result in an erroneous transcript. What did you do to prepare for your deposition today, Mr. Kane?

A. First, could you make this a little louder, I'm having a little trouble hearing.

MR. SEARCY: It is a little soft.

Mark, the phone was little soft. Maybe you could repeat your question.

MR. KRUM: Of course. I actually forgot an admonition.

Q. If you need to take a break, Mr. Kane, let me know. I'm not going to be able to discern that by looking at you. I'd ask only that you answer any question that's pending before you ask for a break. And I will add to that, Mr. Kane, that I hope to not need to have you appear for another deposition. Obviously I think I do, and I have some matters that I intend to cover as quickly as possible, and I'm hopeful that we will do so before we take a break and that will leave you the rest of the Friday to enjoy. So with that by way of admonitions, my first question is what did you do to prepare for your deposition today?

A. I reviewed some testimony that I had previously given that was provided to me by Mr. Searcy. And I think there was some documents in there that I also briefly reviewed.

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Q. When you refer to testimony you have previously given, Mr. Kane, are you referring to prior deposition testimony in this case?

A. Yes, I am.

Q. Were you provided transcripts or excerpts of transcripts or both?

A. I'm not sure I know the difference. If I may, perhaps Mr. Searcy could describe better what he provided me.

MR. SEARCY: I don't get to answer any of the questions, Ed. Just do your best with the question.

THE WITNESS: I think they were transcripts of prior depositions that you had with me.

MR. KRUM:

Q. What I meant, Mr. Kane, by the word excerpts is whether you were provided something less than complete deposition transcripts to review. Do you recall?

A. I think they were complete. But I don't know how I would know if there was something left out, to tell you the truth. It's been so long since you last deposed me. However, my best guess is that they were complete transcripts.

Q. Let's move forward. Mr. Kane, you recall that on the morning of December 29, 2017 there was a telephonic meeting of the Reading International board of

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directors?

A. Yes.

Q. By the way, I'm going to call Reading International RDI, if that's okay with you.

A. Fine.

Q. Mr. Kane, at any time prior to that telephonic board meeting on December 29, 2017 were you party to any communications with Judy Codding about the termination of Jim Cotter, Jr. as its president and CEO of RDI?

A. I can't recall any such conversations.

Q. At any time prior to the telephonic board meeting on December 29, 2017 were you party to any communications with Michael Wrotniak regarding or that referenced the termination of Jim Cotter, Jr. as president and CEO of RDI?

MR. SEARCY: Let me just pose the objection. Vague.

You can answer, Ed.

THE WITNESS: I cannot recall any such conversations.

MR. KRUM:

Q. You've eliminated quite a few of my follow-up questions which should please you. At the -- strike that.

A. Strike it should please me?

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Q. That was my own comment. I apologize. It was not directed at you, sir.

A. Okay.

Q. Did there come a time when you heard or learned that ratification of prior actions or decisions would be taken up or considered at the December 29, 2017 telephonic board meeting?

A. I cannot recall whether I had such -- I may have, but I just can't recall them.

Q. What is your best recollection, Mr. Kane, about when you first heard or learned that ratification of anything would be or was going to be taken up at the December 29, 2017 board meeting?

A. I can't recall if I -- if there was any -- any conversation, any communication regarding the December 29th meeting. There may have been, but I just don't have any recollection of such.

Q. The following question, Mr. Kane, is asked for the purpose of assisting you in terms of remembering events at a particular time. I'm not asking about your personal life, sir. December 25th, Christmas day, was a Monday, right?

A. If you say so. I don't have a calendar. I wouldn't know one way or the other.

Q. You can accept that from me. Nobody will argue

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May I say something to you? I don't have to say this but I will. I'm not trying to be evasive, but I have had probably eight or nine, maybe ten meetings -- compensation committee, board meetings, audit committee meetings -- since December 29, 2017. I cannot recall -- and those have all been in the interim. So you ask me about what did I remember in December 29, 2017, after all those meetings and being 80 years of age, I can't be specific. I can't recall with specificity any of that because it all blends together after a while. I'm telling you that so you'll understand where from I come.

Q. Very well. I need to ask the questions nonetheless.

A. Go ahead. Go ahead.

Q. I'm not harassing you, sir. I'm just trying to cover the material I need to cover.

A. I understand.

Q. Do you recall anything anybody said at the December 29, 2019 board meeting regarding the termination of Mr. Cotter as president and CEO?

A. I do not.

Q. Do you recall anything anybody said with respect to item 3b on the second page of Exhibit 525, which I'll refer to as shorthand, and that is, ratification of the use of Class A voting stock to pay

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for the exercise in the so-called 100,000 share options?

A. I do not.

Q. Do you recall if you said anything about that subject?

A. I don't recall if I did or didn't.

Q. Did anyone ask you any questions about either of those subjects? Meaning the subjects of 3a and b on the second page of Exhibit 525 at the December 29, 2017 board meeting?

A. I don't recall any questions asked of me.

Q. You voted in favor of ratifying both of those matters, correct?

A. Yes, sir.

Q. And in doing so you were voting in favor of the decisions you'd made previously, right?

A. Yes, sir.

Q. And I don't mean to be glib with the following question so don't take it that way. No, seriously.

A. Okay.

Q. Did you give much thought to those matters, or is it fair to say, Mr. Kane, that basically you thought you were correct when you decided and did what you did and so you voted in favor of ratifying?

A. You're absolutely correct. I had voted to terminate Mr. Cotter at the time he was terminated. And

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then I was deemed by Mr. Cotter through you to somehow have a conflict of interest. So I had no problem, which I never had. I had no problem reaffirming my vote to terminate Mr. Cotter at that time. And as chairman of the comp committee who approved, voted to approve the exercise of the Class B voting stock, I had approved it then, and I saw no reason why I wouldn't approve it again.

Q. Directing your attention, Mr. Kane, back to the December 29, 2017 board meeting. Do you recall whether there was any discussion of the subject of whether or not Mr. Adams was independent for any particular purpose or purposes?

A. I don't recall such discussion if there was one.

Q. Again, directing your attention to the December 29, 2017 board meeting. Do you recall any discussions of or relating to Highpoint Associates?

A. I don't recall if there was.

Q. Have you ever heard of Highpoint Associates?

A. Yes, sir.

Q. When and how did you first hear of Highpoint Associates?

A. I can't remember exactly when. It was sometime after I believe -- I believe it was sometime after

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Mr. Cotter, Jr. was terminated as president -- or CEO. I don't recall the context of it, and I was quite surprised to see it. But I was privy to some documentation indicating that Mr. Cotter, Jr. had hired Highpoint to help him become a CEO and had signed a contract with him that was not presented to the other directors or any director, as it should have been. That's the most I can say about it.

Q. Did what you understand about Highpoint Associates make any difference to your decision to vote to ratify the termination of Mr. Cotter?

A. No.

Q. How did you come to have the understanding you just described of the purpose or purposes for which Highpoint Associates had been hired, which had to do with Mr. Cotter being a CEO or becoming a better CEO or something to that effect?

MR. FERRARIO: Ed, if it came from -- Mark Ferrario. If it came from your attorneys, let me know. I don't know how else you may have learned.

THE WITNESS: I don't recall how I was made aware of it.

MR. FERRARIO: Okay.

MR. KRUM:

Q. Have you reviewed any documents concerning

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Highpoint Associates?

A. I was given yesterday, I think, some pages of Highpoint. I scanned them. I didn't pay much attention to it.

Q. Prior to yesterday have you ever seen any documents relating to or concerning Highpoint Associates?

A. I may have. But when it was given to me yesterday it didn't refresh my recollection of having seen it previously. I'd only heard about it.

Q. From whom had you heard about it?

A. It was so long ago I don't remember.

Q. Did Mr. McEachern tell you about Highpoint Associates?

A. I don't remember how I knew.

Q. Did Mr. McEachern ever give you any documents about Highpoint Associates?

A. I have no recollection of discussing it with him or him giving it to me.

Q. Do you possess any documents concerning Highpoint Associates?

A. No, sir.

MR. FERRARIO: Other than --

THE WITNESS: Well, other than what I was given by --

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MR. SEARCY: Mr. Searcy.

THE WITNESS: Mr. Searcy. Sorry. I'm sorry. I missed it. Other than what Mr. Searcy gave me I don't recall. I may have but I just don't recall it.

MR. KRUM:

Q. If you were afforded the opportunity today to vote on whether this derivative lawsuit should proceed or be terminated how would you vote?

A. Terminate it tomorrow, please, sir.

Q. And why?

A. And why? We had -- that, as you well know, sir, that derivative suit was joined by an independent investor in Reading, T-2. They put a lot of money into it. They were present at one or more of my depositions. And they came to the conclusion that the company was well run. And they were laudatory as to how it is run and they pulled out. They didn't receive anything for pulling out. Their expenses were their expenses.

If someone with that sophistication and their own money in it said the company is well run, without Mr. Cotter, Jr., then I cannot foresee why there even is a derivative action. Never made much sense to me. And I'm not criticizing you, sir. You're his counsel. But to me it's a total waste of time and money of all parties.

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And if the directors of a company who are operating, as I was and what I thought, in the best interest of the company and thought it was in the best interest of the company that Mr. Cotter step down from his role, how else can I think, other than there shouldn't have been a derivative suit and it's a waste of his money and our money.

Q. Directing your attention, Mr. Kane, to your last response insofar as it concerned the intervening plaintiffs. What is the basis or what are the bases for your understanding of the conclusions you described them as reaching?

A. I saw some -- at the time I believe I saw some correspondence from them to that effect. And there was also some discussion with regard to the peer group. They made some recommendations for a change in the peer group which we used to determine compensation. It was well thought out. And we had already adopted some of their recommendations of the peer group. And in there they again I believe -- it's a long time ago when I saw the correspondence -- that they were pleased with the way the company was being run and going forward. And they were making recommendations as to the peer group for compensation.

Q. When you refer to correspondence are you

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actually -- do you actually have in mind a press release issued by RDI that included a quote ascribed to one of the intervening plaintiff representatives?

A. I wasn't but now that you mentioned it I did -- I must have. And I have some vague recollection of some of that press release.

Q. Mr. Kane, excluding your prior depositions in this case, have you ever met or communicated with any representative of any of the intervening plaintiffs?

A. By intervening plaintiffs you mean T-2?

Q. Right. T-2 or the folks you referenced earlier as having settled.

A. No. I never personally discussed it with any of them.

Q. What or who was the source of the information you've described about interactions with T-2 and the intervening plaintiffs?

A. I can't recall. I do know that I saw -- maybe it was directed to me, I don't know -- their recommendations for companies that we should use as part of our peer group for compensation purposes. So I probably saw that as chair of the compensation committee. But otherwise, I don't know whether they sent things to the board as a whole or things were given to me. I just don't recall.

Q. Okay. This calls for a yes or no response, Mr. Kane. Was counsel, meaning an attorney who represents you and/or an attorney who represents RDI, the source of some or all of the information you received regarding T-2 and the intervening plaintiffs?

A. Sir, I can't recall so I can't say yes or no.

Q. Very well.

MR. KRUM: Let's take a break.

THE VIDEOGRAPHER: Off the record. The time is 10:21 a.m.

(Recess.)

MR. KRUM: Back on the record. So in light of what we've covered and how we've covered it and the circumstances that bear upon that I don't have anything further at this time. Mr. Kane, thank you for your time. Have a nice day, sir.

THE WITNESS: Thank you. You too.

MR. SEARCY: Thank you.

MR. KRUM: Bye, guys.

(The proceedings concluded at 10:41 a.m.)

***

STATE OF CALIFORNIA) ss

I, Marc Volz, CSR 2863, RPR, CRR, CRC, do hereby declare:

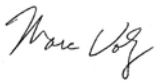
That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn pursuant to Section 2093(b) and 2094 of the Code of Civil Procedure;

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

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

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

WITNESS my hand this 23rd day of April, 2018.



_____

MARC VOLZ, CSR NO. 2863, RPR, CRR, CRC

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state),

and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:
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ERRATA SHEET

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Date: _____ _____

Signature of Witness

_____

Name Typed or Printed

Exhibit 12

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF EDWARD KANE

TAKEN ON JUNE 9, 2016

VOLUME 3

Job No.: 315759

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

VIDEOTAPED DEPOSITION OF EDWARD KANE, taken on behalf of the Plaintiffs, at 3043 Fourth Avenue, San Diego, California, commencing at 9:38 A.M. on June 9, 2016, before PATRICIA L. HUBBARD, CSR #3400, a Certified Shorthand Reporter in and for the State of California, pursuant to Notice.

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Also Present:

James J. Cotter, Jr.
Ryan Lafond, Videographer

I N D E X

WITNESS	PAGE
EDWARD KANE	
(By Mr. Krum)	382

E X H I B I T S

PLAINTIFFS'	DESCRIPTION	PAGE REFERENCED
Exhibit 73	Email chain dated April 19, 2015 from Kane to Storey (Previously marked)	436
Exhibit 197	Email dated 6/1/2015 from Kane to J. Cotter, Jr., et al. (Previously marked)	565
Exhibit 283	Email chain dated April 17, 2015 from Kane to Tompkins, et al.	389
Exhibit 284	Email chain dated April 19, 2015 from Kane to Adams and Storey	415
Exhibit 285	Email chain dated April 22, 2015 from J. Cotter, Jr. To Kane	424
Exhibit 286	Email chain dated April 17, 2015 from Kane to J. Cotter, Jr.	433

E X H I B I T S (Continued)

PLAINTIFF'S	DESCRIPTION	PAGE REFERENCED
Exhibit 287	Email dated September 29, 2014 from Kane to Storey and Adams	455
Exhibit 288	Email chain dated September 29, 2014 from Adams to Kane and Storey	461
Exhibit 289	Letter dated October 2, 2014 From Kane to Jon Shibata	462
Exhibit 290	Email dated October 23, 2014 From Kane to E. Cotter	463
Exhibit 291	Email chain dated October 27, 2014 from Adams to Kane	467
Exhibit 292	Email chain dated 12/23/2014 From Kane to J. Cotter, Jr.	496
Exhibit 293	Email chain dated May 9, 2015 From Kane to Adams	525
Exhibit 294	Email chain dated May 9, 2015 From Adams to Kane	528
Exhibit 295	Email chain dated 4/23/2015 From Kane to Gould	538
Exhibit 296	Email dated May 13, 2015 from Gould to Adams, et al.	541
Exhibit 297	Email chain dated May 13, 2015 From Kane to Gould, et al.	542
Exhibit 298	Email dated May 15, 2015 from Adams to Kane	547
Exhibit 299	Email chain dated May 24, 2015 From Kane to Gould, et al.	557

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stated and what rights they had under those agreements.

MR. KRUM: And I will move to strike both as non-responsive.

I'll ask the court reporter to mark as Exhibit 285 a document that is an email chain of April 21 and 22, 2015, between Mr. Cotter and -- Mr. Jim Cotter, Jr., and Mr. Kane. It bears production number EK77.

(Whereupon the document referred to was marked Plaintiffs' Exhibit 285 by the Certified Shorthand Reporter and is attached hereto.)

BY MR. KRUM:

Q. Are you ready?

A. Yes.

Q. Mr. Kane, do you recognize Exhibit 285?

A. I do now, yes.

Q. Is this an email exchange you had with Jim Cotter, Jr., on April 21 and 22 --

A. I assume --

Q. -- 2015?

A. I assume it was, yes.

Q. Directing your attention to the first

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email at the bottom of Exhibit 285, you see that the first sentence -- in the first sentence Mr. Cotter, Jr., recites that Craig Tompkins had told him that he, Craig, had advised Ellen that it was in her best interest to exercise the option or options -- exercise what we're calling the 100,000-share option.

You see that?

A. Yes.

Q. Had you previously heard or learn or been told that Craig Tompkins was speaking to Ellen Cotter about exercising RDI class B options for the purpose of ensuring that she could retain control of RDI at the next annual shareholders meeting?

MR. SEARCY: Objection. Vague, assumes facts.

THE WITNESS: No.

MR. SEARCY: Also misstates the document.

BY MR. KRUM:

Q. Had you ever heard or learned or been told other than through Exhibit 285 that Craig Tompkins had communicated with Ellen Cotter about whether it was in her best interest to exercise the 100,000-share option?

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A. No.

Q. Did you ever ask Ellen about whether she had communicated with Craig about that subject?

A. No.

Q. Did you ever speak to Craig about it?

A. No.

Q. Did you ever respond to Jim Cotter, Jr., about that?

MR. SEARCY: Objection. Vague.

THE WITNESS: My response to Jim Cotter, Jr., is in this document you gave me.

BY MR. KRUM:

Q. Well, I'm asking if you ever responded to his advice that Craig Tompkins had advised Ellen that it was in her best interest to exercise the 100,000-share option.

A. No.

Q. Did it surprise you to hear that Mr. Tompkins was advising Ellen about what was her best -- what was in her best interest?

A. No.

MR. SEARCY: Objection. Vague and lacks foundation.

BY MR. KRUM:

Q. Did you understand in or about April of

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2014 that --

A. 2015, you mean.

Q. I misspoke. Thank you, sir.

Did you understand in or about April of 2015 that Mr. Tompkins was on the side of Ellen in her disputes with Jim Cotter, Jr.?

MR. SEARCY: Objection. Vague, assumes facts.

THE WITNESS: Yes.

BY MR. KRUM:

Q. What did you understand in that respect?

A. Mr. Cotter, Jr., had by this time hired Bill Ellis as general counsel. And I -- it's my belief, just mine alone -- I don't have any evidence of it, but that Craig Tompkins then spent a good deal of his time and energy with Ellen and Margaret Cotter, hoping to maintain his position in the company.

Q. What was your view of Mr. Tompkins at the time?

MR. SEARCY: Objection. Vague, calls for opinion. It also lacks foundation.

THE WITNESS: When you say my view of him, he was overweight.

What else would you like me to tell you?

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BY MR. KRUM:
Q. Well, did you think he was consistently acting in the interest of the company rather than his own interest?
MR. SEARCY: Objection. Vague, lacks foundation. Also calls for opinion.
THE WITNESS: We're getting off this subject, but at that time I felt Craig Tompkins always acted in his own self-interest.
BY MR. KRUM:
Q. Mr. Tompkins previously had, in effect, been terminated from some position in the company, right?
A. I don't recall him being terminated from any position.
Q. Do you recall a circumstance in which Jim Cotter, Jr., learned that Craig Tompkins, while supposedly holding some position at the company, was chairman or vice chairman of another company?
A. Oh, yeah.
MR. SEARCY: You said Junior. Did you mean Junior or Senior?
MR. KRUM: I meant Senior. Thank you.
BY MR. KRUM:
Q. You understood I meant Senior?

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A. Yes.
Q. Okay. What was that circumstance?
A. I think Jim Cotter, Jr., discovered online that Mr. Tompkins had become an officer and -- of another company, and he had not asked Mr. Cotter, Sr., if that was -- if he could do that.
And previous to that he had got on the board of a REIT, I believe, and again did not ask Mr. Cotter, Sr., if that was okay with him, and he being at that time full-time legal counsel.
Q. Did you ever hear or learn or were you ever told that Craig Tompkins attempted to steer RDI business to Marshall and Stevens?
MR. SEARCY: Objection. Lacks foundation.
THE WITNESS: Yes.
BY MR. KRUM:
Q. What did you hear or learn in that regard?
A. Craig Tompkins was taking the lead role on behalf of the company in the tax case that we had, the major tax case. And we had two firms representing us; Fried Frank in New York and Washington and Duane Morris in Philadelphia.
And he asked them to put -- it's my

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recollection or understanding, put on seminars on behalf of Marshall Stevens.
And I felt that was totally inappropriate, because they were our attorneys. We were paying them, and then we were pushing Marshall Stevens. He couldn't say no. And I was quite upset about it.
Marshall Stevens also did some work for our company after it was known that Craig Tompkins was there, some valuation issues. But then Andrzej Matyczynski decided they weren't the right firm for us. But that happened.
So, I thought that was inappropriate self-interest on his behalf.
Q. The valuation issues that Marshall and Stevens handled for RDI, what were those? Or with respect to what?
A. I don't recall. I think it had to do with maybe some acquisition, I'm guessing, we made and how to allocate the purchase price among various assets. And there were tax benefits and detriments, depending on how you did it.
Q. Did you ever hear or learn, Mr. Kane, that Craig Tompkins had attempted to steer business -- RDI business with respect to one or both

Page 431

of its New York City real estate properties and projects to Marshall Stevens?
MR. SEARCY: Objection. Lacks foundation.
THE WITNESS: I did not hear that, no.
BY MR. KRUM:
Q. Directing your attention, Mr. Kane, back to the circumstance of -- of Craig Tompkins having a position -- having positions that he had not disclosed to Jim Cotter, Sr., at a time when Craig Tompkins was a full-time employee of RDI -- when you learned that, were you of the view that Tompkins should have been terminated?
MR. SEARCY: Objection. Lacks foundation, calls for opinion.
THE WITNESS: It wouldn't have -- I didn't have a view that he should be terminated, but it wouldn't have bothered me if he was terminated. That's the best I can say.
We had no back-up at the time for him, so -- and he was intimately and is intimately aware of all of the issues in the company. And he structured many of them.
So I don't know if it would be in the best interest of the company then or now to

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terminate him.
BY MR. KRUM:
Q. Did -- did you ever express to Jim Cotter, Sr., Jim Cotter, Jr., or both at any point in time that you thought Craig Tompkins should be terminated or that the company's relationship with him should be terminated?
A. I think I had mentioned to Jim Cotter, Sr., and to Jim Cotter, Jr., that they should retain an attorney to familiarize himself or herself with the company's affairs. And the result of that might well have been to terminate Craig Tompkins.
Q. Did you ever tell Jim Cotter, Sr., Jim Cotter, Jr., or both that you thought Craig Tompkins was amoral?
A. Amoral?
Q. Right.
A. I might have used that term.
Q. Do you recall doing so as you sit here today?
A. I didn't hear your question.
Q. Oh, I'm sorry.
Do you recall describing Craig Tompkins as amoral as you sit here today?
A. I think I did, yes.

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MS. HENDRICKS: Mark, we've been going more than an hour. Can we take a break?
THE WITNESS: Yes. Can we have a bathroom break?
MR. KRUM: Sure.
VIDEOTAPE OPERATOR: Off the record at 11:02 A.M.
(Brief recess.)
VIDEOTAPE OPERATOR: Back on the record at 11:19 A.M.
MR. KRUM: I'll ask the court reporter to mark as Exhibit 286 what purports to be an April 17, 2015 email exchange between Craig Tompkins and Mr. Kane with several attachments. It bears production number EK63 through 68.
(Whereupon the document referred to was marked Plaintiffs' Exhibit 286 by the Certified Shorthand Reporter and is attached hereto.)
BY MR. KRUM:
Q. Mr. Kane, do you recognize Exhibit 286?
A. It's an email with my name on it.
Q. Did you receive the email from Craig Tompkins which is part of 286 including the

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attachments on or about the date it bears April 17, 2015?
A. I assume I did. I have no recollection.
Q. I direct your attention, Mr. Kane, to the page bearing production number ending in 1662 as part of Exhibit 286.
Let me know when you have that.
A. I have it in front of me now, yes.
Q. And do you recognize that document?
A. No.
Q. Do you have any understanding as to what it is or purports to be?
A. It purports to be an option agreement between Reading and, I assume, James J. Cotter, Sr.
Q. Well, take such time as you need to review it.
And my next question is do you recognize this to be the option agreement for the supposed 100,000 shares?
A. I see the 100,000-share option in here in paragraph one.
Q. I direct your attention toward -- to the end of that five-page document. At the bottom it says page five of five. It also bears the production number ending in 1666.

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Let me know when you have that.
A. Yes.
Q. Do you see that it bears no signatures?
A. Yes.
Q. Does that refresh your recollection regarding whether you ever saw an option agreement with respect to the 100,000 shares of RDI class B stock that was fully executed?
MR. SEARCY: Objection. Assumes facts, lacks foundation.
THE WITNESS: It doesn't refresh my recollection, but I see it.
BY MR. KRUM:
Q. Did you notice at the time it was transmitted to you by Mr. Tompkins on April 17th that what he had sent you was not signed?
A. Pardon me?
Q. I said did you notice when you received --
A. Uh-huh.
Q. -- Exhibit 286 that the agreement, the option agreement for 100,000 shares was not signed?
A. Yes.
Q. What, if anything, did you do upon seeing that?

A. Yes.
Q. Were you referring to the fact that he was basically in a position of striking a deal or facing a vote on termination?
A. I think that was my thinking, yes.
Q. And then at the bottom of -- at the end of the paragraph numbered five there's a sentence that reads as follows, quote,
"Otherwise you will be sorry for the rest of your life. They and your mother will be hurt and your children will lose a golden opportunity," close quote.
A. Yes.
Q. See that?
A. Yes, I do.
Q. And what was your point in saying that to Jim Cotter, Jr., in this email, Exhibit 306?
A. It was a reiteration of what he told me in his email that if he was out, the family and the company would be destroyed.
Q. Did you share that view?
A. That was his view. I didn't -- one way or another. But look where we are now.
Q. So you were saying this to him in your

will email of June 11th for the purpose of imploring him to --
A. Yes.
Q. -- agree to the deal?
A. Yes.
Q. Okay.
MR. SEARCY: You have to wait for him to finish his question before you answer. Okay?
THE WITNESS: All right.
BY MR. KRUM:
Q. The court reporter is doing quite well.
MR. SEARCY: Sometimes you have to wait for him to actually ask the question before you answer it.
MR. KRUM: Okay. So I have exceeded my 20 minutes, so let's adjourn for the day.
VIDEOTAPE OPERATOR: We'll go off the record at 5:21 P.M.

(Whereupon at 5:21 P.M. the deposition proceedings were concluded.)
* * *

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

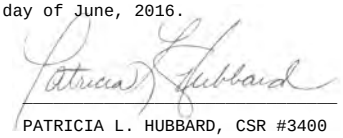
That prior to being examined, EDWARD KANE was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

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

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

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

IN WITNESS WHEREOF, I have subscribed my name this 15th day of June, 2016.



PATRICIA L. HUBBARD, CSR #3400

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____

Signature of Witness

_____

Name Typed or Printed

Exhibit 13

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Index No. A-15-179860-B
READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

VIDEOTAPED DEPOSITION OF ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

June 16, 2016
9:45 a.m.

Videotaped Deposition of ELLEN COTTER, held at the offices of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York, pursuant to Notice, before Michelle Cox, a Certified LiveNote Reporter and Notary Public of the State of New York and New Jersey.

A P P E A R A N C E S:

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BY: MARK G. KRUM, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Margaret Cotter, Ellen Cotter, Guy Adam, Edward Kane and Douglas McEachern
865 South Figueroa Street
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Los Angeles, California 90017
BY: MARSHALL M. SEARCY, ESQ.

BIRD, MARELLA, BOXER, WOLFPERT, NESSIM, DROOKS, LINCENGERG & RHOW, P.C.
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BY: EKWAN E. RHOW, ESQ.

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BY: MARK E. FERRARIO, ESQ.

ROBERTSON & ASSOCIATES, LLP
Attorneys for T2 Group of Plaintiff in Intervention
32121 Lindero Canyon Road,
Suite 200
Westlake Village, California 91361
BY: ROBERT NATION, ESQ.

ALSO PRESENT: Phil Mazo, Videographer,
James J. Cotter, Jr. and
Whitney Tilson

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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about, if we were just talking about a potential retirement benefit for Craig and Bob.

Q Take a look at Item 7. It reads: "Status of Ellen Cotter and Margaret Cotter."

Do you see that?

A Yes.

Q So when you prepared this agenda and distributed it at or about 6:38 p.m., Pacific Time on May 19th, were you thinking that one of the -- that one or two of the agenda items might include the possible termination of you as an executive employee and Margaret as a consultant of RDI?

A Well, I think the reason we were on there was to talk about our employment status.

Q Well, that meant talk about your title and making Margaret an employee of the company, right?

A That's my recollection.

Q Okay. So when you prepared this agenda and distributed it, you were not thinking, with respect to Item No. 7, that it include the discussion of terminating you as an executive and/or terminating Margaret as a consultant, were you?

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MR. TAYBACK: Objection. Asked and answered.

A No.

Q So when you use the same phraseology status to refer to the president and CEO in Item 1 as you use to refer to Craig Tomkins and Robert Smerling in Item 6, and yourself and Margaret Cotter in Item 7, were you attempting to obscure or conceal the fact that Item 1 was actually about terminating Jim Cotter as president and CEO?

MR. TAYBACK: Objection; argumentative, compound.

You can answer.

A I mean, there was no intention on my part to deceive anybody.

Q Well, in point of fact, prior to distributing Exhibit 338, you already had had discussions with Ed Kane, Guy Adams, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as president and CEO, correct?

A Prior to this meeting we did have discussions about whether Jim would remain as the CEO and president.

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Q Well, you had discussions with each of -- Guy Adams, Ed Kane, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as CEO prior to distributing Exhibit 338 on May 19th, correct?

MR. TAYBACK: Objection. Asked and answered.

A Yes.

Q You had no such discussions with Tim Storey, correct?

A I did have discussions with Tim Storey.

Q What discussions did you have with Tim Storey and when did you have them?

A I had had discussions with Tim Storey about Jim and his performance.

Q Okay. The question is: What discussions did you have with Tim Storey, if any, prior to distributing Exhibit 338 on May 19, 2015, about terminating Jim Cotter, Jr. as president and CEO?

A I don't remember the specific discussion that I had with Tim.

Q Did you have any conversation with Tim Storey prior to distributing Exhibit 338 on May 19, 2015, in which the subject of

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terminating Jim Cotter, Jr. as president and CEO of RDI was discussed?

A Prior to this agenda being sent out, Tim and I had had discussions about whether Jim would continue as CEO and president.

Q What discussion did you have with Tim Storey in that regard, and when did they occur?

A I don't remember the specific conversation, but I remember Tim taking the position that he -- he understood that Jim was inexperienced and it wasn't -- Jim's position would be under review and under evaluation.

Q When did you have that discussion?

A As I said, I don't remember.

Q Was it in person?

A I probably did have -- Tim came to Los Angeles a lot. I probably did have some of these discussions in person.

Q What is it that you said during that discussion or those discussions with respect to the subject of Jim Cotter, Jr. continuing as president and CEO or being terminated?

A I don't remember the specifics of the discussion.

answer is yes, what I was about to say is there's some global proposal in the works --

MR. TAYBACK: Yeah.

MR. KRUM: -- so we may end up revising this until then.

MR. TAYBACK: Understand. Yeah.

MR. KRUM: Okay. And but, yes, please provide the transcript to Mr. Tayback for Ms. Cotter.

MR. TAYBACK: Thank you.

MR. NATION: All right.

MR. KRUM: Sorry. Very good.

MR. NATION: Those questions are more properly addressed to Mr. Krum than me. That's been my two cents.

(Continued on the following page to include jurat.)

MR. TAYBACK: Can we go off the video.

THE VIDEOGRAPHER: This concludes today's proceeding in the deposition of Ellen Cotter. We're ending Media No. 5 and going off the record at 6:05 p.m.

(Time noted: 6:05 p.m.)

_____

ELLEN COTTER

Subscribed and sworn to before me this _____ day of _____, 2016.

_____

C E R T I F I C A T E

STATE OF NEW YORK)

:ss

COUNTY OF NEW YORK)

I, MICHELLE COX, a Notary Public within and for the State of New York, do hereby certify:

That ELLEN COTTER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June 2016.

MICHELLE COX, CLR

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INFORMATION REQUESTS

DIRECTIONS: , 42 , 43 , 184 , 202

EXHIBITS

DEPOSITION EXHIBITS		FOR ID.
Exhibit 329	Document Bates-stamped WG104 through WG112	37
Exhibit 330	E-mail Chain	97
Exhibit 331	E-mail dated June 29, 2015, from Ellen Cotter to Guy Adams and Others with	
Exhibit 332	E-mail dated October 23, 2014, from Ed Kane to Ellen Cotter	130
Exhibit 333	E-mail dated August 24, 2015, from Ellen Cotter to ed Kane with Attachment	140
Exhibit 334	E-mail Chain	141
Exhibit 335	E-mail Chain	152
Exhibit 336	E-mail Chain with Attachment	160
Exhibit 337	E-mail Chain with Attachment	164
Exhibit 338	E-mail dated May 19, 2015, from Ellen Cotter to Margaret Cotter and Others	171

DEPOSITION EXHIBITS FOR ID.

Exhibit 339	E-mail dated May 16, 2015, from Ellen Cotter to nelle1438@gmail.com	179
Exhibit 340	E-mail dated May 27, 2015, from Ellen Cotter Ellen Cotter to Other Members of the RDI Board of Directors	185
Exhibit 341	E-mail Chain	189
Exhibit 342	Document Bates-stamped EC1905	204
Exhibit 343	E-mail dated October 21, 2015, from nelle1428@gmail.com to Laura Batista	205
Exhibit 344	E-mail Chain	211

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____

Signature of Witness

_____

Name Typed or Printed

Exhibit 14

DEC

MARK G. KRUM (Nevada Bar No. 10913)
MKrum@LRRC.com
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(702) 949-8200
(702) 949-8398 fax

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

Plaintiffs,

vs.

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

CASE NO. A-15-719860-B
DEPT. NO. XI
Coordinated with:
CASE NO. P-14-082942-E
DEPT. NO. XI
CASE NO. A-16-735305-B
DEPT. NO. XI
Jointly administered

DECLARATION OF PLAINTIFF JAMES J. COTTER, JR. IN OPPOSITION TO ALL INDIVIDUAL DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT *(AND GOULD JOINDERS)*

[Business Court Requested: [EDCR 1.61]

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

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

I, James J. Cotter, Jr. hereby declare, under the penalty of perjury and the laws of Nevada, as follows:

1. I am over eighteen (18) years of age. I have personal knowledge of the facts contained in this declaration, except on those matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I am the Plaintiff in the above-captioned action. I am, and at all times relevant hereto was, a shareholder of RDI. I have been a director of RDI since on or about March 21, 2002. I have been involved in RDI management since mid-2005, I was appointed Vice Chairman of the RDI board of directors in 2007 and President of RDI on or about June 1, 2013. I was appointed CEO by the RDI Board on or about August 7, 2014, immediately after James J. Cotter, Sr. (JJC, Sr.) resigned from that position. I am the son of the late JJC, Sr., and the brother of defendants Margaret Cotter ("MC") and Ellen Cotter ("EC"). I presently own approximately 560,186 shares of RDI Class A non-voting stock and options to acquire another 50,000 shares of RDI Class A non-voting stock. I am also the co-trustee and beneficiary of the James J. Cotter Living Trust, dated August 1, 2000, as amended (the "Trust"), which owns 2,115,539 shares of RDI Class A (non-voting) stock and 1,123,888 shares of RDI Class B (voting) stock. The Trust became irrevocable upon the passing of JJC, Sr. on September 13, 2014.

3. I submit this declaration in support of the oppositions to all of the motions for summary judgment filed by one or more of the individual defendants in this action.

4. Nominal defendant Reading International, Inc. (RDI or Company) is a Nevada corporation and is, according to its public filings with the United States Securities and Exchange

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

Commission (the "SEC"), an internationally diversified company principally focused on the development, ownership and operation of entertainment and real estate assets in the United States, Australia and New Zealand. The Company operates in two business segments, namely, cinema exhibition, through approximately 58 multiplex cinemas, and real estate, including real estate development and the rental of retail, commercial and live theater assets. The Company manages world-wide cinemas in the United States, Australia and New Zealand. RDI has two classes of stock, Class A stock held by the investing public, which stock exercises no voting rights, and Class B stock, which is the sole voting stock with respect to the election of directors. An overwhelming majority (approximately eighty percent (80%)) of the Class A stock is legally and/or beneficially owned by shareholders unrelated to me, EC or MC. Approximately seventy percent (70%) of the Class B stock is subject to disputes and pending trust and estate litigation in California between EC and MC, on the one hand, and me, on the other hand, and a probate action in Nevada. Of the Class B stock, approximately forty-four percent (44%) is held in the name of the Trust. RDI is named only as a nominal defendant in this derivative action.

5. I signed a verification of a Second Amended Verified Complaint (the "SAC") in this action. I stand by the substantive allegations of the SAC and incorporate them herein by reference.

The Position of CEO at RDI

6. Certain of the motions for summary judgment brought by the individual defendants in this action suggest that I was appointed CEO of RDI in August 2014 after what amounted to no deliberation by the Board of Directors. That is absolutely false. In fact, as early as 2006, James J Cotter, Sr. ("JJC, Sr."), then the CEO and controlling shareholder of RDI, had communicated to the RDI board of directors his proposed succession plan for the positions of President and CEO. That plan was for me to work under the direction of JJC, Sr. to learn the businesses of RDI, including by functioning in a senior executive role.

7. Since 2005, I was involved in most RDI executive management meetings and privy to most significant internal senior management memos. As mentioned above, I was appointed Vice Chairman of the RDI board in 2007. The RDI Board appointed me President of

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RDI on or about June 1, 2013, and I filled those responsibilities without objection by the RDI board of directors.

8. Soon after I became CEO, my sisters, Ellen, who was an executive at RDI in the domestic cinema segment of the Company's business, and Margaret, who managed RDI's limited live theater operations as a third-party consultant, both communicated to me and to members of the RDI Board of Directors that they did not want to report to me as CEO. In fact, neither of them previously while working for or with the Company effectively had ever reported to anyone other than our father, JJC, Sr. Margaret in particular resisted and effectively refused to report to me until she no longer needed to do so, following my (purported) termination as President and CEO of the Company. They also co-opted at least one employee, Linda Pham, who claimed at some point in 2014 that I had created a hostile work environment for her, which accusation was not well-taken and, in any event, moot with the passage of time by Spring 2015, as director Kane acknowledged at the time.

Disputes With My Sisters

9. My sisters and I had certain disputes with respect to matters of our father's estate. The most significant and contentious dispute concerned who would be the trustee or trustees of the voting trust that, following our father's death, holds approximately 70% of the voting stock of RDI. According to a 2013 amendment to his trust documentation, Margaret was to be the sole trustee. Pursuant to a 2014 amendment to his trust documentation, Margaret and I were to serve contemporaneously as co-trustees. In early February 2015, Ellen and Margaret commenced a lawsuit in California state court challenging the validity of the 2014 amendment to our father's trust documents (the "California Trust Action").

10. My sisters and I also had certain disputes with respect to RDI. Most generally, they disagreed with my view and approach of running RDI like a public company, including hiring a senior executive qualified to oversee the development of the Company's valuable real estate and, more fundamentally, operating the Company to increase its value for all shareholders, not just its value to the Cotter family as controlling shareholders.

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Threatened Termination and Termination

11. Late in the day on May 19, 2015, I received from Ellen, as the chairperson of the RDI Board of Directors, an agenda for a supposed special meeting of the RDI board on May 21, 2015, two days later. I learned that the benignly described first item on the agenda, "status of president and CEO," apparently referred to a secret plan of Ellen and Margaret, together with Ed Kane, Guy Adams and Doug McEachern, to vote to remove me as President and CEO of RDI. However, that meeting commenced and concluded without the threatened vote being taken.

12. Next, on or about May 27, 2015, the lawyer representing Ellen and Margaret in the California Trust Action transmitted to my lawyer in that action a document that proposed to resolve the disputes between my sisters and me, including with respect to who would be the trustee of the voting trust and whether Margaret and Ellen would report to me as CEO of RDI. (A true and correct copy of the May 27, 2015 document, which was marked as deposition exhibit 322, is attached hereto as exhibit "A.")

13. On Friday, May 29, 2015, the (supposed) special board meeting of May 21 was to resume. That morning, before the meeting, I met with Ellen and Margaret. At that meeting, they told me that they were unwilling to mediate or to negotiate any of the terms of the May 27 document described above. They also told me that if I did not agree to resolve my disputes with them on the terms set out in that document, that the RDI Board of Directors would vote at the (supposed) meeting that day to terminate me as President and CEO.

14. The (supposed) special board meeting commenced on May 29 and the issue of my termination as President and CEO was the subject. At this (supposed) special meeting, or another, McEachern pressured me to resign as President and CEO. Eventually, the non-Cotter members of the RDI Board of Directors met with my sisters separately from me. Following that, the majority of the non-cotter directors, namely, Messrs. Adams, Kane and McEachern, advised me that the meeting would adjourn temporarily and resume telephonically at 6 p.m. They further advised that, if I had not reached a resolution of disputes between me and my sisters by the time the (supposed) special meeting reconvened telephonically at 6 p.m. that day, they would proceed with the vote to

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terminate me, meaning that the three of them would vote to terminate me as President and CEO of RDI.

15. That afternoon, Ellen and Margaret again refused to mediate and again refused to negotiate. Ultimately, I indicated a willingness to resolve disputes based on the document provided, subject to conferring with counsel. At or about 6 p.m., the (supposed) special RDI board meeting resumed telephonically, at which time Ellen reported to the five non-Cotter directors that we had reached an agreement in principle to resolve our disputes, subject to conferring with respective counsel. Ed Kane congratulated us and made a statement to the effect that he hoped that I was CEO of the Company for 30 years. No vote was taken on my termination.

16. On or about June 8, 2015, I communicated to my sisters that I could not agree to the document their lawyer had transmitted to my lawyer on or about June 2, 2015. Ellen called a (supposed) special board meeting for June 12, 2015, at which meeting each of Messrs. Adams, Kane and McEachern made good on their threat to vote to terminate me and did so.

Director Interest and Independence

17. One or more of the defendants' motions for summary judgment claim that SEC filings by RDI describe the non-Cotter directors as "independent," that I signed one or more of those SEC filings and that I therefore admit that those directors are independent for the purposes of this action. That is inaccurate. The term "independent" as used in RDI's SEC filings do not refer to matters of Nevada law. It referred usually to the fact that, pursuant to the terms of the Company's listing agreement with NASDAQ, the stock exchange on which RDI stock trades, directors meet the standard of independence of NASDAQ. None of the director defendants have ever suggested to me that they understood use of the term "independent" in RDI's SEC filings to communicate anything other than that non-Cotter directors were not members of the Cotter family which, in one manner or another, controlled approximately 70% of the voting stock of RDI. As among members of the RDI Board of Directors, the term "independent" was used historically to refer to directors who were not members of the Cotter family.

18. Ed Kane was a life-long friend of my father, having met when they were graduate students. Kane was in my father's wedding and was a speaker at my father's funeral. Over my

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lengthy tenure as a director at RDI, I observed Kane as a director of RDI acting at all times as if his job as a director was to carry out my father's wishes. Kane admitted to me that he was not independent for purposes other than the NASDAQ listing agreement and suggested after I became CEO that the Company would benefit from independent directors knowledgeable about its two principal businesses, cinemas and real estate.

19. On the contentious issue between me and my sisters regarding who would be the trustee(s) of the voting trust, Kane communicated to me that his view was that it was my fathers' wishes that Margaret alone be the trustee, and he pressured me to agree to that. At one point in the context of discussions regarding terminating me as President and CEO of RDI, Kane said to me angrily that he thought I "f*#*ed Margaret" by the 2014 amendment to my father's trust documentation, which amendment made me a co-trustee with Margaret of the voting trust.

20. Kane remains very close with my sisters, who still call him "Uncle Ed"" (which I ceased doing after joining RDI). They continue to get together socially, including for family meals during holiday periods, which is what they admittedly did around the Christmas holidays in 2015.

21. Guy Adams is a long time friend of my father. After Adams effectively became unemployed, my father attempted to provide him work and income. Eventually, my father through a company he wholly-owned entered into an agreement with Adams to pay Adams $1000 per month. That company now is part of my father's estate, of which my sisters are executors, such that they are in a position to control whether Adams is paid that money or not. Adams also has carried interests in certain real estate in which my father invested. My sisters as executors of my father's estate are in position to see to it that Adams is or is not paid any monies he is owed on account of those carried interests.

22. Prior to on or about May 2015, Adam's financial condition and, more particularly, his dependence on or independence from my sisters, in terms of his financial situation, had not arisen as a subject. When I suspected that Adams had agreed with my sisters to vote to terminate me as President and CEO of RDI, that raised the issue of whether he was financially dependent on them. I now know that he is. I learned from Adams' sworn declarations in his California state court divorce case that almost all of his income comes from RDI and from one or more companies

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that my sisters control. Adams is not independently wealthy. I asked him about his financial dependence or independence at the (supposed) May 21, 2015 special board meeting, at which time he refused to answer.

23. Michael Wrotniak's wife Trisha was Margaret's roommate in her freshman year of college at Georgetown University. Margaret and Trisha have been life-long best friends starting with their first year in college together. Michael also went to Georgetown University where he met his wife Trisha and also developed a very close friendship with Margaret in college. Given that Margaret only has a few friends, her relationship with Trisha and Michael is extremely important. Margaret has spent a lot of time with Michael and his wife over the years, as all three live in metropolitan New York City. Margaret became like an aunt to Trisha and Michael's children. My sister Ellen and mother also know Trisha and Michael very well, and they have all attended social events together in New York, such as birthday and cocktail parties my sister Margaret has hosted at her apartment in New York City. I believe Margaret's oldest child refers to Trisha and Michael as Aunt and Uncle. Michael's communication with me as a director has been very guarded, which I understand to reflect his knowledge of the lawsuit and his close relationship with Margaret.

24. Judy Codding has had a very close personal relationship with my mother for more than thirty years. (Ellen lives with our mother, who has chosen my sisters' side in the disputes between us.) Ms. Codding has become close with my sisters Ellen and Margaret. On October 13, 2015, over breakfast I had with her, she expressed to me that RDI is a family business and that the only people who should manage it should be one of the Cotters and that she would help make sure of that, whether it be Ellen or me. Her reaction to the offer to purchase all of the stock of the Company at a price in excess of what it trades in the market (the "Offer"), first made by correspondence dated on or about May 31, 2015, reflected Ms. Codding's unwavering loyalty to Ellen. Before the board meeting at which the Board was going to discuss the Offer, she indicated to me that there was no way that the Offer should even be considered (clearly having spoken to Ellen about it before the board meeting).

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

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

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

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

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

The Executive Committee

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

The Supposed CEO Search

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

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

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

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

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

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

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

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

Monetary Rewards to Margaret, Ellen and Adams

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

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

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

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

The Offer

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

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

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

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

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

DATED this 13th day of October, 2016

James J. Cotter, Jr.

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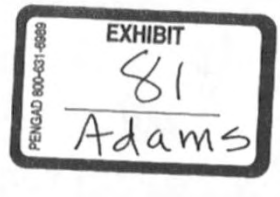
Exhibit 15
(filed under seal)

Exhibit 16

From: Kane <elkane@san.rr.com>
Sent: Monday, May 18, 2015 10:16 PM
To: Guy Adams

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



GA00005500

Exhibit 17
(filed under seal)

Exhibit 18
(filed under seal)

Exhibit 19
(filed under seal)

Exhibit 20

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Reading International, Inc.

(Name of Issuer)

(Exact Name of Issuer as Specified in its Charter)

Class B Voting Common Stock
(Title of Class of Securities)

755408200
(CUSIP Number)

James J. Cotter Living Trust
6100 Center Drive
Suite 900
Los Angeles, CA 90045
(213) 235-2240
(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

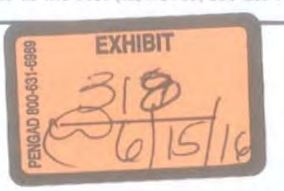
September 13, 2014
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. ☐

Note : Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the "Act"), or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).



CUSIP No. **755408200**

1.	Name of Reporting Person. I.R.S. Identification Nos. of above persons (entities only) **James J. Cotter Living Trust**	
2.	Check the Appropriate Box if a Member of a Group (See Instructions) (a) ☒(1) (b) ☐	
3.	SEC Use Only	
4.	Source of Funds (See Instructions) OO	
5.	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) ☐	
6.	Citizenship or Place of Organization California	
Number of Shares Beneficially Owned by Each Reporting Person With	7. Sole Voting Power 0	
	8. Shared Voting Power 696,080	
	9. Sole Dispositive Power 0	
	10. Shared Dispositive Power 696,080	
11.	Aggregate Amount Beneficially Owned by Each Reporting Person 696,080	
12.	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) ☐	
13.	Percent of Class Represented by Amount in Row (11) 41.4% (2)	
14.	Type of Reporting Person (See Instructions) OO – Trust	

(1) The James J. Cotter Living Trust (the "Trust") is a member of a group for purposes of Schedule 13D. The other members of the group are the Estate of James J. Cotter, Sr. (the "Estate"), Ms. Margaret Cotter and Ms. Ellen Cotter. The Trust is separately filing this report on Schedule 13D from the other members of the group.

(2) Based upon 1,680,590 shares of Class B voting common stock, $0.01 par value per share (the "Voting Stock"), outstanding, which consist of (i) 1,580,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

ITEM 1. SECURITY AND ISSUER

The common stock of Reading International, Inc., a Nevada corporation (the "Issuer" or the "Company"), is divided into two classes, Class A non-voting common stock, $0.01 par value per share (the "Non-Voting Stock"), and Class B voting common stock, $0.01 par value per share (the "Voting Stock" and together with the Non-Voting Stock, the "Shares"). This Schedule 13D (this "Schedule 13D") is being filed by the James J. Cotter Living Trust (the "Trust" or the "Reporting Person") with respect to the Voting Stock by Ms. Ellen Cotter and Ms. Margaret Cotter, two of the three co-trustees of the Trust. The shares of the Voting Stock and the shares of the Non-Voting Stock are listed on NASDAQ.

The address of the principal executive offices of the Issuer is Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

ITEM 2. IDENTITY AND BACKGROUND

The Trust is a trust organized under the laws of California. During the lifetime of Mr. James J. Cotter, Sr., the Trust was revocable by Mr. James J. Cotter, Sr., but the Trust became irrevocable upon the death of Mr. James J. Cotter, Sr. on September 13, 2014. The Trust serves as a vehicle for the management and distribution of the assets of Mr. James J. Cotter, Sr. According to a purported Amendment to the Trust signed on June 19, 2014 ("2014 Amendment"), the children of Mr. James J. Cotter, Sr., including Ms. Ellen Cotter, Ms. Margaret Cotter and Mr. James J. Cotter, Jr., serve as co-trustees of the Trust and therefore may be deemed to share voting and investment power over the shares of the Voting Stock directly beneficially owned by the Trust. In litigation filed in the Superior Court of the State of California, County of Los Angeles, captioned *In re James J. Cotter Living Trust dated August 1, 2000* (Case No. BP159755) ("Trust Litigation"), Ms. Ellen Cotter and Ms. Margaret Cotter have challenged the validity of the 2014 Amendment; according to the pre-existing trust agreement, only Ms. Ellen Cotter and Ms. Margaret Cotter were named as co-trustees. The extent of any pecuniary interest in the Voting Stock owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter as co-trustees of the Trust is dependent upon the outcome of the Trust Litigation. The Trust's principal business office address is c/o Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

During the last five years, the Reporting Person has not been (a) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (b) a party to any civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of which such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws, or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The Trust was established by a Declaration of Trust, dated August 1, 2000, as amended from time to time, and was initially funded with the shares of the Voting Stock owned by Mr. James J. Cotter, Sr. Mr. James J. Cotter, Sr. passed away on September 13, 2014, and the Trust became an irrevocable living trust.

ITEM 4. PURPOSE OF TRANSACTION

The Reporting Person is deemed to have acquired beneficial ownership of 696,080 shares of the Voting Stock as a result of Mr. James J. Cotter, Sr.'s death, as described in Item 3 of this Schedule 13D. Such shares of the Voting Stock were deemed to have been owned by Mr. James J. Cotter, Sr. through the Trust during his lifetime and, upon Mr. James J. Cotter, Sr.'s death and the Trust's conversion into an irrevocable trust, are now deemed to be directly beneficially owned by the Trust, of which the children of Mr. James J. Cotter, Sr. serve as co-trustees. The shares of the Voting Stock directly beneficially owned by the Trust ultimately will be held in further trust for the benefit of the descendants of Mr. James J. Cotter, Sr., and such shares will be held for investment purposes and the co-trustees of the Trust are directed to retain such shares for as long as possible and are relieved from any obligation to diversify the Trust's investments.

On September 21, 2015, the Estate exercised vested stock options and received 100,000 shares of Voting Stock. On April 8, 2015, Ms. Margaret Cotter exercised vested stock options and received 12,500 shares of Non-Voting Stock. On April 17, 2015, Ms. Margaret Cotter exercised vested stock options and received 35,100 shares of Voting Stock. On April 16, 2015, Ms. Ellen Cotter exercised vested stock options and received 50,000 shares of

Voting Stock. Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to hold any shares of Voting Stock directly beneficially owned by them for investment purposes.

Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to vote all of the shares of Voting Stock that they control, including all of the shares of Voting Stock owned by them individually, by the Estate and by the Trust, at the Company's 2015 annual meeting of stockholders.

Each of Ms. Ellen Cotter and Ms. Margaret Cotter, as a co-trustee of the Trust, has been in the past and will be in the future involved on behalf of the Company in their respective capacities as senior executive officers of, directors of and/or consultants to the Company, as applicable, in reviewing and evaluating possible transactions involving the Company and identifying candidates to serve on the Company's board of directors, including transactions of the sort described in clauses (a) through (f) of Item 4 of Schedule 13D. In light of their responsibilities to the Company, Ms. Ellen Cotter and Ms. Margaret Cotter do not anticipate making any disclosures in connection with their participation in the transactions and activities of the Company separate and apart from relevant disclosures by the Company.

The Reporting Person intends to review its investment in the Issuer on a continuing basis and may from time to time and at any time in the future depending on various factors, including, without limitation, the requirements of the Trust, the Issuer's financial position and strategic direction, actions taken by the board of directors of the Issuer, price levels of the Shares, other investment opportunities available to the Reporting Person, conditions in the securities market and general economic and industry conditions, take such actions with respect to the investment in the Issuer as the Reporting Person deems appropriate, including: (i) acquiring additional Shares and/or other equity, debt, notes, other securities, or derivative or other instruments of the Issuer that are based upon or relate to the value of the Shares or the Issuer (collectively, "Securities") in the open market or otherwise; (ii) disposing of any or all of their Securities in the open market or otherwise; (iii) engaging in any hedging or similar transactions with respect to the Securities; or (iv) proposing or considering one or more of the actions described in subsections (a) through (j) of Item 4 of Schedule 13D.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

As of the date hereof, the Trust directly beneficially owns 696,080 shares of the Voting Stock, representing 41.4% of outstanding Voting Stock of the Issuer. Because the children of Mr. James J. Cotter, Sr. serve as co-trustees, the children may be deemed to be indirect beneficial owners of 696,080 shares of the Voting Stock directly beneficially owned by the Trust. The extent of any pecuniary interest in the Voting Stock directly beneficially owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees, is dependent upon the outcome of the Trust Litigation. As of the date hereof, the Trust also directly beneficially owns 1,897,649 shares of the Non-Voting Stock, representing 8.7% of outstanding Non-Voting Stock of the Issuer.

Because Ms. Ellen Cotter and Ms. Margaret Cotter (two of the three children of Mr. James J. Cotter, Sr.) also serve as co-executors (the "Co-Executors") of the Estate, each of them may be deemed to share indirect beneficial ownership of 427,808 shares of the Voting Stock directly beneficially owned by the Estate, representing 25.5% of outstanding Voting Stock of the Issuer. All of the Voting Stock held by the Estate will be transferred to the Trust after a reasonable period of administration. As of the date hereof, the Estate also directly beneficially owns 326,800 shares of the Non-Voting Stock, representing 1.5% of outstanding Non-Voting Stock of the Issuer. As of the date hereof, the Co-Executors of the Estate disclaim beneficial ownership of the Voting Stock and Non-Voting Stock directly beneficially owned by the Estate, except to the extent of their respective pecuniary interest therein.

As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 50,000 shares of the Voting Stock, representing 3.0% of outstanding Voting Stock of the Issuer, and (2) Ms. Margaret Cotter directly beneficially owns 35,100 shares of the Voting Stock subject to stock options, representing 2.1% of outstanding Voting Stock of the Issuer. As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 819,765 shares of the Non-Voting Stock (which amount also includes currently exercisable options to acquire an additional 20,000 shares of the Non-Voting Stock), representing 3.8% of outstanding Non-Voting Stock of the Issuer, (2) Ms. Margaret Cotter also directly beneficially owns 804,173 shares of the Non-Voting Stock, representing 3.7% of outstanding Non-Voting Stock of the Issuer and (3) Mr. James J. Cotter, Jr. (the third child of Mr. James J. Cotter, Sr.) also directly beneficially owns 856,426 shares of the Non-Voting Stock, representing 4.0% of outstanding Non-Voting Stock of the Issuer, according to Mr. James Cotter, Jr.'s public filings.

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RDI-A10155

Ms. Margaret Cotter also serves as a co-trustee of the James. J. Cotter Grandchildren Trust, a trust for Mr. James J. Cotter, Sr.'s grandchildren, which holds 289,390 shares of the Non-Voting Stock, representing 1.3% of outstanding Non-Voting Stock of the Issuer. Ms. Ellen Cotter and Ms. Margaret Cotter also serve as co-trustees of the James J. Cotter Foundation, which holds 120,751 shares of the Non-Voting Stock, representing 0.5% of outstanding Non-Voting Stock of the Issuer.

The percentages reported in this Item 5 are based upon 21,707,938 shares of the Non-Voting Stock outstanding and 1,680,590 shares of the Voting Stock outstanding, which consist of (i) 1,580,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

(b) See rows 7-10 of the cover page for information regarding the power to vote or direct the vote and the power to dispose or direct the disposition of the shares by the Reporting Person. The Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have separately filed a Schedule 13D on the date hereof.

(c) Except as described herein, none of the Reporting Person, the Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have acquired, or disposed of, any shares of the Voting Stock of the Issuer during the past 60 days.

(d) No persons other than Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees of the Trust, and the beneficiaries of the Trust have the right to receive, or the power to direct the receipt of dividends from, the proceeds from the sale of the shares to which this Schedule 13D relates.

(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Except as described in Item 3, Item 4 and Item 5, the Reporting Person has no contracts, arrangements, understandings or relationships (legal or otherwise) with any person with respect to any voting securities of the Company, including, but not limited to, the transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies.

ITEM 7. MATERIALS TO BE FILED AS EXHIBITS

None.

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: October 8, 2015

JAMES J. COTTER LIVING TRUST

By: /s/ Margaret Cotter
Name: Margaret Cotter
Title: Co-Trustee

By: /s/ Ellen Cotter
Name: Ellen Cotter
Title: Co-Trustee

Exhibit 21
(filed under seal)

RDI-A10159-10365
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION (FOR SUMMARY JUDGMENT) BASED ON DEMAND FUTILITY** **Hearing Date: June 19, 2018** **Hearing Time: 8:30 a.m.**

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RDI-A10367

Plaintiff James Cotter, Jr. respectfully submits this opposition to the renewed "Motion to Dismiss Pursuant to NRCP 12(B)(2)..." for failure to show demand futility (the "Renewed Demand Futility MSJ" or "Motion") filed by nominal defendant Reading International, Inc. ("RDI") for the benefit of the remaining individual defendants, Ellen Cotter, Margaret Cotter and Guy Adams (the "remaining defendants").

I. INTRODUCTION

RDI's Motion asks the Court to grant summary judgment and dismiss the remaining individual defendants, Ellen Cotter, Margaret Cotter and Guy Adams. The Motion is based on the premise that the Court's ruling that Plaintiff failed to raise disputed issues of fact regarding the disinterestedness of five directors with respect to the matters that were the subject of their motions for partial summary judgment obviates defendants' burden of proof in this (summary judgment) Motion and requires granting it. The Motion should be denied, including for the following reasons:

After motion practice directed to the pleadings, demand futility is to be determined by way of an evidentiary hearing. However, defendants previously did not request an evidentiary hearing and the Motion does not do so. The Motion therefore should be denied.

As a moving party seeking summary judgment and to deprive a derivative plaintiff of standing, RDI bears the burden of proving that there are no disputed issues of material fact with respect to the matters that are the subject of the two-pronged test used to determine demand futility. However, the Motion proffers *no evidence whatsoever* and therefore must be denied.

As a matter of law, demand futility is assessed based on the directors' ability to impartially assess the derivative action they are asked to approve or disapprove, not the matters which are the subject of the derivative action. The Court's prior rulings regarding interestedness with respect to particular matters raised in the motions for partial summary judgment therefore do not show, much less necessarily prove,

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independence of the dismissed directors for the purposes of the Renewed Demand Futility MSJ.

Moreover, the only evidence proffered, which was by Plaintiff, raises disputed questions of material fact which require denial of the Motion.

The first prong of the two-pronged demand futility analysis raises the question of whether the evidence creates a reasonable doubt that the directors are disinterested and independent for the purposes impartially assessing the derivative action. The only evidence proffered, by Plaintiff, shows that each of the five dismissed directors have prejudged the issue of whether this lawsuit should proceed or be dismissed, and otherwise shows that they are not disinterested and independent. Such evidence, at a minimum, raises disputed questions of material fact which require denial of the Motion.

The second, *alternative* prong of the two-pronged demand futility analysis raises the question of whether the complained-of conduct—which here includes matters that were the subject of motions for partial summary judgment as well as other matters (*e.g.*, the threat to terminate Plaintiff if he did not resolve his personal disputes with defendants Ellen and Margaret Cotter) that were not—gives rise to or constitutes breaches of fiduciary duty on the part of the directors in question. Here, as reflected by the Court's prior rulings denying most motions for partial summary judgment, Plaintiff at a minimum proffered evidence raising disputed issues of material fact about whether the challenged acts and omissions gave rise to or constituted breaches of fiduciary duty.

Independent of the foregoing, Responding Parties have not complied with the Court's May 2, 2018 orders and counsel for Plaintiff has not received, much less reviewed or had an opportunity to use, what the Court on May 2, 2018 ordered be provided. This evidence bears upon the issue of the independence of the directors the Motion simply assumes are independent, including by placing in a new light the prior reliance by these directors on advice from counsel representing nominal defendant Reading International, Inc. ("RDI" or the "Company".) As shown below, use of Company counsel by supposedly independent directors alone raises questions of fact regarding their independence. For

such reasons and for the reasons set out in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to the relief pursuant to NRCP 56(f).

For the reasons described herein, and for the reasons and in view of the evidence included in Plaintiff's oppositions to defendants' motions for partial summary judgment and to Gould's motion for summary judgment, the Renewed Demand Futility MSJ should be denied.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Procedural History.

This action was commenced on June 15, 2015. Defendants moved to dismiss the original complaint and thereafter the first amended complaint on the grounds that Plaintiff had failed to adequately plead the futility of demand, among other grounds. *See* Motion to Dismiss Complaint, filed on 8/10/2015 at 7:6–14:8; RDI's Joinder to Motion to Dismiss Complaint, filed on 8/20/2015; Motion to Dismiss First Amended Complaint, filed on 11/12/2015 at 20:17-21:18; Motion to Dismiss James Cotter Jr.'s First Amended Complaint, filed on 11/24/2015. The Court rejected the demand futility arguments and the case proceeded. *See* Notice of Entry of Order filed on 10/20/2015, and Court Minutes dated 1/19/2016. In opposing Plaintiff's motion for leave to file a second amended complaint, defendants again argued demand futility. *See* RDI's Opposition to James J. Cotter Jr.'s Motion to Amend Complaint, filed on 8/8/2016 at 5:23–10:3; Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding and Michael Wrotniak's Opposition to Plaintiff's Motion for Leave to Amend the First Amended Complaint, filed on 8/8/2016 at 14:4–15:14. The Court rejected defendants' demand futility arguments. *See* Notice of Entry of Order filed on 9/2/2016.

Contrary to what the "Motion for Leave to File Dispositive Motion /Motion to Dismiss for Failure to Show Demand Futility" (the "Motion for Leave") asserted (at p. 6, n. 3 and at 10:19-20), at no time have defendants or any of them requested an evidentiary hearing on the subject of demand futility. Instead, they filed a motion requesting an evidentiary hearing on the subject of the adequacy of Plaintiff as a derivative plaintiff.

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See Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as a Derivative Plaintiff, filed on 10/12/2017. Understandably, the Motion does not repeat the false claim that defendants previously sought an evidentiary hearing with respect to demand futility, but instead is silent on the subject, tacitly acknowledging that they did not do so.

Pursuant to a scheduling order issued by the Court, discovery concluded on August 26, 2016 and summary judgment motions were required to be filed no later than September 23, 2016. *See* Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call, filed on 11/10/2015. Defendants Ellen Cotter, Margaret Cotter, Guy Adams and other director defendants filed six separate motions for partial summary judgment, but filed no motion for summary judgment arguing the futility of demand. The Court denied all but one of those motions for partial summary judgment and granted Plaintiff's motion to reopen and/or finish discovery with respect to certain matters. *See* Court Minutes dated October 27, 2016. Individual director defendants including Ellen Cotter, Margaret Cotter and Guy Adams in November 2017 filed supplemental briefs and noticed their motions for partial summary judgment for hearing on December 11, 2017. *See* Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5, and 6, filed on 11/9/2017. One of those motions was granted and the balance were granted in part and denied in part. *See* Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions In Limine, filed on 12/28/2017, at 4:8–5:15.

However, not until January 3, 2018 was a motion for summary judgment with respect to the futility of demand filed. *See* Motion to Dismiss for Failure to Show Demand Futility, filed on 1/3/2018. That motion, entitled "Motion to Dismiss for Failure to Show Demand Futility" (the "Original Demand Futility MSJ"), purported to be predicated on the Court's "determ[ination] that a majority of RDI's Directors were

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independent with respect to the decisions challenged by [Plaintiff]." Original Demand Futility MSJ at 8:8-9.

Like the Motion for Leave and the Original Demand Futility MSJ, the Motion posits that it was based upon the Court's December 11, 2017 rulings, which assumption the Court previously rejected. *See* Transcript of Proceedings for Hearing on Plaintiff's Motion for Continuance (Public), 1/8/18 at 13:19-25.

Like both the Motion for Leave and the Original Demand Futility MSJ, the Motion submits *no evidence whatsoever*, with respect to *either* matters relating to the first prong *or* the second prong of the two-pronged demand futility test applicable here.

****

Defendants on January 4, 2018 also filed a separate motion for summary judgment based upon purported ratifications defendants claimed had occurred at a December 29, 2017 RDI Board of Directors meeting. *See* The Remaining Director Defendants' Motion for Judgment as a Matter of Law, on file. In that motion for summary judgment, defendants argued that the same five directors they claim are independent for the purposes of their Renewed Demand Futility MSJ had "ratified" conduct the Court has found actionable, which conduct indisputably was not previously approved by a majority of independent directors.

The Court on January 8, 2018 had ordered defendants to provide Plaintiff discovery with respect to matters raised in those motions. Following argument on April 30, 2018 on motions brought by Plaintiff regarding discovery, and following a May 2, 2018 evidentiary hearing, the Court on May 2, 2018 ordered that RDI and former defendants and RDI directors William Gould, Judy Codding, Michael Wrotniak, Doug McEachern and Ed Kane (the "Responding Parties") provide Plaintiff with additional discovery relating to "ratification," including the conduct of those five individuals leading up and related to the purported ratifications, among other things. *See* Transcript of Proceedings on Evidentiary Hearing, 5/2/2018 at 75:8-18.

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B. What The Evidence Shows Regarding the Futility of Demand.

1. The Deposition Testimony of the Five Raises Reasonable Doubt about Their Ability to Have Impartially Assessed this Derivative Action.

With respect to the question of whether they would have voted to allow this derivative action to proceed or to terminate it, each of the five testified that they had determined that it should not proceed. Gould testified that "[m]y vote would be to terminate, to terminate the derivative action." (*See* Ex. 5 to JJC 6/13/18 Opp.[1] at 547:17-19 and 548:19-23). He acknowledged that the reason is that he was named as a defendant. (*See id.* at 548:24-549:4). Codding testified with respect to this derivative action as follows: "I don't think it should go forward." (Ex. 4 to JJC 6/13/18 Opp. at 234:12-17). She explained that she did not see the purpose of it or understand it. (*Id.*) McEachern likewise testified that he would "vote to dismiss the [derivative] lawsuit." (Ex. 7 to JJC 6/13/18 Opp., at 526:14-21). He explained that he understood this derivative lawsuit to concern simply "reinstatement" of Plaintiff as CEO and damages from his termination, and McEachern does not believe there were any. (*Id.* at 526:22-527:2). Wrotniak's testimony was to the same effect; his answer to a question asking his view of this derivative lawsuit was that "the board had the right to terminate [Plaintiff] and made an informed decision and took it." (Ex. 10 to JJC 6/13/18 Opp. at 76:9-14.) In response to a question about how he would vote on whether this derivative lawsuit should proceed or be terminated, Kane answered "terminate it tomorrow, please, sir." (Ex. 11 to JJC 6/13/18 Opp. at 690:6-9).

2. The Five Already Acted to Dismiss this Derivative Action

Promptly following their dismissal from this action, and as explained in Plaintiff's opposition to the "Ratification MSJ," the five hastily acted to cause this action to be dismissed as against the remaining defendants, approving "ratification" that Codding and Wrotniak acknowledged they did not understand, independent of what counsel of

[1] "JJC 6/13/18 Opp." refers to Plaintiff's Opposition to Ellen Cotter, Margaret Cotter and Guy Adams' Motion for Summary Judgment (Based on Ratification) filed on June 13, 2018.

record for RDI told them. (Ex. 4 to JJC 6/13/18 Opp. at 232:19-233:1; Ex. 10 to JJC 6/13/18 Opp. at 88:12–23.) Gould acknowledged at his deposition that "ratification" is a "litigation strategy" in this derivative action. (Ex. 5 to JJC 6/13/18 Opp. at 541:15-18). The foregoing events are among the following:

- In December 2017, before seeking and securing approval of "ratification" from the SIC on December 21 (described below), GT lawyers cleared the "ratification" "process" with Margaret Cotter, Ellen Cotter and Tompkins.[2] On December 13, 2017, GT attorneys Mark Ferrario and Michael Bonner exchanged emails with Craig Tompkins, *which emails were copied to Ellen Cotter*, regarding the subject of a "Special Committee." (*See* Ex. 1 to JJC 6/8/18 Motion,[3] GT February 22, 2018 privilege log at entry ending in 60907 and 60911; *see also* Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log at entries ending in RDI 73538, 76569, 76783.) Those emails are described as "Communication[s] regarding Ratification process." (Ex. 1 to JJC 6/8/18 Motion, February 22, 2018 Privilege log at entries ending in 60907 and 60911.)
- Again on December 15, 2017, GT attorney Bonner exchanged emails with Craig Tompkins, *which emails also were copied to Ellen Cotter*, regarding "Misc." (*See* Ex. 1 to JJC 6/8/18 Motion, at entries ending in 60823 and 60824.) Those emails are described as "Communication[s] regarding ratification process." (*Id.*)
- Also on December 15, 2017, GT attorney Ferrario discussed the subject of ratification with *Margaret Cotter* in person. (*See* Ex. 16 to JJC 6/8/18 Motion, Margaret Cotter's February 14, 2018 interrogatory responses at Response No. 2.)

---

[2]As to Craig Tompkins, RDI's General Counsel to whom GT attorneys report, Kane at deposition explained that the words he used in an email stating "according to [Ellen Cotter], Craig is also on the 'team[,]' meant that Tompkins "was [with] Ellen and Margaret versus Jim." (See Ex. 14 to JJC 6/8/18 Motion, Kane 5/2/16 dep. tr. at 176:18-177:1; Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105).)

[3] "JJC 6/8/18 Motion" refers to Plaintiff James J. Cotter Jr.'s Motion to Compel filed on June 8, 2018.

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(Margaret Cotter's interrogatory responses disclosed this communication regarding "ratification," but not others described herein.)

- On December 21, 2015, GT attorney Bonner sent an email to Tompkins, copied to *Ellen Cotter* and GT attorney Ferrario, regarding "special committee/stockholder action alternatives." (*See* Ex. 1 to JJC 6/8/18 Motion, GT February 22, 2018 privilege log at entry ending in 60533.) Ellen Cotter at her deposition acknowledged receiving this email. (*See* Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter 4/4/18 dep. tr. at 479:21-480:6.)
- On December 21, 2017, GT attorneys Bonner and Ferrario discussed ratification telephonically with Special Independent Committee ("SIC") members Gould, Codding and McEachern. (Ex. 5 to JJC 6/8/18 Motion, April 12, 2018 correspondence from GT producing an almost entirely redacted version of December 21, 2017 Special Independent Committee meeting minutes); (Ex. 1 to JJC 6/8/18 Motion, RDI Privilege Log at p. 2, 8, entries ending in 59829 and 60012, respectively);
- According to Gould, the SIC on December 21, 2017 "formally" took action to approve and advance "ratification." (Ex. 5 to JJC 6/13/18 Opp. at 528:10-18).
- On December 27, 2017, Bonner and other GT lawyers exchanged emails with Tompkins about one or more drafts of what came to be the December 27, 2017 email sent by Gould, purportedly on behalf of the five dismissed directors (which email was marked as Dep. Ex. 527 and Ex. P-1 from the 5/2/18 evidentiary hearing; Ex. 6 to JJC 6/8/18 Motion). (*See* Ex. 15 to JJC 6/8/18 Motion, 5/2/18 hearing tr. at 59:1-8.) Several of those emails had file names such as "For Bill Gould to sign.msg," a subject of "For Bill Gould to sign," and a description of the emails as "Communication regarding draft letter re Special Board Meeting." (*See* Ex. 1 to JJC 6/8/18 Motion, GT February 22, 2018 privilege log, entries ending in 57090, 59768, 59899, 59911, 59912, 59959, 60790, 60802 and 60810.) The description of one email is

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slightly different, reading "Communication regarding board meeting, notice and ratification process." (*Id.*, entries ending in 60798.)

- Also on December 27, 2017, Tompkins and GT lawyers exchanged emails the file names of which included "Ratificat.zip?ratificat/For Bill Gould to sign," the subjects of which were "Ratification," and which are described as "Communication[s] regarding draft letter re Special Board Meeting" or "Communication[s] regarding Special Meeting Request." (*Id.*, entries ending in 60404, 60408, 60412, 60424, 60428, 60450, 60464, 60843, 60846.)
- Several of the December 27, 2017 emails with file names such as "Ratificat.zip?ratificat/Ratification" and "Ratification.msg" and the subject "Ratification" also *were copied to Ellen Cotter*. (*Id.*, entries ending in 60450, 60452, 60464 and 60846; Ex. 2, 5/30/18 privilege log, entries ending in RDI 68619, 68626, 70083, 70095.)
- Another December 27, 2017 email from Tompkins to Bonner and Ferrario concerned "ratification" according to the email subject line, but the privilege log provides no description of the communication. (*Id.*, entry ending in 60843.) A subsequent entry also is an email regarding "ratification," and is from Bonner to Tompkins and Ferrario, *but also copied Ellen Cotter*. (*Id.*, entry ending in 60846.)
- After receiving responses from Tompkins and possibly Ellen Cotter regarding the draft of what came to be Gould's December 27, 2017 email, GT attorney Bonner on December 27, 2017 sent Gould an email, with a copy to GT attorney Ferrario, the "re" line of which read "**FW**: for Bill Gould to sign," which RDI's privilege log also describes as "communication regarding draft letter re Special Board Meeting." (*Id.*, entries ending in entries ending in 59792 and 59937.) (Emphasis supplied.)
- On December 27, 2017, Gould and his assistant transmitted the email bearing that date, which Gould testified that GT attorneys Bonner and Ferrario drafted. (Ex. 5 to JJC 6/13/18 Opp. at 530:2–531:14).

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- Each of McEachern, Codding, Wrotniak and Kane testified that they had not seen Gould's December 27, 2017 email—supposedly sent on their behalf—prior to their depositions (or, for Wrotniak, preparing for his deposition) this year. (Ex. 7 to JJC 6/13/18 Opp., McEachern 2/28/18 Dep. Tr. at 544:3-8); (Ex. 5 to JJC 6/13/18 Opp., Codding 2/28 Dep. Tr. at 231:9-232:5); (Ex. 10 to JJC 6/13/18 Opp., Wrotniak 3/6/18 Dep. Tr. at 91:17-93:2); (Ex. 11 to JJC 6/13/18 Opp., Kane 4/20/18 Dep. Tr. at 683:14-19).
- On or about December 28, 2017, GT attorneys Bonner and Ferrario spoke telephonically with Wrotniak (together with Codding) about ratification, which was the first time Wrotniak heard or learned that ratifying prior conduct would be on the agenda for the December 29, 2017 board meeting. (Ex. 10 to JJC 6/13/18 Opp., Wrotniak Dep. Tr. at 41:2–42:25);
- On December 29, 2017, Gould, Codding, McEachern, Wrotniak and Kane "ratified" certain prior conduct of Adams, Kane and McEachern in June 2015 of voting to terminate Plaintiff as President and CEO of RDI and of Adams and Kane in September 2015 as members of the RDI Board of Directors Compensation Committee in authorizing the use of RDI class A nonvoting stock to pay for the exercise of the so-called 100,000 share option.

3. The Historical and Ongoing Use by the "Independent" Directors Of Company Counsel.

With respect to matter after matter raised in this case, the "independent" directors repeatedly have failed to engage independent counsel and instead have relied on advice from Company Counsel. Other examples are discussed below. Perhaps the best example was the reliance by compensation committee members Kane and Adams on Company counsel with respect to the issue of ownership of the so-called 100,000 share option.

As Plaintiff previously demonstrated and the Court found, Adams and Kane testified that they relied on the substance of the advice of counsel, including Tompkins and GT, in answering (or ignoring) questions Kane raised regarding the ownership of the

option. As explained by Kane, both in emails produced in this case by defendants and in his deposition testimony, one issue the compensation committee members needed resolved to authorize (or not) the exercise of the 100,000 share option was whether it was the property of the James J. Cotter, Sr. Trust (the "Trust"), as RDI's Proxy Statement in 2014 and years prior had stated and as Plaintiff contended, or whether it was the property of the Estate, as EC contended. In an April 17, 2015 email (produced by defendants and provided to the Court by Plaintiff previously), Kane summarized the issue(s) as whether there was "any legal reason why Ellen [Cotter], as executor, could not exercise" the share option. (E-mail from Edward Kane to Craig Tompkins, Ellen Cotter, Margaret Cotter, Tim Storey, and Guy Adams, Apr. 17, 2015, 22:44, Exhibit 16 at 186 (emphasis added), to James Cotter Jr's Reply in support of Motion to Reconsider Order.) In another email (produced by defendants and also previously filed with the Court), Kane identified a particular legal issue as whether, by operation of the Trust documents of James J. Cotter, Sr. (under California law), the 100,000 share option had poured over into his Trust upon his death. (E-mail from Edward Kane to Tim Storey, Apr. 18, 2015, 12:26, Exhibit 19 at 194, to James Cotter Jr's Reply in support of Motion to Reconsider Order.)

Kane and Adams "resolved" those questions by obtaining legal advice and, based solely on that advice, authorized EC as an executor of the Estate to exercise the 100,000 share option. As the Court will recall, Adams testified as follows:

> Q. Did you ask her - - well, what did you do to ascertain [the 100,000 share option] was her asset?
>
> A. I informed myself through legal counsel.
>
> MR. TAYBACK: Don't - - don't disclose the communications with Legal counsel. You can simply say you conferred with legal counsel.
>
> THE WITNESS: I conferred with legal counsel.
>
> BY MR. KRUM:
>
> Q. Who?
>
> A. Craig Tompkins, Greenberg Traurig and Bill Ellis.

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****

Q. Okay. But you relied on this particular Greenberg Traurig memo in connection with making the decision to vote as a member of the compensation committee to allow Ellen and Margaret Cotter, as executors, to exercise the supposed option to acquire 100,000 shares of class B voting stock, is that right?

****

A. Yes, in addition to Craig Tompkins and Bill Ellis.

Q. Now, to your knowledge... Did any of those lawyers possess any expertise in trust and estate matters?

****

A. I have no knowledge about that.

(Ex. 2 to JJC 6/13/18 Opp., Adams 4/28/16 Dep. Tr. at 215:24-216:9 and 220:9-221:2.)

As the Court will recall, Kane testified as follows:

Q. What were the other issues?

A. There was the issue of exercising the options that were granted to Jim Cotter, Sr.

Q. What was the issue there or what were the issues, as best you can recall?

A. Mr. Cotter, Jr., was saying those options belong to the trust, that they had been transferred to the living trust, and that they could not exercise that option on behalf of the estate.

* * *

Q. Well, as to you personally, Mr. Kane, what did you do to reach a conclusion with respect to the question of whether Ellen and Margaret Cotter as executors of the estate of Jim Cotter, Sr., had the right to exercise the 100,000 share option?

A. I asked for a legal opinion.

(Ex. 6 to JJC 6/13/18 Opp., Kane 5/2/16 Dep. Tr. at 94:19-95:20, 100:23-102:21 & 104:13-23.)

In view of such testimony, the Court found that Adams and Kane had testified that their sole basis for authorizing the exercise of the 100,000 share option was the substance or content of the advice of counsel:

THE COURT: Mr. Ferrario, I'm not going to talk to you about a hypothetical case. I am talking about the facts in this case where I have two witnesses who

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testified that their sole basis was they relied upon representation or the opinion of counsel in making a determination. That's this case. That's the one I'm deciding. (Transcript of District Court Proceedings, October 27, 2016, Ex. B at 13:10-15, on file as Exhibit 4 to Appendix to Plaintiff's Motion to Reconsider.) (Emphasis supplied.)

Whether by design or oversight, Adams and Kane apparently did not ascertain whether the lawyers on whose advice they relied were qualified to provide the advice sought. Adams (quoted supra) testified that he had "no knowledge" if "any of those lawyers possess any expertise in trust and estate matters."

Kane and Adams had reason to doubt the independence of the attorneys on whom they relied. Kane testified that he (Kane) understood that Tompkins was on the side of EC in her disputes with Plaintiff, as well as that he (Kane) was of the view that "Tompkins always acted in his own self-interest." (Ex. 12 to JJC 6/13/18 Opp., at 427:3-9, 428:2-9 and 432:13-25.) In the former regard, Kane at deposition explained that words he used in an email stating "according to [EC], Craig is also on the 'team[,]'" meant that Tompkins "was [with] Ellen and Margaret versus Jim." (Ex. 6 to JJC 6/13/18 Opp., at 176:18-177:1.)

As to GT, the third member of the compensation committee, Timothy Storey, told Kane and Adams that he found GT's advice with respect to Ellen's proposed exercise of the 100,000 share option to be inadequate, and that it "did not satisfy [him] that there was a clear legal answer to the issue." (*See* Ex. 1 to the Appendix of Exhibits to James J. Cotter, Jr.'s Motion To Compel Production filed on August 12, 2016, at 53:5-7.) Nevertheless, Kane and Adams did not seek the advice of counsel independent of the Company, but instead relied on Company Counsel.

III. ARGUMENT

A. The Motion Must Be Denied Because Defendants Did Not Request an Evidentiary Hearing.

1. Defendants Also are Guilty of Laches and Undue and Prejudicial Delay.

Although the Motion purports to be brought pursuant to NRCP 12(b), it does not accept the allegations of the pending second amended complaint as true and argue that

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defendants nevertheless are entitled to judgment as a matter of law. Instead, it disputes those allegations and seeks relief based on matters outside of the pending second amended complaint. As the Court has observed previously with respect to the prior iteration of the Motion, it is for summary judgment. As the moving party seeking summary judgment on behalf of the remaining defendants, RDI bears the burden of proof.

"[W]hen the [complaint] is sufficient to excuse pre-suit demand, defendants are, of course, still free to show on summary judgment by uncontradicted facts that the allegations made are untrue." *Kahn v. Tremont*, 1992 WL 205637, at *2, n. 2 (Del. Ch. Aug. 21, 1992). "On such a motion the parties would be entitled to develop an evidentiary record in affidavit or other appropriate form." *Siegman v. Tri-Star Pictures, Inc.*, 1989 WL 48746, at *12, n. 16 (Del Ch. May 5, 1989), *affirmed in part and reversed in part on other grounds sub nom. In re Tri-Star pictures, Inc. Litig.*, 634 A.2d 319 (Del. 1993).

In Nevada, "an evidentiary hearing [is the procedural means] to determine... whether the demand requirement... *deprives* the shareholder of his or her standing to sue." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 644, 137 P.3d 1171, 1186 (2006) (emphasis supplied). As explained below, futility is determined in cases such as this based on the two-pronged test first articulated by the Delaware Supreme Court in *Aronson v. Lewis*. *See Shoen*, 122 Nev. at 641, 137 P.3d at 1184 (" . . . we adopt the test described in *Aronson* . . . ").

In September 2016, the individual defendants filed multiple motions for partial summary judgment, but brought no summary judgment motion arguing that demand was not futile.

The Motion for Leave claimed that defendants "requested that an evidentiary hearing to determine the issue of standing, but...[t]his Court declined to conduct the requested evidentiary hearing." Renewed Demand Futility MSJ at 10:19-22 and p.6, fn. 4. Defendants cited nothing to support this claim, which was false. In fact, defendants requested an evidentiary hearing regarding only the adequacy of Plaintiff as a derivative plaintiff, not an evidentiary hearing regarding the futility of demand. *See* Motion for

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Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as a Derivative Plaintiff, filed on 10/12/2017. The Motion does not repeat the false claim that defendants previously sought (and the Court denied) an evidentiary hearing with respect to demand futility, tacitly acknowledging that defendants did not do so.

The record is undisputed. Defendants failed to seek an evidentiary hearing with respect to the issue of demand futility. Additionally, instead of raising that issue in a timely manner by way of motion for summary judgment, defendants belatedly brought the Original Demand Futility MSJ and, now, the Motion. Both motions are predicated on facts (not evidence) beyond the pleadings (and contrary to the pleadings, according to defendants). For such reasons, the Motion should be denied.

Having no excuse for not seeking an evidentiary hearing and no response to the argument that they were required to do so but did not, defendants instead misstate the law. In particular, the Motion (at 9:25-27) asserts that "if a plaintiff survives a motion to dismiss based on a failure to adequately *plead* demand futility, the plaintiff must, prior to trial on the merits, prove the demand was, in fact, futile." In support of that misstatement of the law, the Motion cites *Shoen v. SAC Holding Corp.*, 122 Nev. at 645, 137 P.3d at 1187. The Motion then acknowledges that the actual statement it misquotes states "[i]f the district court should find the pleadings provide sufficient particularized facts to show demand futility, it must later conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement nevertheless deprives a shareholder of his or her standing to sue." (*Id.*) Indisputably, neither RDI nor any of defendants ever did so. For that reason alone, the Motion should be denied.

2. Defendants' Standing/Subject Matter Jurisdiction Argument is a "Red Herring."

In the last section of the Motion, defendants make a convoluted argument about standing, subject matter jurisdiction, and the timing of challenges about one or both. (Motion at 12:6–28.) They do so in an apparent effort to excuse either or both (i) their failure to timely file a summary judgment motion regarding demand futility and (ii) their failure to request an evidentiary hearing regarding demand futility. (*Id.* at 13:1-6.)

Although they cite mostly inapposite authority for unremarkable propositions of law or regarding standing,[4] they cite no authority whatsoever for the notion that these legal propositions somehow overrule, supersede, or moot other rules and deadlines, such as the date by which summary judgment motions must be filed and/or the requirement that defendants seeking to deprive a derivative plaintiff of standing based on matter outside the pending complaint must do so by way of an evidentiary hearing. Simply put, the argument is a "red herring."

B. The Motion Must Be Denied, as a Matter of Law.

1. Defendants Bear the Burden of Proof.

Even assuming the Court could decide demand futility on a motion for summary judgment, where a court has determined that demand is excused and the defendants subsequently seek summary judgment with respect to demand futility, the moving defendants bear the burden of establishing "by uncontradicted facts that the allegations [that excused demand] are untrue." *Kahn*, 1992 WL 205637, at *2 n.2; *see also Avacus Partners, L.P. v. Brian*, 1990 WL 161909 (Del. Ch. Oct. 24, 1990) (if "a defendant files affidavits definitively rebutting the allegations of the complaint, the defendant would be entitled to summary judgment dismissing the complaint").

Here, defendants have proffered no evidence whatsoever, much less evidence sufficient to satisfy the burden of proof faced by a moving party seeking summary judgment, and much less evidence sufficient to "deprive" a plaintiff of standing to pursue a derivative action.

2. The Motion is Based on a Legally Mistaken Assumption.

The Motion is based on the premise that the Court's ruling that Plaintiff failed to raise disputed issues of fact regarding the disinterestedness of five directors with respect to the matters that were the subject of their motions for partial summary judgment obviates defendants' burden of proof in this (summary judgment) Motion and requires granting it. For example, the Motion (at 11:9-13) asserts that because "this Court found

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Plaintiff's evidence insufficient to support his allegations regarding the bases for the claimed interest and lack of independence with respect to the challenged decisions[,]...[i]t necessarily follows that such evidence could not suffice to show the claimed interest and lack of independence that purport (sic) to preclude impartial review of his claims." On its face, this purported syllogism is a *non sequitur.*

Similar statements were made in the original demand MSJ and in the Motion for Leave, in response to which Plaintiff correctly pointed out that those statements erroneously assumed that demand futility is assessed based on whether directors are personally interested in the challenged matters. As a matter of law, demand futility is assessed based on the directors' views of the derivative action, not the underlying matters which are the subject of the derivative action. *Rales v. Blasband,* 634 A.2d 927, 932 (Del. 1993) (Demand is futile where "the directors are incapable of making an impartial decision regarding such litigation"); *Drage v. Procter & Gamble,* 694 N.E.2d 479, 482-83 (Ohio Ct. App. 1997) ("Futility means that the directors' minds are closed to argument and that they cannot properly exercise their business judgment in determining whether the suit should be filed") (quoted in *Carlson v. Rabkin,* 789 N.E. 1122, 1128 (Ohio Ct. App. 2003)).

The Motion does not dispute the foregoing. Instead, it simply replaces the previously unstated erroneous premise with the *non sequitur* and exercise in question begging quoted above. The Motion proffers no evidence, and discusses no evidence, much less evidence in view of the applicable demand futility legal standard, which is whether "the directors are incapable of making an impartial decision regarding such litigation." Thus, that the Court determined that there were no disputed issues of material fact with respect to the disinterestedness of the five directors with respect to the particular matters raised in their motions for partial summary judgment does not, as the Motion posits show, much less , necessarily prove, that those directors' minds are open to argument such that they could properly exercise disinterested, independent business judgment in determining whether this derivative action should continue. Whether it is

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based on an erroneous premise, based on a *non sequitur* and/or is an exercise in question begging, the premise on which the Motion is based is erroneous, and the Motion must be denied.

3. The Evidence Raises a Reasonable Doubt, at a Minimum, About Whether the Five Could Impartially Consider a Demand.

As observed above, the question of demand futility is a question of whether directors responding to a demand have open minds about the derivative lawsuit. Where the directors have prejudged the question of whether the derivative lawsuit should proceed or be dismissed, demand is futile. As the evidence above shows, each of the five dismissed directors the Motion claims are disinterested and/or independent for the purposes of demand futility each previously determined that this derivative action should be dismissed. The evidence that they have done so shows demand futility or, at a minimum, raises disputed issues of material fact that require of Renewed Demand Futility MSJ.

C. Shoen Adopted the Two-Pronged Test Regarding Demand Futility.

In *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), the Nevada Supreme Court adopted the two-pronged demand futility analysis articulated by the Delaware Supreme Court in *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984). Quoting *Aronson*, the Nevada Supreme Court in *Shoen* described the two-pronged demand futility analysis as follows:

> "[I]n determining demand futility[,] the [the trial court] ... must decide whether, under the particularized facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent [or] (2) the challenged transaction was otherwise the product of a valid exercise of business judgment."

Shoen, 122 Nev. at 637, 137 P.3d at 1182 (quoting *Aronson*, 473 A.2d at 812).

The Court in *Shoen* cited additional Delaware Supreme Court decisions explaining that the *Aronson* two-pronged test provides two *alternative* means by which a plaintiff may demonstrate demand futility. *Shoen*, 122 Nev. at 638 n. 43, 137 P.3d at 1182 n. 43 (citing, *e.g.*, *Pogostin v. Rice*, 480 A.2d 619, 624–25 (Del. 1984) (where the plaintiff has

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alleged with particularity facts that "support a reasonable doubt as to *either aspect* of the *Aronson* analysis, the futility of demand is established and the court's inquiry ends") (emphasis in original) and *Levine v. Smith*, 591 A.2d 194, 2016 (Del. 1991) ("The point is that in a claim of demand futility, there are two alternative hurdles, either of which a derivative shareholder complainant [may satisfy] to successfully withstand a Rule 23.1 motion")).

1. The First Prong: Independence and Disinterestedness

Independence, as used in the context of an element of the business judgment rule, requires that a director is able to engage, and in fact engages, in decision-making "based on the corporate merit of the subject before the board rather than extraneous considerations or influences." *Gilbert v. El Paso, Co.*, 575 A.2d 1131, 1147 (Del. 1999). "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Reflecting that director independence is not a "check the box" type of analysis, the Nevada Supreme Court in *Shoen* stated as follows:

> "[D]irectors' independence can be implicated by particularly alleging that the director's execution of their duties is unduly influenced, manifesting 'a direction of corporate conduct in such a way as to comport with the wishes or interests of the [person] doing the controlling."

Shoen, 122 Nev. at 639, 137 P.3d at 1183 (quoting *Aronson*, 473 A.2d at 816).

As described above, discovery regarding how the five dismissed directors came to vote to "ratify" prior conduct the Court found to be actionable shows that what each of them did was to do what GT lawyers directed by Ellen Cotter and Craig Tompkins told him or her to do in order to pursue "ratification" as a "litigation strategy" directed at dismissal of this derivative action. Thus, the evidence regarding "ratification" demonstrates a lack of independence on the part of the same five directors the Motion posits are independent for demand futility purposes.

Critically, the fact that directors whose "independence" is the sole stated basis for the Motion relied on the advice of counsel who represent RDI and directly or indirectly

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(through Tompkins) answer to defendant Ellen Cotter, independently evidences that those directors lack independence, as a matter of law.

Courts repeatedly have found that the use of company counsel, whether by special committees or other directors supposedly acting independently, raises questions about the independence of the advisors and, thereby, the committee and the individual directors. *Gesoff v. IIC Industries Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006), *subsequent proceedings*, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006) ("[A] special committee's decision to use the legal and financial advisors already advising the parent 'alone rais[ed] questions regarding the quality and independence of the counsel and advice received' ") (citing *In re Tele-Communications, Inc. Shareholders Litig.*, 2005 WL 3642727 (Del. Ch. Dec. 21, 2005); *see generally* William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990). Thus, courts reject determinations made by directors based on advice of counsel where such advice may be tainted by a conflict of interest. *In re Oracle Securities Litig.*, 820 9F. Supp. 1176, 1189 (N. D. Cal. 1993) (a board committee reliance on the inherently biased advice of in-house counsel made the committee's determination "worthless.")

In *In re Par Pharm., Inc. Derivative Litig.*, 750 F. Supp. 641 (S.D.N.Y. 1990), the nominal defendant company moved to dismiss after a special litigation committee conducted an investigation and recommended dismissal, and the supposedly independent members of the company's board of directors accepted that recommendation and voted to dismiss. The court denied the motion to dismiss, in part "because the Committee failed to retain independent counsel," "but instead relied upon the firm [that represented the Company] and its board in th[at] litigation." *Id.* at 644, 647. The court described that counsel as having a "conflict of interest . . . ." *Id.* at 647. With respect to the jurisprudence, the Court observed that "[b]oth New York and Delaware law contemplate that a special litigation committee be represented by independent counsel." *Id.* (citing *Spiegel v. Buntrock*, 571 A.2d 767, 772 (Del. 1990); *Kaplan v. Wyatt*, 484

A.2d 501, 511 (Del. Ch. 1984), *aff'd*, 499 A.2d 1184 (Del. 1985); *Byers v. Baxter*, 69 A.D. 2d 343, 348, 419 N.Y.S. 2d 497, 500 (App. Div. 1979)).

Here, the "independent" directors failed to engage independent counsel, but instead relied entirely on "advice" from Company Counsel, who face actual, pervasive and debilitating conflicts.

The evidence regarding "ratification" highlights the historical lack of independence on the part of these supposedly independent directors, each of whom historically has relied on Company Counsel, meaning Craig Tompkins (who reports to Ellen Cotter) and lawyers from GT, RDI's outside counsel who report to Tompkins and to Ellen Cotter, for "advice" with respect to decisions they have made as "independent" directors. At a minimum, this historical (and ongoing) reliance on Company counsel raises disputed issues of material fact regarding the independence of these directors. Examples include the following:

Kane and McEachern relied on "advice" from GT in making their decisions as "independent" directors to proceed with the meeting to vote to terminate Plaintiff as President and CEO of RDI. In responding to a May 19, 2015 email from RDI director Timothy Storey, which stated that "we need to take time to carefully consider the legal position and our clear duties as directors [,]" Kane responded by saying "Tim, I respect your concerns. However, we have heard from Nevada counsel via their memos..." and concluded that the meeting at which termination was first raised would proceed without delay or pre-meeting. (Ex. 1 hereto, Dep. Ex. 304, May 2015 email chain.)

As described above, Kane (and Adams) did not seek a judicial determination or even seek advice from independent counsel regarding the issue of whether the Trust or the Estate owned the 100,000 share option. Instead they relied on advice from Company Counsel, including Tompkins and GT, which apparently persuaded Kane to authorize the exercise of that option by the Estate, which was controlled by Ellen and Margaret Cotter, without actually analyzing, much less ascertaining, whether the Estate owned the option. (*See* Ex. 6 to JJC 6/13/18 Opp., Kane 5/2/16 dep. tr. at 99:25-104:23.)

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Gould and McEachern, as members of the "CEO search committee," failed to seek the advice of independent counsel and instead relied on "advice" from Tompkins and GT lawyer Ferrario regarding their fiduciary duties, which is when they aborted the CEO search and selected Ellen Cotter to be CEO notwithstanding the fact that she possessed none of the qualifications the CEO search specification identified as most important. (**Ex. 2** hereto, Minutes of the CEO Search Committee Meeting, December 29, 2015, Dep. Ex. 389)

Likewise, "independent" directors relied on GT lawyers in connection with their decisions to hire and highly compensate Margaret Cotter as the senior executive at RDI responsible for development of its valuable New York real estate, notwithstanding the fact that Margaret Cotter had no prior real estate development experience. For example, at the March 17 and 20, 2017 continued meeting of the Compensation Committee, of which Kane, Codding, and McEachern were the members, GT Attorney Bonner attended and provided legal advice. (**Ex. 3** hereto, Minutes of a Meeting of the Compensation and Stock Options Committee, March 14 and 20, 2017.)

2. The Second Prong: Valid Exercises of Business Judgment

With respect to the second prong of the *Aronson* test for demand futility, the *Shoen* court stated as follows:

> When undertaking analysis under the second prong of the Aronson test to determine if the complaint's particularized facts raise a reasonable doubt as to the challenged transaction constituting a valid exercise of business judgment, "the alleged wrong is substantively reviewed against the factual background alleged in the complaint."

Shoen, 122 Nev. at 638, 137 P.3d at 1182 (quoting *Aronson*, 473 A.2d at 814).

The Motion ignores this second, alternative prong of the *Aronson* test for showing demand futility. (The Motion in a backhanded way does acknowledge the second prong when it says "this Court would have to find that one of the Dismissed Directors *was either unentitled to the protections of the business judgment rule*... or that he or she lacked

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independence...) (Motion at 11:14-12:2.) (Emphasis supplied.) The Motion does so because application of the second prong requires denial of the Motion.

The threshold the Plaintiff must meet is "reasonable doubt." The Delaware Supreme Court in *Grimes v. Donald* explained that "[r]easonable doubt can be said to mean that there is a reason to doubt." 673 A.2d 1207, 1217 (Del 1996). "This concept [of reasonable doubt] is sufficiently flexible and workable to provide the stockholder with 'the keys to the courthouse' in an appropriate case where the claim is not based on mere suspicions are stated solely in conclusory terms.'" *Id.; see also Beam v. Stewart,* 845 A.2d 1040, 1050 (Del. 2004) (quoting *Grimes* and holding same)

The issue here is whether the evidence Plaintiff has proffered (regarding breaches of fiduciary duty, in response to the various motions for partial summary judgment and to Gould's motion for summary judgment) is sufficient to raise disputed issues of material fact with respect to whether any or all of the dismissed five breached their fiduciary duties in connection with the various matters that were the subjects of the foregoing motions, as well as matters that were not the subject of any motion for partial summary judgment (such as the attempt to extort Plaintiff into resolving trust and estate disputes with Ellen and Margaret Cotter on terms satisfactory to them). In denying all of those motions (except for one which was granted on a different and here irrelevant basis), the Court necessarily found that the complained-of conduct is actionable. Additionally, the Court stated that the conduct of the dismissed directors themselves could be a subject of proof at trial, as follows:

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

(January 4, 2018 Hearing Tr. at 12:10-15.)

Thus, the second prong of the two-pronged demand futility analysis requires the Court to review the challenged conduct to determine whether or not that conduct may constitute a breach of any of the directors' fiduciary duties. Here, the Court did do so

and denied motions for partial summary judgment. Under the second prong of the two-pronged demand futility analysis applicable here, the Court for the same reasons must deny the Motion.

D. Plaintiff Is Entitled to Rule 56(f) Relief.

Where a plaintiff properly identifies additional facts necessary to oppose a summary judgment motion and seeks additional time to obtain that discovery, summary judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.* 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Where it is "unclear whether genuine issues of material fact exists," a Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures*, 121 Nev. at 115, 110 P.3d at 60. Here, due to the delay of Responding Parties in providing court-ordered discovery, Plaintiff through no fault of his own is not yet in a position to present all "facts essential to justify the party's opposition." For the reasons set forth above and in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to NRCP 56(f) relief.

Plaintiff is entitled to relief under NRCP 56(f). The remaining defendants and the Responding Parties have not complied with the Court's May 2, 2018 order, delayed compliance or both, as a result of which Plaintiff has not had an opportunity to obtain the discovery the Court ordered Plaintiff was entitled to obtain. Plaintiff reasonably expects that additional discovery will evidence the contemporaneous involvement of defendant Ellen Cotter and/or Margaret Cotter, along with RDI counsel Tompkins, in the "ratification" "process," together with extensive disclosure to Ellen Cotter and to Tompkins of matter supposedly privileged and confidential vis-à-vis at least the remaining defendants. Plaintiff also reasonably anticipates this discovery will reveal not only with whom each of the supposedly independent directors communicated to him about "ratification" and the other particular matters that were the subject of the Court's May 2, 2018 order, but also will evidence what they did and did not do in determining to approve "ratification." All such evidence will go to the question of the independence of the directors whose independence is a basis for this Motion and for the Ratification MSJ.

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Moreover, Plaintiff is still reviewing and analyzing privilege logs and documents produced on May 30 and 31, 2018, documents produced on June 9, 11, and 12, 2018 and anticipates that a further supplemental privilege log will be produced. The Court previously ruled that Plaintiff is entitled to time to review such material to determine what further discovery if any Plaintiff needs.

IV. CONCLUSION

For all the foregoing reasons, as well as the reasons stated in Plaintiff's prior briefs and evidence referenced herein, Plaintiff respectfully submits that the Renewed Demand Futility MSJ should be denied.

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By: */s/ Akke Levin*

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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) **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION (FOR SUMMARY JUDGMENT) BASED ON DEMAND FUTILITY** to be served via the Court's Odyssey E-Filing System: 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 13th day of June, 2018.

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **DECLARATION OF MARK G. KRUM PURSUANT TO NRCP 56(f) AND IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS** **Hearing Date: June 19, 2018** **Hearing Time: 8:30 a.m.**

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I, Mark G. Krum, declare:

1. I am an attorney with Yurko, Salvesen & Remz, P.C., counsel for plaintiff James J. Cotter, Jr. ("Plaintiff"). I make this declaration based upon personal knowledge, except where stated upon information and belief, and as to that information, I believe it to be true. If called upon to testify as the contents of this declaration, I am legally competent to testify to its contents in a court of law.

2. The Motion for Summary Judgment filed on June 1, 2018 by defendants Ellen Cotter, Margaret Cotter and Guy Adams (the "Ratification MSJ") is predicated on the assumption that, because the Court found no disputed issues of material fact with respect to the disinterestedness of certain directors for the purposes of the matters raised in partial summary judgment motions argued on December 11, 2017, those directors therefore are disinterested and independent for all purposes, including for the purposes of the "ratification" on which the Ratification MSJ is based.

3. The Motion for summary judgment regarding demand futility filed on June 4, 2018 by counsel of record for nominal defendant Reading International, Inc. ("RDI") is predicated on the same assumption.

4. Because disinterestedness and independence are questions of fact, Plaintiff is entitled to discovery, including regarding the "ratification" "process," as the Court found on January 8, 2018 and ruled on May 2, 2018, when the Court ordered RDI and former defendants (the "Responding Parties") to provide additional documents and information with respect to "ratification" and matters related thereto, described below.

5. Likewise, Plaintiff is entitled to discovery regarding whether the "ratifying" directors acted in good faith and on an informed basis, which also are questions of fact. That discovery likewise concerns the "ratification" "process."

6. On or about January 12, 2018, Plaintiff issued subpoenas to the Responding Parties and document requests and interrogatories to the remaining defendants. By the end of February 2018, all but Gould purported to have produced or listed on a privilege log all responsive documents. Additionally, the remaining defendants provided

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interrogatory responses.

7. As the Court knows from prior motion practice, Counsel for Plaintiff learned for the first time at depositions of SIC members Doug McEachern, Judy Codding and William Gould of a meeting of the "Special Independent Committee" of the RDI board of directors (the "SIC") in December 2017 at which "ratification" had been discussed and "formally" approved.. As the Court also knows from prior motion practice, counsel for Plaintiff specifically requested that counsel for the Responding Parties produce minutes of that December 2017 SIC meeting.

8. Finally, on or about April 12, 2018, minutes of what turned out to be a December 21, 2017 SIC meeting were produced for the first time. However, they were produced in a wholly redacted form.

9. As a result of the foregoing, among other efforts on the part of the remaining defendants and Responding Parties to frustrate Plaintiff's ability to obtain discovery regarding the "ratification" "process," Plaintiff filed a motion for "omnibus relief." That motion was heard on April 30, 2018, at which time the Court ordered an evidentiary hearing, which occurred on May 2. At the end of the May 2 hearing, the Court granted Plaintiff's motion for omnibus relief in part, ordering that the Responding Parties produce and/or log all documents responsive to three categories of information, as follows:

> THE COURT: ... So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

10. The Court on May 2, 2018 also granted the remaining defendants motion to file what is the now filed Ratification MSJ, but instructed them not to file it until after they had complied with the Court's May 2, 2018 order and also had afforded counsel for Plaintiff sufficient time to review and analyze the documents and privilege logs ordered

produced, and to then determine whether Plaintiff needed further discovery. In this regard, the Court stated as follows:

> THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide
>
> whether he needs to take additional depositions and, if you fight about it, for me to rule on it. So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff

(5/2/18 hearing tr. at 81:6-16.)

11. On June 1 and 4, 2018, respectively, the remaining defendants filed the renewed Ratification MSJ and RDI file the renewed Demand Futility MSJ. As described below, what the Court sought to avoid has happened. The remaining defendants and the Responding Parties have slow played Plaintiff, whose counsel has not an opportunity to do what he is entitled to do and what the Court ordered he be afforded the opportunity to do.

12. On May 30 and 31, 2018, Greenberg Traurig ("GT'), for RDI and/or for the Responding Parties, made supplemental productions of thousands of pages of documents and produced two (facially deficient) voluminous, supplemental privilege logs. Dozens upon dozens of documents relating to one or more of the foregoing three categories have been withheld based on claims of attorney-client privilege, the work product doctrine, or both, as reflected by entries on those privilege logs. As demonstrated in a separate motion, Plaintiff seeks the production of those documents, asserting that those documents are not privileged and are not properly claimed to be subject to work product protection and, even if they were subject to proper claims of privilege and/or work product protection, both were waived.

13. However, even if the documents listed on the May 30 and 31, 208 privilege logs are properly withheld based on claims of attorney-client privilege, work product or both, they must be properly logged so counsel for Plaintiff is able to use the entries on the

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privilege logs for the various purposes for which they are required, including to examine witnesses (who claim not to recall) to learn what communications were had between and among the counsel for RDI, the remaining defendants and/or the Responding Parties with respect to the three subject matters of the Court's May 2, 2018 order. Because the May 30 and 31, 2018 privilege logs suffer from several facial deficiencies, including the failure to identify each sender and recipient by name, and the failure to describe the subject matter of the documents logged in terms that are not so general as to be meaningless, counsel for Plaintiff is unable to use those to logs even identify the subjects matter of dozens upon dozens of logged communication, much less examine witnesses to confirm the subject matters and/or the participants.

14. On June 6, 2018, I met and conferred telephonically with counsel for RDI and the remaining defendants and the Responding Parties (except for Gould) regarding the May 30 and 31 document productions and privilege logs. On June 8, counsel for RDI advised that the responding parties would be making supplemental productions of documents and would provide a revised privilege log.

15. On Saturday, June 9, 2018, GT made a further supplemental production of documents, producing over 2000 pages of documents. Counsel for Plaintiff has not completed the review of those documents, but it appears that they are largely if not entirely draft SEC filings and email communications regarding those drafts.

16. About the close of business on June 11, 2018, GT made another supplemental production of documents, the total volume of which is in excess of 3000 pages. The documents were password protected and counsel for Plaintiff was not provided with password until June 12. Faced with deadlines for oppositions to the recently renewed summary judgement motions, counsel for Plaintiff did not review those documents yesterday or today.

17. Last night, at approximately 8 p.m. Pacific on Tuesday, June 12, 2018, GT made another supplemental production of documents, the total volume of which appears to be over 1000 pages. Counsel for Plaintiff has not yet reviewed these documents.

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18. Also on June 12, 2018, GT attorney Kara Hendricks advised that a supplemental and/or superseding privilege log would be produced today, June 13, 2018. It has not been produced at the time of completion of this declaration..

19. Counsel for Plaintiff will need time to complete the review of documents produced on June 9, 2018, and to commence and complete the review of documents produced on June 11 and 12, 2018. Counsel for Plaintiff likewise will be time to review a supplemental privilege log, if and when it is produced. If the course of discovery is any indication, such a log is unlikely to cure all of the deficiencies from which the May 30 and 31, 2018 logs suffered. Even if it did so, Plaintiff has not had the opportunity to use the that log for any purpose, or the May 30 and 31, 2018 logs to further depose any of Ellen Cotter, Craig Tompkins, Margaret Cotter, William Gould, Judy Codding, Michael Wrotniak and/or Ed Kane, each of whom was (according to documents produced on May 30 and 31, 2018 and/or entries in the May 30 and 31, 2018 privilege logs) party to communications that concerned one or more of the three subjects of the Court's May 2, 2018 order.

20. Simply put, the remaining defendants and the Responding Parties have not complied with the Court's May 2, 2018 order, delayed compliance or both, as a result of which Plaintiff has not had an opportunity to obtain the discovery the Court ordered Plaintiff was entitled to obtain. As indicated by Plaintiff's description of certain of the documents produced on May 30 and 31, 2008, as well as by Plaintiff's description of certain entries on the May 30 and 31, 2018 privilege logs, Plaintiff reasonably expects that additional discovery (without regard to whether the Court orders the production of additional documents) will evidence the contemporaneous involvement of defendants Ellen Cotter and/or Margaret Cotter, along with RDI counsel Tompkins, in the "ratification" "process," together with extensive disclosure to Ellen Cotter and to Tompkins of matter supposedly privileged and confidential vis-à-vis at least the remaining defendants. Plaintiff also reasonably anticipates this discovery will reveal not only with whom each of the supposedly independent directors communicated about

"ratification" and the other particular matters that were the subject of the Court's May 2, 2018 order, but also will evidence what they did and did not do in determining to approve "ratification." All such evidence will go to the question of the independence of the directors whose independence is a basis for the Ratification MSJ and the summary judgment motion based on demand futility, and/or to the question of whether those directors acted in good faith and on an informed basis in approving "ratification."

Executed this 13th day of June, 2018.

Mark G. Krum, Esq.

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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: **Declaration of Mark G. Krum Pursuant to NRCP 56(f) and in Opposition to Summary Judgment Motions** 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 13th day of June, 2018.

By: /s/ JUDY ESTRADA

Exhibit 1
(filed under seal)

Exhibit 2

READING INTERNATIONAL

Minutes of the
Board of Directors
of
Reading International, Inc.
CEO Search Committee

December 29, 2015

On December 29, 2015, a duly noticed telephonic meeting of the CEO Search Committee (the "Committee") was held, commencing at approximately 2:30 p.m. Attending the meeting were Members William Gould (Chair), Margaret Cotter and Doug McEachern. Present at the invitation of the Committee were Craig Tompkins, Recording Secretary, and Mark Ferrario, outside counsel.

Chair Gould stated that, all of the candidates having been interviewed, the purpose of this meeting was to determine the individual, if any, to be recommended by the Committee to the Board for the position of President and Chief Executive Officer, to serve at the pleasure of the Board.

Before considering the recommendation of a candidate, the Committee discussed whether it was appropriate for Margaret Cotter to vote on the matter. In its considerations, the Committee discussed the facts that Margaret Cotter was the sister of Ellen Cotter, was part of a "group" with Ellen Cotter for SEC reporting purposes, was the President of Liberty Theaters and would thereby be reporting to Ellen Cotter (should Ellen Cotter be appointed as President and Chief Executive Officer) and held a variety of other fiduciary duties and obligations as a Co-Executor of the James J. Cotter, Sr. Estate and as a Co-Trustee of the James J. Cotter, Sr. Trust. The Committee concluded that, given her position as Co-Executor of the James J. Sr. Estate and as Co-Trustee of the Cotter Trust, as a practical matter, Margaret Cotter's support of any candidate was critical: this was one of the reasons that she had been selected to participate on the Committee in the first place and she had been elected to the Committee by the Board with full knowledge of these facts and relationships. The Committee concluded that, ultimately, whether or not Margaret Cotter should vote on the matter would be left for Margaret Cotter to determine.

The Committee next took up the recommendation to the Board of candidate for President and Chief Executive Officer of the Company to serve at the pleasure of the Board. The Committee noted that the candidates presented by Korn Ferry had varying backgrounds, skill sets and compensation requirements, but were all of the highest caliber, and that any of them would likely be competent to run a company such as Reading.

The Committee discussed, among other things, but not necessarily in the order set forth below (as the discussion took up a number of topics on more than one occasion during the discussion), and without attempting to assign any particular order of importance or significance, the following:

- The benefits of selecting a President/CEO who has the confidence of the existing senior management team;

EXH 389
DATE 6-29-16
WIT Gould
PATRICIA HUBBARD

- The benefits of selecting a President/CEO who knows the Company, its assets, personnel and operations and who could "hit the ground running:"
- The fact that it would be beneficial to the Company and to the interests of stockholders generally to have a period of management stability, so that management could focus on the implementation of the Company's mixed entertainment/real estate development business plan;
- The fact that the compensation demands of certain of the President/CEO candidates seemed to reflect the erroneous belief on their part that the Company was in extremis and needed to be turned around or redirected, when, in fact, the Company is doing well from an operating point of view and the Board is comfortable with the Company's mixed entertainment/real estate business plan;
- The fact that the bulk of the Company's cash flow is derived from its entertainment activities, and that the maintenance and growth of that cash flow is of primary importance for the Company to execute on its business plan;
- The fact that, as a practical matter, the nominee will need to be acceptable to Ellen Cotter and Margaret Cotter as representatives of the controlling stockholder of the Company;
- The benefits and detriments of having a Chairman/CEO and of having a Chairman/CEO who is also a controlling stockholder of the Company;
- The performance of Ellen Cotter in uniting the current senior management team behind her leadership under the unusual and stressful circumstances of recent months;
- The scope and extent of Ellen Cotter's knowledge of the Company, its assets, personnel and operations, including its overseas and real estate assets, personnel and operations;
- Ellen Cotter's experience and performance as a senior executive of the Company, and her performance since June 12, 2015 as the Company's interim President and Chief Executive Officer;
- Ellen Cotter's experience and involvement in the Company's public reporting activities and working in a public company environment;
- The fact that Ellen Cotter had demonstrated her competency and experience in dealing with real estate matters in her handling of the Cannon Park and Sundance matters and her activities in connection with the development/refurbishment of a variety the Company's cinemas.
- The practical difficulties of having an executive management structure where two of the executives reporting up to a new outside chief executive officer would be members of the Board and controlling stockholders of the Company;

- Ellen Cotter's plan for transitioning out of her current position as chief of operations of the Company's domestic cinemas in order to be able to appropriately handle the duties of President and Chief Executive Officer;

- The scope and extent of the other demands upon Ellen Cotter's time, given her other duties and responsibilities with respect to the administration of her father's estate and the other assets included within that Estate (including, by way of example, the Estate's interest in Cecelia Packing, Sutton Hill Associates, Shadow View Land & Farming, and the 86th Street Cinema) and the various conflicts of interest arising due to her, at times, potentially conflicting duties in her capacity as an officer and director of the Company and as a Co-Executor of the James J. Cotter, Sr. Estate and a Co-Trustee of the James J. Cotter, Sr. Trust;

- The scope and extent of her personal financial interest in the Company, and the scope and extent of her control over the Company given her position as Co-Executor of the James J. Cotter, Sr. Estate, and as a Co-Trustee of the James J. Cotter, Sr. Trust, and the likely impact of such interests and obligations on her performance as President and Chief Executive Officer;

- The qualifications, experience and compensation demands of the other candidates;

- The fact that her appointment would likely be opposed by James J. Cotter, Jr., and would likely be made an issue in the pending derivative litigation being prosecuted by James J. Cotter, Jr.; and

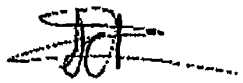
- The need, for the stability of the Company, to bring the CEO search to a conclusion.

After discussion in which all members participated and during which a variety of questions were asked and advice provided by counsel regarding the fiduciary obligations of the Committee Members and the Committee, on motion duly made and seconded, the Committee resolved to recommend to the Board Ellen Cotter as President and Chief Executive Officer (no longer serving as "Interim President and Chief Executive Officer"), to serve at the pleasure of the Board. Messrs. Gould and McEachern each voted Yes. Margaret Cotter, for a variety of reasons, as outlined above, elected to Abstain, but stated her concurrence with and support of the Committee's recommendation.

Although it was the consensus of the Committee that, if she is appointed by the Board as the President and Chief Executive Officer, Ellen Cotter's compensation should be revisited in light of her increased duties and responsibilities, the Committee determined that the negotiation of her employment terms had not been delegated to it, and that this would be a matter more properly addressed by the Company's Compensation and Stock Options Committee and Board.

Mr. Tompkins was directed to prepare minutes for the Committee and to prepare a draft report of the Committee's actions and determinations for review and approval by the Committee and submission to the Board.

There being no further action, the meeting was adjourned at approximately 3:15 P.M.



S. Craig Tompkins, Recording Secretary

Exhibit 3
(filed under seal)

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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

ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: June 19, 2018
Time of Hearing: 8:30 a.m.

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INTRODUCTION

Plaintiff does not and cannot dispute the material facts that mandate granting summary judgment in favor of the remaining defendants: (1) the Court determined there is no disputed issue of fact regarding the independence of Edward Kane, Doug McEachern, Judy Codding, Michael Wrotniak, or William Gould; (2) Nevada law permits ratification of prior decisions; (3) an independent (per the Court's order) majority of RDI's Board of Directors voted to ratify certain prior Board decisions at issue in this matter; and (4) the minutes of the December 29 Board of Directors meeting regarding ratification are accurate. Instead of addressing this small handful of material, relevant facts, and instead of offering any testimony (written or oral) of his own regarding the December 29 Board meeting he attended, Plaintiff raises a variety of fanciful legal and factual arguments in an effort to keep his case alive. None have any merit.

First, Plaintiff suggests that Nevada law does not actually permit the Board to have voted in favor of ratifying the decisions at issue. This argument is contradicted by the plain language of NRS 78.140, and the Delaware authority Plaintiff relies on actually undermines his baseless position. Plaintiff cannot have it both ways. Either the matters of which he complains were "transactions," making the independence of Directors Guy Adams, Ellen Cotter and Margaret Cotter an issue in the case (and subject to ratification under NRS 78140), or they were not, in which case Plaintiff himself has no legal claims and the "independence" of these three remaining directors is of no relevance.

Next, Plaintiff contends that the members of the Board who voted in favor of ratification were neither independent nor acting in good faith. Plaintiff simply misstates the facts and the applicable law. Indeed, Plaintiff completely ignores the Court's prior ruling and judgment regarding the independence of a majority of the Board, the fact that the accuracy of the minutes of the December 29 Board meeting is not in dispute, and the sworn testimony of various directors about their preparations for a ratification vote. Plaintiff instead cites a series of cases in which courts evaluated the decisions of Special Litigation Committees to dismiss derivative actions (and where there had been no judicial determination of independence). Not only are those cases inapplicable here—the ratification vote was held at a meeting of the *full* Board of

directors, not RDI's Special Independent Committee, and was not a recommendation to dismiss the derivative action—but the standards in those cases, even if they were applied here (which they cannot be), actually support granting summary judgment. (In his Opposition, Plaintiff represents to the Court that the Special Independent Committee, rather than RDI's full Board, made the ultimate determination regarding ratification. In doing so, Plaintiff mischaracterizes—and, in one case, *completely changes*, using brackets—the deposition testimony of members of that committee.)

Finally, Plaintiff offers rank speculation about the motives of his fellow directors, but provides no evidence supporting his allegations. Evidence, rather than assumption and accusation, is required to defeat summary judgment. Plaintiff of course would like to relitigate the Court's determination that a majority of the Board is independent, but the proper venue for that is in front of the Nevada Supreme Court, where an appeal is pending, not through his Opposition or his ill-conceived request for an evidentiary hearing on issues already decided.

ARGUMENT[1]

I. THE BOARD'S DECISION REGARDING PLAINTIFF'S TERMINATION AND THE 100,000 SHARE EXERCISE WERE PROPERLY THE SUBJECT OF A RATIFICATION VOTE UNDER NEVADA LAW

Initially, Plaintiff's Opposition presents the self-defeating argument that the matters ratified by the Board on December 29, 2017 were not transactions between RDI and one of more of its directors under NRS 78.140. (*See* Opp. at 17-21.) This is contrary to the entire premise of the derivative suit Plaintiff has pursued for the last three years. If the decisions ratified at that meeting were not matters which required independence on the part of the directors, then Plaintiff's challenge to directorial independence is irrelevant; if those decisions did require independence, then—as a matter of law—they can be ratified by the independent directors.

Plaintiff, himself a director and stockholder of RDI, has sued various other RDI directors because he contends they were personally interested in the outcome of various transactions the

[1] Plaintiff raises an argument that the Motion is untimely. Such an argument was mooted by the Court granting Defendants leave to file the instant motion, which was a logical

Board or its committees voted on *involving him or other directors*, including Plaintiff's termination (which terminated a contract between Plaintiff and RDI) and the approval of the use of Class A Non-Voting Common Stock to exercise a the 100,000 share option (a contract) to purchase Class B Voting Stock (a purchase of voting stock from RDI which Plaintiff alleges inured to the benefit of Ellen and Margaret Cotter). The directors—both current and former defendants—whom Plaintiff alleges were personally interested in the outcome of these transactions were "present at the meeting of the board of directors or a committee thereof which authorize[d] or approve[d] the contract or transaction." NRS 78.140. Accordingly, these decisions are clearly subject to ratification under Nevada law.[2]

Plaintiff also argues that the 100,000 share option exercise was not actually ratified, and that only the use of Class A stock as consideration was the subject of ratification by independent directors. (*See* Opp. at 15-17.) According to Plaintiff, an issue remains as to whether the Cotter Estate or the Cotter Trust owned these options. (*See id.*) None of Plaintiff's contentions have merit. First, the ownership issue was resolved long ago by the Court in the context of the Estate case; even if it had not been, the ownership question would be fundamentally irrelevant—Ellen and Margaret Cotter control the options under any scenario, as they were both the Co-Executors of the Cotter Estate and the Co-Trustees of the Cotter Estate. Thus, Plaintiff's attempted distinction is irrelevant.

Moreover, Plaintiff's assertion is demonstrably false; the RDI Board did not conduct a partial ratification involving the share option exercise. As the undisputed minutes of the December 29, 2017 meeting show, the Board "ratifie[d] the decision of the Compensation Committee of the Company, as outlined in the minutes of the September 21, 2015 meeting, to

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result of allowing Plaintiff to take extensive discovery of RDI and its directors regarding the Board's December 29, 2017 ratification vote.

[2] The Delaware law that Plaintiff invokes in an attempt to support his argument actually undermines his position. (*See* Opp. at 19 (citing DGCL § 144 and quoting from *Cinerama Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1169 (Del. 1995)).) Indeed, in the words of the *Cinerama* court, "[t]he key to upholding an interested transaction is the approval of some neutral decision-making body. Under 8 Del. C. § 144, a transaction will be sheltered from shareholder challenge

permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment for the exercise of an option to purchase 100,000 shares of Class B voting stock of the Company." (Helpern Decl., Ex. B.) There was no discussion about the Board only ratifying *part* of the at-issue decision made by the Compensation Committee in September 2015. In any event, even if Plaintiff's factual claim was accurate, summary judgment is still appropriate. The only alleged damages arising from this option exercise relate to the purportedly improper use of Class A stock as consideration. (*See* Pl.'s Supp'l Opp'n to Mot. for Summ. J. Nos. 2 & 6, filed 12/1/17, at 10 ("[T]he consideration provided for the exercise, RDI Class A non-voting shares, was not consideration of value or at least sufficient value to the Company to warrant approval of the exercise, and that the Company incurred losses and/or damages as a result.").) Absent any injury to the Company, there can be no derivative claim for breach of fiduciary duty. Accordingly, if an independent group of the Board ratified only this aspect of the option exercise—which is what Plaintiff contends—then Plaintiff's breach of fiduciary duty claim still fails as a matter of law.

Pursuant to NRS 78.140, these transactions have now been ratified by directors whom the Court has ruled are disinterested, meaning that the transactions are "valid" and that the business judgment rule applies. *See Shoen v. SAC Holding Corp.,* 122 Nev. 621, 636, 137 P.3d 1171, 1181 (2006). Of course, if Plaintiff now wishes to withdraw his allegation that allegedly interested directors were involved in the initial transactions at issue in this case, that would obviate the need for the pending motion for summary judgment regarding ratification (and also resolve this case entirely).

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if approved by either a committee of independent directors, the shareholders, or the courts." 663 A.2d at 1170.

II. THE COURT HAS ALREADY RULED THAT THERE IS NO DISPUTED MATERIAL FACT REGARDING THE INDEPENDENCE OF THE DIRECTORS WHO VOTED TO RATIFY AT A MEETING OF THE FULL BOARD OF DIRECTORS

A. The Ratification Vote Was Not Delegated to a Special Litigation Committee

Throughout his brief, Plaintiff relies almost exclusively on cases in which a board fully delegated responsibility for derivative litigation to a Special Litigation Committee ("SLC") prior to any determination as to independence of the directors involved, and the courts are evaluating the recommendations of that SLC to dismiss the pending suit. *See, e.g., Matter of DISH Network Deriv. Litig.,* 401 P.3d 1081, 1092 (Nev. 2017), *reh'g denied* (Dec. 8, 2017) (holding that "the district court did not abuse its discretion in determining that the SLC conducted a good-faith, thorough investigation."). Those SLC cases are inapposite here, including for the reasons described in the Remaining Director Defendants' Joinder to RDI's Combined Opposition to Plaintiff's Motion to Compel and Motion for Relief.

In reality, the vote to ratify the RDI Board's decisions regarding Plaintiff's termination and the 100,000 share option was held at the December 29, 2017 meeting of RDI's full Board of Directors. No decision or vote relevant to Defendants' motion for summary judgment was made by the Special Independent Committee of RDI's Board (which Plaintiff refers to as the "SLC" in his Opposition, *see* Opp. at 3, intentionally misnaming the committee for rhetorical effect). **Every single director, including Plaintiff himself, participated in the December 29 meeting.** At this meeting of the full Board, five directors—all of whose independence has been extensively litigated and ruled on by this Court—voted in favor of ratification. Simply put, Plaintiff's characterization of the ratification decision as having been made by a purported "Special Litigation Committee" are inaccurate.

B. Plaintiff Mischaracterizes the Testimony of All Three Members of the Special Independent Committee to Support His Position

So insistent is Plaintiff on pointing the Court away from the full Board's ratification vote that his Opposition misleadingly modifies Defendants' deposition testimony in an effort to amplify the role of the Special Independent Committee and the supposed importance of its December 21, 2017 meeting. Plaintiff contends the Special Independent Committee, not the full

Board, made the ratification decision; this is false. For example, Plaintiff claims that Mr. McEachern testified: "*[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification]*." (Opp. at 5 (emphasis in original).) **Mr. McEachern never said that.** He actually testified that "[i]t was delegated to the **compensation committee** to handle this type of matter. We were approving **this**." Contrary to Plaintiff's creative edits, Mr. McEachern was plainly referring to the Compensation Committee's September 21, 2015 decision—more than two years prior to the ratification vote—to allow the Cotter Estate to use Class A RDI stock to pay for a Class B stock-option exercise, which he thought was a *pro forma* decision that should be respected and therefore ratified by the Board. (Opp. Ex. 7 (2/28/18 McEachern Dep.) at 503:1-509:18) (emphasis added).) Plaintiff altered the testimony to say something different entirely.

Similarly, Plaintiff claims Mr. Gould testified that the Special Independent Committee "formally [took] action" to advance ratification. (Opp. at 7.) This claim grossly distorts the testimony: Mr. Gould did not testify that the Special Independent Committee approved ratification. In reality, the "action" mentioned by Mr. Gould was limited to "request[ing] that the company include the subject on the agenda for its next meeting"—no votes were taken and no recommendations on the final outcome of the issue were made on December 21. (*Id.*, Ex. 10 (4/5/18 Gould Dep.) at 529:10-18.)

Plaintiff also distorts the testimony of Ms. Codding, the third member of the Special Independent Committee. The Opposition states, "Codding testified that the SIC approved 'ratification,' explaining that she did not distinguish between the process or fact of 'ratification' and the merits of the two 'ratification' decisions (that defendants claim were made at the December 29, 2017 Board meeting)." (Opp. at 7.) Once again, that is not what Ms. Codding said; nowhere did Ms. Codding state that the SIC "approved" ratification. (*Id.*, Ex. 4 (2/28/18 Codding Dep.) at 205:24-207:4). Rather, the Ms. Codding simply stated that she was "not sure whether there was a distinction in [her] mind" between "the merits of either ratification decision as distinct from the fact of or reasons for ratification." (*Id.*) That Ms. Codding did not distinguish between the "reasons" for ratification as opposed to the "merits" of ratification is not

notable—in plain English, there is no distinction between the two—and does not remotely suggest that the Special Independent Committee as opposed to the full Board approved ratification. Plaintiff's intentional mischaracterization of the deposition testimony of all three members of the Special Independent Committee is egregious, and only serves to emphasize the utter lack of evidence he can muster to establish a genuine disputed issue of material fact.

C. The Directors Who Voted in Favor of Ratification at the December 29 Meeting Constitute a Majority of the Board and Are Independent as a Matter of Law

There is no dispute that, on December 11, 2017, the Court determined that Plaintiff failed to raise a genuine issue of triable fact as to the disinterestedness and/or independence of Directors Wrotniak, Codding, McEachern, Kane, and Gould, and entered summary judgment in their favor. (*See* Helpern Decl. Ex. A (12/29/17 Notice of Entry of Order).) These are the same five directors, constituting a majority of the Board, who voted in favor of ratification at the December 29, 2017 Board meeting. Plaintiff does not and cannot offer any reason why the Court's prior determination of these directors' independence, which was made after years of discovery, briefing, and hearings, should be disregarded when it comes to ratification.

Plaintiff directs the Court to the *DISH Network* case, ostensibly to invalidate the Court's prior independence determinations. But *DISH Network* and its burden-shifting "formula for evaluating the independence of an SLC" relate only to a Special Litigation Committee's recommendation to dismiss a derivative suit. 401 P.3d at 1090. As already discussed, the ratification decisions at issue here were the result of a vote of RDI's full Board of Directors. Moreover, even under the standard set forth in *DISH Network*, summary judgment would be appropriate. In the context of a Special Litigation Committee's recommendation to dismiss a derivative suit, the *DISH Network* court held that, "as a matter of first impression, courts should defer to the business judgment of an SLC that is empowered to determine whether pursuing a derivative suit is in the best interest of a company where the SLC is independent and conducts a good-faith, thorough investigation." Here, the Court has *already determined* that every Board member who voted in favor of ratification is independent. That decision is now the controlling law of this case, this Court has certified it as "final" pursuant to NRCP 54(b), and the question of

directorial independence is no longer at issue in these proceedings—it is now before the Nevada Supreme Court and cannot be undone simply because Plaintiff is unhappy with it. These same Board members conducted good faith and thorough investigations, as established by deposition testimony and meeting minutes that are entirely unrebutted by Plaintiff (and discussed in more detail below). Accordingly, no evidentiary hearing is necessary or supportable; summary judgment in favor of the remaining defendants is appropriate.

III. THE BOARD PROPERLY EXERCISED SOUND BUSINESS JUDGMENT IN REACHING ITS DECISIONS REGARDING RATIFICATION

A. The Directors Who Voted on Ratification Informed Themselves of Relevant Facts, as Reflected by the Undisputed Evidence

Every director who voted in favor of ratification took steps to inform themselves of relevant facts and issues, including by reviewing the board book that was circulated prior to the December 29 meeting. (*See* Helpern Decl. Ex. B (December 29 Minutes discussing preparation by Board members for that meeting).) This evidence is undisputed.

Recognizing this, Plaintiff's Opposition instead takes jabs at the ratification process though unsupported, speculative argument and by selectively quoting—and, as already discussed, wholly misquoting—the deposition testimony of his fellow directors. These jabs are themselves puzzling. For example, Plaintiff criticizes certain directors for not reading transcripts of depositions in this case prior to voting on ratification (*see, e.g.*, Opp. at 12 (discussing Codding); Opp. at 14 (discussing Wrotniak), but he then incongruently criticizes other directors for supposedly having this ongoing litigation in mind when considering ratification (*see* Opp. at 10 (discussing Gould); Opp. at 11 (discussing McEachern)). It appears that, in Plaintiff's eyes, nothing his fellow directors considered in connection with ratification was ever going to be proper, yet Plaintiff himself has refused to offer his own written or oral testimony about what matters he considered when objecting to ratification, despite being provided ample opportunity at the December 29, 2017 full Board meeting.

And, of course, Plaintiff himself is completely silent on what occurred at the December 29 Board meeting or what he did to inform himself of the issues up for consideration, even though he was in attendance, cast a vote, and was given full opportunity to ask questions and

address the Board. Plaintiff has not supplied a declaration, nor was he willing to be deposed. In fact, in order to avoid a deposition at all costs, Plaintiff (through his counsel) stipulated that he would not offer any written or oral testimony regarding the ratification process or meeting, stating: "**Based on the deposition testimony and documents provided by defendants, we do not intend to offer testimony by Mr. Cotter about what happened regarding the ratifications at the December 29 telephonic board meeting, including the content of discussions, the accuracy of minutes and the reasons he voted against the ratifications.**" (*See* Helpern Decl. Ex. G (correspondence between counsel regarding Plaintiff's deposition) (emphasis added).) Plaintiff's silence confirms he does not and cannot dispute the accuracy of the detailed minutes describing the December 29, 2017 meeting or the diligent, good faith efforts undertaken by his fellow directors to inform themselves of the issues. Given that Plaintiff *could have* testified about the December 29, 2017 meeting but *chose not to*, his unsupported allegations about purported shortcomings in the ratification process have no weight.

Defendants, on the other hand, have testified under oath about the steps they took to inform themselves regarding the relevant facts and properly exercise their business judgment. For example, Ms. Codding and Mr. Wrotniak—who were not members of the Board when the now-ratified decisions were originally made—spent time familiarizing themselves with the issues. Mr. Wrotniak testified that he voted to ratify after "receiving the board book, after reading it and after considering it very carefully." (*See* Exh. 1 attached hereto (3/6/18 Wrotniak Dep. Tr.) at 53:6-14). He "thought a lot" about "[t]he contents of the board package" in advance of the December 29 meeting. (*Id*. at 44:23-45:3). In voting to ratify Plaintiff's termination as CEO, Mr. Wrotniak "relied on the minutes of the meetings leading up to his termination and my firsthand experience with him at the board level," including "[h]is temperament, his unwillingness to make decisions, his what I interpreted as his lack of leadership skills . . . [and] the aggressive way that he deals with people on the board. I also interpreted as his lack of vision . . . He's often rude." (*Id.* at 56:17-58:4). Similarly, Ms. Codding testified that she spent "several hours" reviewing the Board package prior to the ratification vote. (*See* Exh. B attached hereto (2/28/28 Codding Dep. Tr.) at 200:20-201:6). In Ms. Codding's words: "I considered the

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two years that I've spent on the board with interacting with Jim Cotter, Jr. I considered the documents that I've read. I've considered the conversations that I've had with Jim Cotter, Jr., and myself. I've considered conversations that I've had with other directors, and came to my own conclusion about what would be in the best interests of all shareholders of Reading." (*Id*. at 210:23-211:16). None of this testimony is in dispute. Nor is there any dispute about the extensive discussion about relevant matters that took place at the December 29, 2017 Board meeting, as embodied in the meeting minutes. All evidence shows that the Board engaged in an adequate process prior to voting on ratification, and Plaintiff has not provided any basis why their business judgment should be questioned or second-guessed.

B. The Board's Consultation With Greenberg Traurig Does Not Somehow Invalidate the Ratification Vote

In his Opposition, Plaintiff makes much of the fact that directors received advice from Company counsel regarding ratification, suggesting that this alone voids the ratification vote and defeats summary judgment. Plaintiff is incorrect, again relying on and misconstruing various inapposite authorities. As he does throughout the Opposition, Plaintiff cites a series of cases that relate specifically to the process engaged in by a *special committee* of a board of directors *whose independence is in question*. Neither of those circumstances exist here. The ratification vote was undertaken by RDI's full Board of Directors, and the Court has already determined that every director who voted in favor of ratification is independent. Therefore, the cases cited by Plaintiff are irrelevant.

For example, in *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130 (Del. Ch. 2006) (*see* Opp. at 24), the Delaware Court of Chancery assessed the independence of a special committee formed to consider a parent-subsidiary merger and did so under an entire fairness standard, noting the troubling fact that the special committee used the same financial advisor as the parent company and "the financial advisor with the dual role was motivated by an incentive fee structure to close the deal on behalf of the full board, thus further splitting its loyalties." *Id*. at 1147. Here, the business judgment rule applies, not the entire fairness standard, and Plaintiff has not alleged (nor could he) that Company counsel obtained some kind of incentive fee in

connection with the ratification decision. Plaintiff also relies on *In re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1187 (N.D. Cal. 1993) (*see* Opp. at 24), which considered whether to approve the termination of a derivative suit by a special settlement committee of the board of directors, not (as here) a vote by a full board of directors to ratify prior decisions. Moreover, the *Oracle* court applied the *Zapata* standard used by Delaware courts (*id.*); this standard has been explicitly rejected by the Nevada Supreme Court. *DISH Network*, 401 P.3d at 1087-88. Similarly, Plaintiff's reliance on *In re Par Pharm., Inc. Deriv. Litig.*, 750 F. Supp. 641 (S.D.N.Y. 1990) (*see* Opp. at 24), is misplaced. There, the court evaluated the determination of a Special Litigation Committee to dismiss a derivative action. The work of the Special Litigation Committee was found to be lacking, "most starkly reflected in the Committee's position that" the derivative action would conflict with the company's other litigation positions, which did not reflect a proper evaluation of the merits of the pending derivative claim. *Id*. That analysis is irrelevant here.

That members of the Board sought advice from Company counsel and may have considered the potential impact of ratification on this derivative litigation does not show bad faith on their part—*it shows the opposite*. It would be unfathomable for a member of *any* board of directors, acting in good faith, to decline to seek advice from counsel regarding a vote to ratify a decision that has been the subject of extensive litigation. Nevada law expressly permits corporate directors to seek out and rely on advice from counsel in connection with their decision-making. Moreover, every member of RDI's Board is familiar with this derivative lawsuit and Plaintiff's propensity to add new allegations to his complaint any time the Board makes a decision he dislikes. Further, every member of RDI's Board—besides Plaintiff—believes this lawsuit is without merit, views Plaintiff as a vexatious litigant, and considers this litigation to be an unnecessary drain on substantial Company resources. In their view, the Company and its stockholders would benefit from this action being resolved against Plaintiff. Accordingly, it is neither improper nor surprising that, if given the choice, they would want this lawsuit over with. RDI's Board is not somehow required to support a lawsuit attempting to reverse decisions that independent directors believe were appropriately made in the best interests of the Company and

its stockholders; to the contrary, they have a fiduciary duty to minimize the significant ongoing damage being caused by such a suit.

IV. PLAINTIFF HAS NOT MET HIS BURDEN OF SHOWING WHY RULE 56(f) RELIEF IS APPROPRIATE

"[A] motion for a continuance under NRCP 56(f) is appropriate ***only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact***." *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669 (2011) (quoting *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118 (2005)) (emphasis added). Thus, in *J.E. Dunn Northwest, Inc. v. Corus Constr. Venture, LLC*, the Nevada Supreme Court found that the district court did not err in refusing to allow plaintiff to conduct additional discovery because the issues on which the plaintiff sought discovery would not create a genuine issue of material fact with respect to a "threshold inquiry" in the case. 127 Nev. 72, 84 n.7 (2011); *see also PNC Bank, N.A. v. Saticoy Bay, LLC Series 4208 Rolling Stone Dr. Tr.*, 398 P.3d 290 (Nev. 2017) ("Although appellant asked to conduct discovery to determine whether the sale was commercially reasonable, this general request failed to specify what evidence appellant believed additional discovery would yield so as to create a genuine issue of material fact.").

Here, Plaintiff seeks Rule 56(f) relief and yet another trial continuance to review certain documents and re-take the depositions of RDI directors and RDI's in-house counsel. But nowhere does Plaintiff explain what evidence he expects to find that could possibly create a genuine issue of material fact that would justify denying Defendants' Motion for Summary Judgment. The Court already determined that there is no disputed issue of fact regarding the independence of Edward Kane, Doug McEachern, Judy Codding, Michael Wrotniak, or William Gould. Further, there is no dispute about the other relevant facts regarding ratification, which are: (1) Nevada law permits ratification of prior decisions; (2) an independent majority (per the Court's order) of RDI's Board of Directors voted to ratify certain prior Board decisions at issue in this matter; and (3) Plaintiff does not, and cannot, dispute the accuracy of the minutes of the Board of Directors meeting regarding ratification. Plaintiff apparently wants discovery of privileged documents and communications, but there is no reason he should be privy to that—he

is entitled to know of the fact that RDI's directors received advice of counsel, but not the substance of that advice.

Plaintiff's mere speculation that he will discover favorable evidence is not sufficient to grant his request for a continuance and additional discovery. For example, in *Halebian v. Berv*, the Plaintiff in a derivative action requested additional discovery under Federal Rule of Civil Procedure 56(d)—which is analogous to NRCP 56(f))—by "articulating a number of arguments that are constructed from facts already in his possession and that are intended to assail defendants' independence" and asserting that he "expects discovery to uncover other examples of defendants putting the interests of Citigroup before those of the investors." 869 F. Supp. 2d 420, 440-41 (S.D.N.Y. 2012), *aff'd*, 548 F. App'x 641 (2d Cir. 2013). The court determined that in the absence of facts other than the plaintiff's conclusory allegations about the defendants' independence, "plaintiff's confidence that discovery will reveal any evidence favorable to him at all is merely speculation." *Id.* at 441. The plaintiff's "apparent inability to identify the facts that he [sought] with any particularity reveal[ed] that his motion for discovery [was] a *de facto* application for a fishing expedition." *Id.* at 440. The plaintiff did identify with specificity three questions on which he sought discovery (relating to defendants' compensation as trustees). *Id.* at 442. However, the court found that "none of the possible answers to these questions would raise a dispute of material fact bearing on the only possibly relevant legal issue: whether the defendants are independent under the law of Massachusetts," and therefore discovery on those issues would "serve no purpose other than to delay these proceedings[.]" *Id.*

So too here. Because the Court has already found that there is no disputed issue of fact regarding the independence of the directors who participated in the ratification vote, nothing that could possibly turn up in discovery would raise a dispute of material fact bearing on the only possibly relevant legal issue. The fact that Plaintiff would like to relitigate the matter of these directors' independence ad nauseam does not amount to a disputed issue of fact. His conclusory allegations that discovery will reveal a lack of independence is mere speculation, showing that he seeks nothing more than a chance to keep this case alive without ever proceeding to trial.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion for Summary Judgment.

Dated: June 15, 2018

COHENJOHNSONPARKEREDWARDS

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

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CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2018, I caused a true and correct copy of the foregoing **ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** 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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Exhibit A

Exhibit A

DISTRICT COURT
CLARK COUNTY, NEVADA

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

PLAINTIFF,

Case No: A-15-719860-B

DEPT. NO. XI

-against-

Consolidated with

Case No: P-14-082942-E

DEPT. NO. XI

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

DEFENDANTS.

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DATE: March 6, 2018

TIME: 9:17 A.M.

VIDEOTAPED DEPOSITION of the Non-Party Witness, MICHAEL WROTNIAK, taken by the Plaintiff, pursuant to a Notice and to the Federal Rules of Civil Procedure, held at the offices of Lowey, Dannenberg, Bemporad & Selinger, PC, 44 South Broadway, White Plains, New York 10601, before Suzanne Pastor, RPR, a Notary Public of the State of New York.

JOB NO.: 455310

A P P E A R A N C E S:

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ALSO PRESENT:

CONNOR EICHENBERG, Videographer

* * *

you received the board package, Exhibit 525?

A. I don't recall.

Q. How long did that call last?

A. Specifically, I don't recall.

Q. Well, can you give it a range? Was it five to ten minutes, three to five hours, something else?

A. Less than an hour.

Q. Where were you when you took that call?

A. In Florida.

Q. When were you in Florida?

A. I go there frequently.

Q. When were you there in the time frame of this telephone call?

A. I flew on the 26th from New York to Florida.

Q. So the 26th was a Tuesday, obviously the day after Christmas for a lot of people. And the 29th, the day of the telephonic board meeting, was a Friday. So it was sometime in that time frame that you had this call with Mr. Ferrario and Mr. Bonner and Ms. Codding?

A. Yes. Must have been.

Q. Other than reviewing the board package, Exhibit 525, what, if anything, did you do to prepare for the telephonic board meeting of December 29, 2017?

A. I thought a lot.

Q. About what?

A. The contents of the board package.

Q. How much time did you spend reviewing Exhibit 525?

A. I don't recall.

Q. When did you review it?

A. We had a compensation committee meeting prior to the board meeting, the day before. And I had to prepare for that. And much of what was contained in here was in that, and I was ready for that meeting.

Q. So what had happened is the compensation committee approved certain matters on the 28th, and those same matters were submitted to the full board on the 29th, right?

A. Yes.

Q. So setting aside the compensation committee matters, meaning the subjects that you prepared for and discussed at the compensation committee meeting on the 28th and again at the telephonic board meeting on the 29th, how much time did you spend looking at Exhibit 525, meaning with respect to the ratification matters?

A. I don't recall.

Q. Let's go to page production in the lower

earlier.

Q. Otherwise it's all news to you?

A. Yes, correct.

Q. It's a matter of how much time we spend on it. We've just covered it. That's why I asked that.

So directing your attention back to December of 2017, when did you decide to -- well, on December 29 at the telephonic board meeting you voted to ratify the termination of Jim Cotter, Jr. as president and CEO, correct?

A. Yes.

Q. When did you decide to do that?

A. Between receiving the board book, after reading it and after considering it very carefully.

Q. And by the board book you're referring to Exhibit 525?

A. Is that the name of this exhibit?

Q. Yes.

A. How you keep those numbers straight is beyond me, but okay.

Q. Well, actually, Mr. Wrotniak, ordinarily we have a stamped copy for you but we just marked it at a deposition last week, so we don't. But Mr. Searcy and I both know that is what it is. And that's why I call it that.

So when you say boardroom discussion, as you mentioned, nothing more, you're referring to your prior testimony, is that correct?

A. Yes.

Q. Did you ever hear or learn or were you ever told, including by Bill Gould in particular, that either he or then RDI director Tim Storey first learned that the possible termination of Jim Cotter, Jr. was going to be taken up on May 21, 2015, only a couple days or days beforehand?

A. No.

Q. When you voted on December 29 to ratify the decision concerning the termination of Jim Cotter, Jr. as president and CEO of RDI, why did you do so?

A. I was asked to take a vote, and it was my decision.

Q. Why did you vote yes, is the question I'm asking? When you voted on December 29 affirmatively to ratify the decision on the termination of Jim Cotter, Jr. as president and CEO of RDI, why did you do so?

A. I relied on the minutes of the meetings leading up to his termination and my firsthand experience with him at the board level.

Q. When you say your firsthand experience with him at the board level, you mean with him as the

former president and CEO acting as another director?

A. As -- I -- yes, as a director of RDI.

Q. You never had an opportunity or occasion to interact with Jim Cotter, Jr. as president and CEO of RDI, right?

A. Yes.

Q. Yes, correct?

A. Correct.

Q. And when you refer to your firsthand experience with him as a director, what about that experience factored into your affirmative vote to ratify his termination as president and CEO of RDI?

A. His temperament, his unwillingness to take decisions, his what I interpreted as his lack of leadership skill.

Q. When you say what you interpreted as lack of leadership skill, is that referring to his unwillingness to take decisions, or something else or both?

A. I'm there referring to the aggressive way that he deals with people on the board. I also interpreted as his lack of vision.

Q. When you say "aggressive way," what does that mean? Is he forward, direct, rude, or something else?

A. He's often rude.

Q. When you say "rude," what do you characterize as rude?

A. Significantly less than polite.

Q. Ed Kane has been rude at board meetings, correct?

A. I think you could interpret that as being rude.

Q. Particularly directed at Jim Cotter, Jr., right?

A. Yes.

Q. Doug McEachern has been rude with Mr. Cotter, Jr. also, correct?

A. I don't recall.

Q. What about Guy Adams, has he ever been rude in your presence?

MR. SEARCY: Objection; vague.

A. I don't recall.

Q. Margaret Cotter, she's been rude at board meetings, right?

MR. SEARCY: Objection; vague.

A. I'd say no.

Q. Have you ever heard Margaret Cotter be rude to Jim Cotter, Jr.?

A. No. I don't recall.

Exhibit B

Exhibit B

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, VS. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B Volume II

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF JUDY CODDING

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

FILE NO.: 453340-B

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of JUDY CODDING, taken on behalf of Plaintiff, at 1901 Avenue of the Stars, Suite 600, Los Angeles, California, beginning at 2:22 a.m. and ending at 4:38 p.m., on Wednesday, February 28, 2018, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

Q. -- 2017?

A. Right.

Q. So you reviewed that board package in advance of the December 29 board meeting; right?

A. I did.

Q. To your right, next to the bottle of water, there's a small stack of documents, on the top of which is a document that's been marked previously as Exhibit 525. Take a look at that and let me know if you recognize it.

(Pause in proceedings.)

A. Yes.

Q. "This" -- "this" being Exhibit 525 is the board package you read in advance of the December 29, 2017, board meeting?

A. Yes.

Q. When did you read it?

A. The day or two before the September [sic] 29th meeting.

Q. Well, I direct your attention, Ms. Codding, to the first page of Exhibit 525.

Do you see that it appears to be a December 27th, 5:30 p.m. email from Laura Batista to you and others?

A. Yes.

Q. Does that refresh your recollection that you received the board package by email on December 27th, about 5:30 p.m.?

A. Yes.

Q. How much time did you spend reviewing it?

A. Several hours.

Q. Did you -- prior to the December 29, 2017, board meeting, did you have any discussions with anybody about the board package or any of the contents of the board package?

A. Not between September 27th and September 29th.

MR. TAYBACK: You mean December?

A. I mean December. Sorry.

BY MR. KRUM:

Q. Was there anything in Exhibit 525 that you viewed as providing you information that would enable you to make a decision about anything which information you did not know or possess previously?

MR. TAYBACK: Objection. Vague, "make a decision about anything."

You may answer. You can answer. I -- I just -- I can make an objection, but unless I instruct you not to answer, you should still answer the question.

individually?

A. Yes.

Q. And you understand that they represent -- represented you in connection with this derivative lawsuit; right?

A. Yes.

Q. And you understand Mr. Tayback and any of his colleagues or anyone else at Quinn Emanuel to represent you in any context or for any purpose other than this derivative lawsuit?

A. I think that's what they represent us for.

MR. KRUM: So you weren't here this morning, Chris. I asked the minutes for this meeting be produced. And I don't know what Marshall and Mark have done, but that request stands.

Q. What did you do, Ms. Codding, if anything, other than review Exhibit 525 to prepare yourself for the December 29, 2017, board meeting?

A. For that specific meeting?

Q. Right.

A. Nothing.

Q. Now, directing your attention to the ratification decision you've identified earlier concerning the termination of Jim Cotter, Jr., as

president and CEO, you have that in mind?

A. Yes.

Q. You voted to ratify that decision; correct?

A. I did.

Q. And on what basis did you do so, meaning what information did you consider?

A. I considered the two years that I've spent on the board with interacting with Jim Cotter, Jr. I considered the documents that I've read. I've considered the conversations that I've had with Jim Cotter, Jr., and myself. I've considered conversations that I've had with other directors, and came to my own conclusion about what would be in the best interests of all shareholders of Reading.

Q. As of the date you voted?

A. Yes.

Q. Did you come to the conclusion as to what was the appropriate decision as of the time it was made in 2015?

A. The only thing that I had to go on, since I was not a part of those decisions, was certainly reading the minutes. I spoke with the independent board members about it over a period of time as to

why Jim Cotter, Jr., was removed. Understood the thinking and rationale for that decision.

Q. So you've now twice referred to communications with other board members. With which board members did you have such communications?

MR. TAYBACK: Object to the premise of the question about how many times she's referenced it.

You can answer the question, who you spoke to.

A. I spoke to Bill Gould, Doug McEachern, Ed Kane, Guy Adams, Mike Wrotniak, although he wasn't there either, but we spoke about what our understandings have been. I spoke with Jim Cotter, Jr., Margaret Cotter, and Ellen Cotter.

Q. Were any of those conversations in December of 2017?

A. They've gone on for a long period of time, so I -- I can't tell you whether they were or not.

Q. Well, prior to December of 2017, and excluding your prior deposition in this case, on what occasion, if any, in 2017, did you have to consider the subject of termination of Jim Cotter, Jr.?

A. I didn't have to consider it until

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CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., 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** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** Date of Hearing: June 19, 2018

This matter having come before the Court on June 19, 2018, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams Motion for Summary Judgment and Defendant Reading International, Inc.'s Motion to Dismiss Pursuant to NRCP 12(b)(2), or in the alternative, NRCP 12(b)(5) for Lack of Standing, Plaintiff James J. Cotter, Jr. appearing by and through his counsel Mark G. Krum, Esq. of the law firm of Yurko, Salvese & Remz and Akke Levin, Esq. of the Morris Law Group; Defendants Margaret Cotter, Ellen Cotter, and Guy Adams by and through their counsel of record, Kevin M. Johnson, Esq. of the law firm of Cohen|Johnson|Parker|Edwards and Marshall M. Searcy, Esq. and Christopher Tayback, Esq. of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP; Dismissed Defendant William Gould by and through Shoshana Bannett, Esq. of the law firm of Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C.; and Defendant Reading International, Inc. appearing by and through Mark E. Ferrario, Esq. and Kara B. Hendricks, Esq. of the law firm of Greenberg

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Traurig, the Court having read and considered the pleadings filed by the parties; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on all remaining claims before the Court, pursuant to NRCP 56; the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 2, 2016, Plaintiff James J. Cotter, Jr. filed his Second Amended Complaint, which asserted derivative claims for breach of the duty of care (Count I), breach of the duty of loyalty (Count II), breach of the duty of disclosure (Count III), and aiding and abetting breaches of fiduciary duty (Count IV). Plaintiff asserted Counts I-III against Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak (collectively, the "Original Defendants"), each of whom currently serve as directors of Reading International, Inc. ("RDI" or the "Company"). Plaintiff asserted Count IV against only Margaret and Ellen Cotter.

2. Nominal Defendant RDI is a Nevada corporation headquartered in Los Angeles, California, and publicly traded on the NASDAQ Stock Exchange.

3. Plaintiff James Cotter, Jr. ("Plaintiff") is an RDI stockholder and currently serves as a director on RDI's Board of Directors (the "Board"). On June 1, 2013, Plaintiff was appointed President of RDI. On August 7, 2014, Plaintiff was appointed CEO by RDI's Board. On June 12, 2015, the RDI Board voted to terminate Plaintiff as the Company's President and CEO a 5-2 vote. Directors Kane, McEachern, Adams, Ellen Cotter, and Margaret Cotter voted in favor of Plaintiff's termination, directors Gould and Timothy Storey (a non-party to this litigation) voted against terminating Plaintiff at that time, and Plaintiff abstained from the termination vote.

4. Storey left RDI's Board in October 2015. Codding and Wrotniak joined RDI's Board as directors on October 5, 2015 and October 12, 2015, respectively.

5. Ellen Cotter and Margaret Cotter, as two of three trustees of a trust established by their deceased father, James J. Cotter, Sr., and as co-executors of the estate of James J. Cotter Sr., control in excess of 50% of the class B voting stock of RDI.

6. Following various motions for partial summary judgment brought by Kane, McEachern, Codding, Adams, Ellen Cotter, Margaret Cotter, and Wrotniak, as well as a separate motion for summary judgment filed by Gould, the Court determined at a hearing held on December 11, 2017 that there were no genuine issues of fact related to the disinterestedness and/or independence of directors Kane, McEachern, Codding, Wrotniak, and Gould (the "Dismissed Defendants" or the "Independent Directors"), and granted summary judgment in their favor. The Court determined that there were genuine issues of material fact related to the disinterestedness and/or independence of directors Guy Adams, Ellen Cotter, and Margaret Cotter (the "Remaining Defendants"), and denied summary judgment. The Court entered its summary judgment ruling pursuant to a written order dated December 28, 2017.

7. On January 4, 2018, the Court certified as final under NRCP 54(b) the portion of the Court's December 28, 2017 order granting summary judgment to the Dismissed Defendants with respect to all of Plaintiff's claims asserted against them.

8. As a result of the Court's December 11, 2017 ruling and December 28, 2017 order, all of the corporate actions alleged by Plaintiff in his Second Amended Complaint to be actionable breaches of fiduciary duty were approved by a majority of disinterested, independent directors, except for two: (1) Plaintiff's June 12, 2015 termination as President and CEO of RDI; and (2) the September 21, 2015 decision by directors Kane and Adams, as two of three members of RDI's Compensation and Stock Options Committee (the "Compensation Committee"), to approve the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI held by the Estate of James J. Cotter, Sr.

. . .

. . .

9. On December 29, 2017, the RDI Board convened a special telephonic meeting for which the agenda included the proposed ratification of (1) Plaintiff's June 12, 2015 termination as President and CEO of RDI; and (2) the September 21, 2015 decision by directors Kane and Adams, as two of three members of RDI's Compensation Committee, to approve the use of Class A Stock to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI held by the Estate of James J. Cotter, Sr. (collectively, the "Remaining Challenged Decisions"). In advance of this meeting, all members of the Board were provided with documents to review, which included copies of the minutes from the Board meetings held on May 21, 2015, May 29, 2015, and June 12, 2015, which concerned Plaintiff's termination, as well as other materials for consideration in connection with any ratification of the Remaining Challenged Decisions.

10. Lawyers from Greenberg Traurig, counsel for RDI, provided advice relating to ratification of the Remaining Challenged Decisions to members of the RDI Board. Among other things, Greenberg Traurig lawyers participated in (i) a December 21, 2017 meeting of the Special Independent Committee of RDI's Board (the "SIC"), the members of which were directors Gould, McEachern and Codding, and (ii) the December 29, 2017 special meeting. Pursuant to NRS 78.138(2)(b), the Greenberg Traurig lawyers provided legal advice to the RDI Board relating to the scope of NRS 78.140, as well as legal advice regarding the Board's fiduciary duties under Nevada law, including the duties of due care and loyalty.

11. Director Gould, the Company's Lead Independent Director, summarized the first issue for consideration: ratification of the actions taken by the Board relating to the termination of Plaintiff as President and CEO of RDI.

12. In addition to their review of the Board materials provided, Independent Directors Codding and Wrotniak, who were not members of the RDI Board at the time of Plaintiff's termination, stated that they were drawing on their "extensive knowledge about the Board's

reasons for the termination of Mr. Cotter, Jr.," including their observations of Plaintiff's "behavior and demeanor in Board meetings" since each joined the Board over two years ago.

13. Director Codding expressed her view that Plaintiff "did not possess the knowledge, experience, ability, temperament or demeanor to be chief executive officer of the Company," an opinion with which Mr. Wrotniak concurred.

14. Members of the Board also discussed the materials that had been provided to them in advance of the meeting.

15. Director McEachern then made a motion, seconded by Director Codding, as follows:

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

16. After an opportunity for further discussion, the proposed resolution was adopted by a 5-1 vote. Directors Codding, Gould, Kane, McEachern, and Wrotniak voted in favor of the resolution, with Plaintiff casting the sole vote in opposition. The Remaining Defendants—Ellen Cotter, Margaret Cotter and Guy Adams—abstained from the vote.

17. Director Gould then introduced the second issue for consideration: ratification of the 2-0 September 21, 2015 decision by RDI's Compensation Committee (with members Adams and Kane voting in favor) to permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment (as opposed to cash) for the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI.

18. Counsel for RDI summarized the information regarding the matter considered by the Compensation Committee in 2015, including the fact that acceptance of stock was within the discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan under which the stock option was granted.

19. Members of the Board then generally expressed their awareness of the information as well as their review of the Board materials and Compensation Committee minutes, and opened the floor up for discussion.

20. The Board noted, among other things, that the Compensation Committee had discretion under the 1999 Stock Option Plan to allow the use of Class A Shares to exercise options to acquire Class B Stock, that the Company was at the time buying in its Class A Shares under its stock repurchase plan, and that the market price of Class A shares has significantly increased since the date of the transaction.

21. A motion was made by Director McEachern and seconded by Director Wrotniak, as follows:

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

22. The proposed resolution was then adopted by a 5-1 vote. Directors Codding, Gould, Kane, McEachern, and Wrotniak voted in favor of the resolution, with Plaintiff casting the sole vote in opposition. The Remaining Defendants—Ellen Cotter, Margaret Cotter and Guy Adams—abstained from the vote.

23. The Board then moved, without objection, that its resolutions include the "authorization to take such other actions as may be necessary to accomplish the matters approved herein."

24. After denying without prejudice the Remaining Defendants' prior motion for summary judgment based on ratification of the Remaining Challenged Decisions at the December 29, 2017 RDI Board meeting, the Court in January 2018 allowed discovery with respect thereto. On May 2, 2018, following an evidentiary hearing, the Court granted a motion filed by Plaintiff to compel RDI and the Dismissed Defendants to produce and/or list on privilege logs all documents relating to (i) the December 21, 2017 meeting of the SIC, during which potential ratification of the Remaining Challenged Decisions was discussed; (ii) a

December 27, 2017 email sent by Gould on behalf of the Independent Directors requesting that ratification of the Remaining Challenged Decisions be added to the agenda for the December 29, 2017 meeting; and (iii) the subject of ratification, not limited by time.

25. On June 1, 2018, the Remaining Defendants filed a motion seeking summary judgment in their favor (the "Motion for Summary Judgment"). The Remaining Defendants argued, *inter alia,* that the Remaining Challenged Decisions had been properly ratified by a majority of disinterested, independent directors pursuant to NRS 78.140.

26. Plaintiff filed a Motion to Compel and a Motion for Relief, in which he argued that RDI, the Dismissed Directors and the Remaining Defendants had not fully complied with the Court's May 2, 2018 rulings. Plaintiff's motions sought relief in the form of, *inter alia*, the provision of revised privilege logs, *in camera* inspection by the Court of certain documents, the production of additional documents, renewed depositions of certain previously-deposed individuals, delay of the scheduled July 9, 2018 trial on Plaintiff's claims against the Remaining Defendants, and the preclusion of any ratification defense by the Remaining Defendants.

27. On June 19, 2018, the Court held a hearing on Plaintiff's Motion to Compel and Motion for Relief, as well as the Remaining Defendants' Motion for Summary Judgment. The Court first heard argument on Plaintiff's motions, which is granted in part.[1] For purposes of any pretrial motions, as an evidentiary sanction, the Court infers and makes a rebuttable presumption that the documents at issue, if timely produced, would support Plaintiff's position that the ratification was a sham or fraudulent exercise.

28. The Court then heard argument on the Remaining Defendants' Motion for Summary Judgment. For the reasons outlined at the June 19, 2018 hearing and as set forth below, the Court grants the Remaining Defendants' Motion for Summary Judgment.

29. After consideration of the evidence presented by the parties in response the Remaining Defendants' Motion for Summary Judgment, the Court concludes that such evidence

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[1] The order related to those motions was filed on July 12, 2018.

is sufficient to overcome the inferences and rebuttable presumption that the ratification process was a sham or fraudulent exercise.

30. The Court finds all of the requirements for the application of NRS 78.140, and the business judgment rule, are met with respect to the RDI Board's actions ratifying Plaintiff's termination and the approval of using Class A stock for the contested option exercise (the Remaining Challenged Decisions).

31. The RDI Board ratified each of the remaining challenged transactions, with the five affirmative votes being those directors whose disinterestedness and independence the Court had previously determined in its December 11, 2017 ruling and December 28, 2017 order.

32. The December 29, 2017 ratification vote was "in good faith," as required by NRS 78.140(2)(a). The directors who were not present at the time these matters were initially decided—directors Wrotniak and Codding—reasonably informed themselves of the relative merits of the decisions, including by reviewing contemporaneous materials and drawing on their personal knowledge gleaned in their two years of Board service; corporate counsel was present and advised the entire Board of its fiduciary duties under Nevada law, as well as the history of each decision; no ratifying director had a personal stake in the derivative litigation brought by Plaintiff or in the particular transaction ratified; and discussion and debate occurred prior to the final votes, with all directors—including Plaintiff—afforded the chance to ask questions or make comments.

33. With respect to the Remaining Challenged Decisions and the RDI Board's subsequent ratification of them, all of the preconditions necessary for a "valid interested director transaction" under NRS 78.140(2)(a) are present.

34. The independent majority of RDI's Board who voted in favor of ratification of the Remaining Challenged Decisions on December 29, 2017 had a rational business purpose for doing so and exercised their good faith business judgment.

35. The Court also takes into consideration that RDI's Independent Directors engaged the Company's counsel, Greenberg Traurig, which provided legal advice regarding ratification. While it would have been better practice for the Independent Directors to have engaged

independent advisers to provide information to the Board and/or any special committees under NRS 78.138, it is uncontested that Greenberg Traurig is qualified and experienced.

36. Any finding of fact stated above that is more appropriately deemed a conclusion of law shall be deemed so.

CONCLUSIONS OF LAW

37. The business judgment rule is a "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006).

38. "The business judgment rule does not only protect individual directors from personal liability, rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision." *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cnty. of Clark*, 399 P.3d 334, 342 (Nev. 2017).

39. Nevada Revised Statute 78.140 provides that a "contract or other transaction is not void or voidable solely because" it is between a Nevada "corporation and [o]ne or more of its director or officers[,]" or because an interested or non-independent director "is present during a meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction," or the votes of an interested director are counted for the purpose of authorizing or approving the contract or transaction, if "[t]he fact of the common directorship, office or financial interest is known to the board of directors or committee, and the directors or members of the committee, other than any common or interested directors or members of the committee, approve or ratify the contract or transaction in good faith." NRS 78.140(2)(a).

40. Citing NRS 78.140, the Nevada Supreme Court has made clear that the business judgment rule applies "in the context of valid interested director action, or the valid exercise of business judgment by disinterested directors in light of their fiduciary duties." *Shoen.* 122 Nev. at 636, 137 P.3d at 1181.

41. Nevada Revised Statute 78.138(b)(2) provides that, "[i]n exercising their respective powers, directors and officers may, and are entitled to, rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by . . . [c]ounsel . . . as to matters reasonably believed to be within the preparer's or presenter's professional or expert competence." Here, the Court finds that RDI's Board, including the Independent Directors, were entitled to rely upon Greenberg Traurig's advice in making their decisions to ratify the Challenged Remaining Decisions.

42. The substance of the advice provided by Greenberg Traurig to RDI's Board and its Independent Directors is protected by the attorney-client privilege and may not be considered by the Court. *See Wynn*, 399 P.3d at 341-42.

43. As the Remaining Challenged Decisions were ratified by a majority of independent, disinterested directors, the Court grants the Remaining Defendants' Motion for Summary Judgment.

44. Any conclusion of law stated above that is more appropriately deemed a finding of fact shall be so deemed.

ORDER

Based upon the forgoing, the Court grants the Remaining Defendants' Motion for Summary Judgment. Judgment is entered in favor of Defendants Ellen Cotter, Margaret Cotter, and Guy Adams on all claims asserted by Plaintiff.

Due to the fact that the Court's ruling moots RDI's Motion to Dismiss Pursuant to NRCP 12(b)(2), or in the Alternative, NRCP 12(b)(5) for Lack of Standing, the Court further denies without prejudice RDI's Motion to Dismiss.

As here are pending issues remaining in the probate matter, the cases are ordered deconsolidated.

Dated this 8 day of August 2018.

Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List:

James L Edwards, Esq. (Cohen Johnson, et al)

Mark E Ferrario, Esq. (Greenberg Traurig)

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Dan Kutinac

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

BUSINESS COURT

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Case Number: A-15-719860-B

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOTICE IS HEREBY GIVEN that the Findings of Fact and Conclusions of Law were entered in the above-captioned case on the 8th day of August, 2018, a copy of which is attached hereto.

Dated: August 16, 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*

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CERTIFICATE OF SERVICE

I hereby certify that, on August 16, 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., 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** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** Date of Hearing: June 19, 2018

This matter having come before the Court on June 19, 2018, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams Motion for Summary Judgment and Defendant Reading International, Inc.'s Motion to Dismiss Pursuant to NRCP 12(b)(2), or in the alternative, NRCP 12(b)(5) for Lack of Standing, Plaintiff James J. Cotter, Jr. appearing by and through his counsel Mark G. Krum, Esq. of the law firm of Yurko, Salvese & Remz and Akke Levin, Esq. of the Morris Law Group; Defendants Margaret Cotter, Ellen Cotter, and Guy Adams by and through their counsel of record, Kevin M. Johnson, Esq. of the law firm of Cohen|Johnson|Parker|Edwards and Marshall M. Searcy, Esq. and Christopher Tayback, Esq. of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP; Dismissed Defendant William Gould by and through Shoshana Bannett, Esq. of the law firm of Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C.; and Defendant Reading International, Inc. appearing by and through Mark E. Ferrario, Esq. and Kara B. Hendricks, Esq. of the law firm of Greenberg

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Traurig, the Court having read and considered the pleadings filed by the parties; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on all remaining claims before the Court, pursuant to NRCP 56; the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 2, 2016, Plaintiff James J. Cotter, Jr. filed his Second Amended Complaint, which asserted derivative claims for breach of the duty of care (Count I), breach of the duty of loyalty (Count II), breach of the duty of disclosure (Count III), and aiding and abetting breaches of fiduciary duty (Count IV). Plaintiff asserted Counts I-III against Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak (collectively, the "Original Defendants"), each of whom currently serve as directors of Reading International, Inc. ("RDI" or the "Company"). Plaintiff asserted Count IV against only Margaret and Ellen Cotter.

2. Nominal Defendant RDI is a Nevada corporation headquartered in Los Angeles, California, and publicly traded on the NASDAQ Stock Exchange.

3. Plaintiff James Cotter, Jr. ("Plaintiff") is an RDI stockholder and currently serves as a director on RDI's Board of Directors (the "Board"). On June 1, 2013, Plaintiff was appointed President of RDI. On August 7, 2014, Plaintiff was appointed CEO by RDI's Board. On June 12, 2015, the RDI Board voted to terminate Plaintiff as the Company's President and CEO a 5-2 vote. Directors Kane, McEachern, Adams, Ellen Cotter, and Margaret Cotter voted in favor of Plaintiff's termination, directors Gould and Timothy Storey (a non-party to this litigation) voted against terminating Plaintiff at that time, and Plaintiff abstained from the termination vote.

4. Storey left RDI's Board in October 2015. Codding and Wrotniak joined RDI's Board as directors on October 5, 2015 and October 12, 2015, respectively.

5. Ellen Cotter and Margaret Cotter, as two of three trustees of a trust established by their deceased father, James J. Cotter, Sr., and as co-executors of the estate of James J. Cotter Sr., control in excess of 50% of the class B voting stock of RDI.

6. Following various motions for partial summary judgment brought by Kane, McEachern, Codding, Adams, Ellen Cotter, Margaret Cotter, and Wrotniak, as well as a separate motion for summary judgment filed by Gould, the Court determined at a hearing held on December 11, 2017 that there were no genuine issues of fact related to the disinterestedness and/or independence of directors Kane, McEachern, Codding, Wrotniak, and Gould (the "Dismissed Defendants" or the "Independent Directors"), and granted summary judgment in their favor. The Court determined that there were genuine issues of material fact related to the disinterestedness and/or independence of directors Guy Adams, Ellen Cotter, and Margaret Cotter (the "Remaining Defendants"), and denied summary judgment. The Court entered its summary judgment ruling pursuant to a written order dated December 28, 2017.

7. On January 4, 2018, the Court certified as final under NRCP 54(b) the portion of the Court's December 28, 2017 order granting summary judgment to the Dismissed Defendants with respect to all of Plaintiff's claims asserted against them.

8. As a result of the Court's December 11, 2017 ruling and December 28, 2017 order, all of the corporate actions alleged by Plaintiff in his Second Amended Complaint to be actionable breaches of fiduciary duty were approved by a majority of disinterested, independent directors, except for two: (1) Plaintiff's June 12, 2015 termination as President and CEO of RDI; and (2) the September 21, 2015 decision by directors Kane and Adams, as two of three members of RDI's Compensation and Stock Options Committee (the "Compensation Committee"), to approve the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI held by the Estate of James J. Cotter, Sr.

. . .

. . .

9. On December 29, 2017, the RDI Board convened a special telephonic meeting for which the agenda included the proposed ratification of (1) Plaintiff's June 12, 2015 termination as President and CEO of RDI; and (2) the September 21, 2015 decision by directors Kane and Adams, as two of three members of RDI's Compensation Committee, to approve the use of Class A Stock to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI held by the Estate of James J. Cotter, Sr. (collectively, the "Remaining Challenged Decisions"). In advance of this meeting, all members of the Board were provided with documents to review, which included copies of the minutes from the Board meetings held on May 21, 2015, May 29, 2015, and June 12, 2015, which concerned Plaintiff's termination, as well as other materials for consideration in connection with any ratification of the Remaining Challenged Decisions.

10. Lawyers from Greenberg Traurig, counsel for RDI, provided advice relating to ratification of the Remaining Challenged Decisions to members of the RDI Board. Among other things, Greenberg Traurig lawyers participated in (i) a December 21, 2017 meeting of the Special Independent Committee of RDI's Board (the "SIC"), the members of which were directors Gould, McEachern and Codding, and (ii) the December 29, 2017 special meeting. Pursuant to NRS 78.138(2)(b), the Greenberg Traurig lawyers provided legal advice to the RDI Board relating to the scope of NRS 78.140, as well as legal advice regarding the Board's fiduciary duties under Nevada law, including the duties of due care and loyalty.

11. Director Gould, the Company's Lead Independent Director, summarized the first issue for consideration: ratification of the actions taken by the Board relating to the termination of Plaintiff as President and CEO of RDI.

12. In addition to their review of the Board materials provided, Independent Directors Codding and Wrotniak, who were not members of the RDI Board at the time of Plaintiff's termination, stated that they were drawing on their "extensive knowledge about the Board's

reasons for the termination of Mr. Cotter, Jr.," including their observations of Plaintiff's "behavior and demeanor in Board meetings" since each joined the Board over two years ago.

13. Director Codding expressed her view that Plaintiff "did not possess the knowledge, experience, ability, temperament or demeanor to be chief executive officer of the Company," an opinion with which Mr. Wrotniak concurred.

14. Members of the Board also discussed the materials that had been provided to them in advance of the meeting.

15. Director McEachern then made a motion, seconded by Director Codding, as follows:

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

16. After an opportunity for further discussion, the proposed resolution was adopted by a 5-1 vote. Directors Codding, Gould, Kane, McEachern, and Wrotniak voted in favor of the resolution, with Plaintiff casting the sole vote in opposition. The Remaining Defendants—Ellen Cotter, Margaret Cotter and Guy Adams—abstained from the vote.

17. Director Gould then introduced the second issue for consideration: ratification of the 2-0 September 21, 2015 decision by RDI's Compensation Committee (with members Adams and Kane voting in favor) to permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment (as opposed to cash) for the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI.

18. Counsel for RDI summarized the information regarding the matter considered by the Compensation Committee in 2015, including the fact that acceptance of stock was within the discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan under which the stock option was granted.

19. Members of the Board then generally expressed their awareness of the information as well as their review of the Board materials and Compensation Committee minutes, and opened the floor up for discussion.

20. The Board noted, among other things, that the Compensation Committee had discretion under the 1999 Stock Option Plan to allow the use of Class A Shares to exercise options to acquire Class B Stock, that the Company was at the time buying in its Class A Shares under its stock repurchase plan, and that the market price of Class A shares has significantly increased since the date of the transaction.

21. A motion was made by Director McEachern and seconded by Director Wrotniak, as follows:

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

22. The proposed resolution was then adopted by a 5-1 vote. Directors Codding, Gould, Kane, McEachern, and Wrotniak voted in favor of the resolution, with Plaintiff casting the sole vote in opposition. The Remaining Defendants—Ellen Cotter, Margaret Cotter and Guy Adams—abstained from the vote.

23. The Board then moved, without objection, that its resolutions include the "authorization to take such other actions as may be necessary to accomplish the matters approved herein."

24. After denying without prejudice the Remaining Defendants' prior motion for summary judgment based on ratification of the Remaining Challenged Decisions at the December 29, 2017 RDI Board meeting, the Court in January 2018 allowed discovery with respect thereto. On May 2, 2018, following an evidentiary hearing, the Court granted a motion filed by Plaintiff to compel RDI and the Dismissed Defendants to produce and/or list on privilege logs all documents relating to (i) the December 21, 2017 meeting of the SIC, during which potential ratification of the Remaining Challenged Decisions was discussed; (ii) a

December 27, 2017 email sent by Gould on behalf of the Independent Directors requesting that ratification of the Remaining Challenged Decisions be added to the agenda for the December 29, 2017 meeting; and (iii) the subject of ratification, not limited by time.

25. On June 1, 2018, the Remaining Defendants filed a motion seeking summary judgment in their favor (the "Motion for Summary Judgment"). The Remaining Defendants argued, *inter alia,* that the Remaining Challenged Decisions had been properly ratified by a majority of disinterested, independent directors pursuant to NRS 78.140.

26. Plaintiff filed a Motion to Compel and a Motion for Relief, in which he argued that RDI, the Dismissed Directors and the Remaining Defendants had not fully complied with the Court's May 2, 2018 rulings. Plaintiff's motions sought relief in the form of, *inter alia*, the provision of revised privilege logs, *in camera* inspection by the Court of certain documents, the production of additional documents, renewed depositions of certain previously-deposed individuals, delay of the scheduled July 9, 2018 trial on Plaintiff's claims against the Remaining Defendants, and the preclusion of any ratification defense by the Remaining Defendants.

27. On June 19, 2018, the Court held a hearing on Plaintiff's Motion to Compel and Motion for Relief, as well as the Remaining Defendants' Motion for Summary Judgment. The Court first heard argument on Plaintiff's motions, which is granted in part.[1] For purposes of any pretrial motions, as an evidentiary sanction, the Court infers and makes a rebuttable presumption that the documents at issue, if timely produced, would support Plaintiff's position that the ratification was a sham or fraudulent exercise.

28. The Court then heard argument on the Remaining Defendants' Motion for Summary Judgment. For the reasons outlined at the June 19, 2018 hearing and as set forth below, the Court grants the Remaining Defendants' Motion for Summary Judgment.

29. After consideration of the evidence presented by the parties in response the Remaining Defendants' Motion for Summary Judgment, the Court concludes that such evidence

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[1] The order related to those motions was filed on July 12, 2018.

is sufficient to overcome the inferences and rebuttable presumption that the ratification process was a sham or fraudulent exercise.

30. The Court finds all of the requirements for the application of NRS 78.140, and the business judgment rule, are met with respect to the RDI Board's actions ratifying Plaintiff's termination and the approval of using Class A stock for the contested option exercise (the Remaining Challenged Decisions).

31. The RDI Board ratified each of the remaining challenged transactions, with the five affirmative votes being those directors whose disinterestedness and independence the Court had previously determined in its December 11, 2017 ruling and December 28, 2017 order.

32. The December 29, 2017 ratification vote was "in good faith," as required by NRS 78.140(2)(a). The directors who were not present at the time these matters were initially decided—directors Wrotniak and Codding—reasonably informed themselves of the relative merits of the decisions, including by reviewing contemporaneous materials and drawing on their personal knowledge gleaned in their two years of Board service; corporate counsel was present and advised the entire Board of its fiduciary duties under Nevada law, as well as the history of each decision; no ratifying director had a personal stake in the derivative litigation brought by Plaintiff or in the particular transaction ratified; and discussion and debate occurred prior to the final votes, with all directors—including Plaintiff—afforded the chance to ask questions or make comments.

33. With respect to the Remaining Challenged Decisions and the RDI Board's subsequent ratification of them, all of the preconditions necessary for a "valid interested director transaction" under NRS 78.140(2)(a) are present.

34. The independent majority of RDI's Board who voted in favor of ratification of the Remaining Challenged Decisions on December 29, 2017 had a rational business purpose for doing so and exercised their good faith business judgment.

35. The Court also takes into consideration that RDI's Independent Directors engaged the Company's counsel, Greenberg Traurig, which provided legal advice regarding ratification. While it would have been better practice for the Independent Directors to have engaged

independent advisers to provide information to the Board and/or any special committees under NRS 78.138, it is uncontested that Greenberg Traurig is qualified and experienced.

36. Any finding of fact stated above that is more appropriately deemed a conclusion of law shall be deemed so.

CONCLUSIONS OF LAW

37. The business judgment rule is a "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006).

38. "The business judgment rule does not only protect individual directors from personal liability, rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision." *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cnty. of Clark*, 399 P.3d 334, 342 (Nev. 2017).

39. Nevada Revised Statute 78.140 provides that a "contract or other transaction is not void or voidable solely because" it is between a Nevada "corporation and [o]ne or more of its director or officers[,]" or because an interested or non-independent director "is present during a meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction," or the votes of an interested director are counted for the purpose of authorizing or approving the contract or transaction, if "[t]he fact of the common directorship, office or financial interest is known to the board of directors or committee, and the directors or members of the committee, other than any common or interested directors or members of the committee, approve or ratify the contract or transaction in good faith." NRS 78.140(2)(a).

40. Citing NRS 78.140, the Nevada Supreme Court has made clear that the business judgment rule applies "in the context of valid interested director action, or the valid exercise of business judgment by disinterested directors in light of their fiduciary duties." *Shoen*, 122 Nev. at 636, 137 P.3d at 1181.

41. Nevada Revised Statute 78.138(b)(2) provides that, "[i]n exercising their respective powers, directors and officers may, and are entitled to, rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by . . . [c]ounsel . . . as to matters reasonably believed to be within the preparer's or presenter's professional or expert competence." Here, the Court finds that RDI's Board, including the Independent Directors, were entitled to rely upon Greenberg Traurig's advice in making their decisions to ratify the Challenged Remaining Decisions.

42. The substance of the advice provided by Greenberg Traurig to RDI's Board and its Independent Directors is protected by the attorney-client privilege and may not be considered by the Court. *See Wynn*, 399 P.3d at 341-42.

43. As the Remaining Challenged Decisions were ratified by a majority of independent, disinterested directors, the Court grants the Remaining Defendants' Motion for Summary Judgment.

44. Any conclusion of law stated above that is more appropriately deemed a finding of fact shall be so deemed.

ORDER

Based upon the forgoing, the Court grants the Remaining Defendants' Motion for Summary Judgment. Judgment is entered in favor of Defendants Ellen Cotter, Margaret Cotter, and Guy Adams on all claims asserted by Plaintiff.

Due to the fact that the Court's ruling moots RDI's Motion to Dismiss Pursuant to NRCP 12(b)(2), or in the Alternative, NRCP 12(b)(5) for Lack of Standing, the Court further denies without prejudice RDI's Motion to Dismiss.

As here are pending issues remaining in the probate matter, the cases are ordered deconsolidated.

Dated this 8 day of August 2018.

Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List:

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EXHIBIT 7

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(See signature page for additional counsel.)

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 **JOINT PRETRIAL MEMORANDUM** **DATE: 12/11/2017** **TIME: 10:30 a.m.**

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Case Number: A-15-719860-B

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The parties, through their respective counsel of record, hereby submit the following joint pre-trial memorandum in accordance with this Court's 1st Amended Order Setting Civil Jury Trial, Pre-trial Conference and Calendar Call dated September 29, 2017and Local Rule 2.67 after counsel for all parties[1] conferred regarding the same on November 15, 2017 and November 20, 2017.

I. MATTER REFERENCED IN OCTOBER 4, 2017 ORDER, PARAGRAPH D

A. Motions in Limine (December 11, 2017)

1. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1 Regarding Advice of Counsel

2. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.

3. Plaintiff James Cotter Jr.'s Motion In Limine No. 3 Regarding After Acquired Evidence

4. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative

5. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority

6. Defendant William Gould's Motion In Limine Exclude Irrelevant Speculative Evidence

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[1] Counsel participating in the pretrial conference included: Mark Krum and Steve Morris on behalf of Plaintiff; Marshall Searcy and Noah Helpern on behalf of Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Shoshana Bannett on behalf of William Gould; and Kara Hendricks on behalf of Reading International, Inc.

RDI-A09725

B. Motions for Summary Judgment (December 11, 2017)

1. Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6

2. See also Section II. J.

II. OTHER PRETRIAL MATTER

A. Statement of Facts

Plaintiff's Statement:

In view of the significant prior proceedings in this case, including motions to dismiss and summary judgment motions, as well as the detail in the pending Second Amended Complaint (the particular allegations of which have been or will be admitted or denied in the individual defendants' respective answers), and the Court's resulting familiarity with this case, the parties respectfully provide the following abbreviated, summary statement of facts of the case:

Plaintiff James J. Cotter, Jr. ("Mr. Cotter" or "Plaintiff") was and is a substantial shareholder and a director of nominal defendant Reading International, Inc. ("RDI" or the "Company"), as well as a former President and Chief Executive Officer ("CEO"). Defendants Ellen Cotter and Margaret Cotter were and are members of the RDI board of directors (the "Board") and at all times relevant hereto have purported to be and/or been the controlling shareholder(s) of RDI. Each of the remaining individual defendants was at relevant times and is a member of the RDI Board, as well of certain Board committees.

The facts of this case include and concern acts and omissions of individual director defendants which the Plaintiff claims give rise to entail breaches of fiduciary duties individually and/or together with other acts

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and omissions, including with respect to the following matters: the threat to terminate Mr. Cotter as President and CEO of RDI, the termination of Mr. Cotter as President and CEO of RDI, the demand that he resign from the Board, RDI Board governance matters, RDI SEC filings and press releases, the search for a permanent CEO that resulted in Ellen Cotter becoming permanent CEO, the hiring and compensation of Margaret Cotter as EVP RED NY, the payment of certain monies to certain of the individual defendants and the actions and or lack of actions by each of the individual defendants in response to offers or expressions of interest by Patton Vision and others to purchase all of the outstanding stock of RDI.

Director Defendants' Statement:

On June 12, 2015, the Board of Directors of Reading International, Inc. ("RDI") voted to terminate Plaintiff James J. Cotter, Jr. as President and CEO of RDI. Plaintiff claims that this decision was a breach of fiduciary duty. Plaintiff also claims various other breaches of fiduciary duty, including with respect to the search for a new President and CEO of RDI, the hiring of Margaret Cotter as an Executive Vice President for Real Estate -- NYC, the exercise of an option held by the Estate of James J. Cotter, Sr. to purchase 100,000 shares of RDI Class B voting stock, and the response to a third party's indication of interest in purchasing all outstanding shares of RDI. The Director Defendants contend that they acted in the best interests of RDI stockholders at all times and fulfilled their fiduciary duties to the Company.

One of the Director Defendants, William Gould is separately represented. On the central claim that initiated this case—Plaintiff's termination—Mr. Gould voted *against* terminating Plaintiff. Although Mr. Gould is separately represented, there is substantial overlap in his witness list and his responses to other portions of this pre-trial

RDI-A09727

memorandum with that of the other director defendants and individual defendants have therefore chosen to present a combined defense position in the pre-trial memorandum.

RDI's Statement:

RDI joins in the Director Defendants' Statement above.

B. List of Claims

Plaintiffs' list of claims for relief is as follows:

A. Breaches of the Duty of Care (SAC 1–179) (First Cause)

1. Process in connection with termination, including aborting ombudsman and lack of process/process failures (SAC 3, 35, 36, 43, 50 – 57, 61 – 94) (EC, MC, GA, EK, DM, WG) (equitable relief)[2]

2. Breach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC (SAC - all), including paragraph A. 1. above and the following:

- Use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams/WG, JC, MW)
- Process/process failures from aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: All)
- Erroneous and/or materially misleading statements in board materials such as agendas and minutes, and in public disclosures including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

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[2] Arabic numbered bold typeface paragraphs indicate matters which Plaintiff contends give rise to and/or constitute breaches of fiduciary duty independently, as well as together with other matter.

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- Process/process failures in connection with nomination and retention of directors, including adding Codding and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the $200,000 pre-employment bonus (committees - members) (Board - all)
- $50,000 to Adams (SAC 153, 166) (Committees – members) (Board – all but GA)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)

3. **Damages/injury (SAC 163 – 168)**

a. injury to RDI's reputation and goodwill (164)

b. impairment of shareholder rights due to SEC filings (165)

B. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)

1. **Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EK, DM, EC, MC)**
2. **Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EK, DM, EC, MC) (equitable relief also sought)**
3. **Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)**
4. **Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: all)**
5. **Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (Committee members) (Board: all)**
6. **Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)**
7. **Breach of the duty of loyalty (all) and misuse of their**

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position as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- $50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

8. Damages/injury (SAC 163 – 168)

a. diminution in value of RDI (163)

b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

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C. Breaches of the Duty of Candor (SAC 1 – 172, 187 – 192) (Third Cause)

1. SEC filings and press releases (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (EC - all) (WG - Form 8-Ks and press releases about termination and CEO) (each as to disclosures regarding themselves (e.g., proxies))
2. Damages/injury (SAC 163 – 168)
   a. diminution in value of RDI (163)
   b. impairment of shareholder rights due to SEC filings (165)
   c. injury to reputation and goodwill (168)

D. Aiding and Abetting Breaches of Fiduciary Duty (SAC 193 – 200) (Fourth Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)
2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
4. Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
5. Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (EC, MC)
6. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
7. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (EC, MC)
8. Patton Vision offer(s) (SAC 16, 154-162) (EC, MC)

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9. Damages/injury (SAC 163 – 168)
    a. diminution in value of RDI (163)
    b. injury to reputation and goodwill (164)
    c. impairment of shareholder rights due to SEC filings (165)
    d. other monetary damages (166)
    i. $200,000 and job to MC
        ii. $50,000 to Adams
        iii. duplicate cost of paying consultants to perform MC's position's responsibilities
        iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. List of Affirmative Defenses

Plaintiff has not abandoned any purported claims identified in the Second Amended Complaint. Director Defendants therefore cannot abandon any affirmative defenses asserted in its Answer to the Second Amended Complaint. Depending on which particular claims for relief Plaintiff actually pursues at trial, Director Defendants may raise the following affirmative defenses:

- Failure to State a Cause of Action;
- Statute of Limitations and Repose;
- Laches;
- Unclean Hands;
- Spoliation;
- Illegal Conduct and Fraud;
- Waiver, Estoppel, and Acquiescence;
- Ratification and Consent;

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- No Unlawful Activity;
- No Reliance;
- Failure to Plead Fraud with Particularity;
- Uncertain and Ambiguous Claims;
- Privilege and Justification;
- Good Faith and Lack of Fault;
- No Entitlement to Injunctive Relief;
- Damages too Speculative;
- No Entitlement to Punitive Damages;
- Failure to Mitigate;
- Comparative Fault;
- Business Judgment Rule;
- Equitable Estoppel;
- Election of Remedies;
- N.R.S. 78.138;
- Failure to Make Appropriate Demand;
- Conflict of Interest and Unsuitability to Serve as a Derivative Representative.

RDI

- Failure To State A Claim
- Failure To Make Demand
- Corporate Governance
- Irreparable Harm To Company
- Unclean Hands
- Spoliation
- Waiver, Estoppel, And Acquiescence
- Ratification And Consent
- No Unlawful Activity

- Privilege And Justification
- Good Faith And Lack Of Fault
- No Entitlement To Injunctive Relief
- Damages Too Speculative
- Mitigation Of Damages
- Comparative Fault
- Equitable Estoppel
- Nevada Revised Statute 78.138
- Conflict Of Interest And Unsuitability To Serve As Representative

D. Claims or Defenses to be Abandoned

None. However, Plaintiff will not seek equitable relief with respect to historical or past actions relating to the executive committee, to corporate governance of RDI such as misleading or inaccurate meeting agendas and/or minutes, to the addition or removal of persons to and/or from the RDI board of directors and to SEC filings and press releases. Plaintiff will seek equitable relief with respect to the vote to terminate James J. Cotter Jr. as President and CEO and reserves the right to do so with respect to authorization of the exercise of the so-called 100,000 share option.

E. List of Exhibits

The Court has given the parties to and including December 13, 2017 to provide exhibit list(s).

F. Agreements to Limit or Exclude Evidence

None presently.

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G. Witness List

1. Nonexpert Witnesses

For Plaintiff:

1. James Cotter, Jr. (*plaintiff expects to present this witness*)
   c/o Mark Krum
   Yurko, Salvesen & Remz. P.C.
   One Washington Mall, 11th Floor
   Boston, MA 02108
   617.723.6900

2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)
   c/o Mark E. Ferrario, Esq.
   Leslie S. Godfrey, Esq.
   Greenberg Traurig LLP
   3773 Howard Hughes Parkway, Suite 400 North
   Las Vegas, Nevada 89169
   702-792-3773

3. Margaret Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   COHEN | JOHNSON | PARKER | EDWARDS
   375 E. Warm Springs Road, Ste. 104
   Las Vegas, NV 89119
   702-823-3500

4. Ellen Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   COHEN | JOHNSON | PARKER | EDWARDS
   375 E. Warm Springs Road, Ste. 104
   Las Vegas, Nevada 89119
   702-823-3500

5. Douglas McEachern (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
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6. Guy Adams (*plaintiff expects to present this witness*)
c/o Stan Johnson
Cohen-Johnson, LLC
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Las Vegas, Nevada 89119
702-823-3500

7. Edward Kane (*plaintiff expects to present this witness*)
c/o Stan Johnson
Cohen-Johnson, LLC
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
702-823-3500

8. William Gould (*plaintiff expects to present this witness*)
Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
MAUPIN, COX & LeGOY
4785 Caughlin Parkway
Reno, Nevada 89519
775-827-2000

9. Timothy Storey (*plaintiff expects to present this witness*)
Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
MAUPIN, COX & LeGOY
4785 Caughlin Parkway
Reno, Nevada 89519
775-827-2000

10. John Hunter (*plaintiff may call this witness if the need arises*)
Milken Institute, Chief Financial Officer
1250 4th Street
Santa Monica, CA 90401

11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)
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Los Angeles, California 90024
310-293-7384

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12. Eric Barr (*plaintiff may call this witness if the need arises*)
9 Park Street, Brighton, VIC 3186
Southern Melbourne, Australia
011-61-488-096-616
ebarr@optushome.com.au

13. Al Villasenor (*plaintiff may call this witness if the need arises*)
116 – 19th Street
Manhattan Beach, California 90266
Home- 310-546-5193
Mobile- 310-897-0407

14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*)
20100 Wells Drive
Woodland Hills, California 91364
(805) 447-6265

15. Harry P. Susman (*plaintiff may call this witness if the need arises*)
Susman Godfrey, LLP
1000 Louisiana, Suite 5100
Houston, Texas 77002
713-653-7875 (w)
hsusman@susmangodfrey.com

16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)
The Karahan Companies
7200 Bishop Road, Suite 250
Plano, Texas 75024
214-473-9700 (w)
fehmi@karahaninc.com

17. Judy Codding (*plaintiff expects to present this witness*)
2266 Canyon Back Road
Los Angeles, California 90049

18. Michael J. Wrotniak (plaintiff expects to present this witness)
Aminco Resources USA
World Headquarters
81 Main Street Suite 110

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White Plains, NY 10601
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19. Gil Borok (*plaintiff may call this witness if the need arises*)
3835 Hayvenhurst Avenue
Encino, California 91436
Mobile- 818-0528-3689
Email- gborok@me.com

20. Robert Wagner (*plaintiff may call this witness if the need arises*)
Korn Ferry
1900 Avenue of the Stars Suite 2600
Los Angeles, CA 90067
310-226-2672 (w)
Robert.wagner@kornferry.com

21. John M. Genovese (*plaintiff may call this witness if the need arises*)
7584 Coastal View Drive
Los Angeles, CA 90045
Mobile: 310-245-1760
Email- jmgenovese@yahoo.com

22. William D. Ellis (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

23. Craig Tompkins (*plaintiff may call this witness if the need arises*)
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24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
310-728-3358

25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
310-728-3358

26. Robert Mayes (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
Korn Ferry
c/o Samantha Goodman
1900 Avenue of the Stars, Suite 2600
Los Angeles, CA 90067
310.556.8557

27. Andrew Shapiro (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Jahan Raissi
Shartsis Freise LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
415.421.6500

28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
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29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
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Westlake Village, CA 91361
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30. Andrez Matycynski (*plaintiff may call this witness if the need arises*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169

31. Dev Ghose (*plaintiff may call this witness if the need arises*)
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For the Director Defendants:

1. Ellen Cotter (*the director defendants expect to present this witness*)
c/o COHEN | JOHNSON | PARKER | EDWARDS
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And
Quinn Emanuel Urquhart & Sullivan, LLP
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213-443-3000

2. Margaret Cotter (*the director defendants expect to present this witness*)
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3. James Cotter, Jr. (*the director defendants expect to present this witness*)
c/o Mark Krum
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4. Guy Adams (*the director defendants expect to present this witness*)
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5. Edward Kane (*the director defendants expect to present this witness*)
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6. Douglas McEachern (*the director defendants expect to present this witness*)
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7. Michael Wrotniak (*the director defendants expect to present this witness*)
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8. Judy Codding (*the director defendants expect to present this witness*)
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9. Bill Gould (*the director defendants expect to present this witness*)
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10. Timothy Storey (*the director defendants expect to present this witness*)
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c/o Bird, Marella, Boxer, Wolpert,
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11. Craig Tompkins (*the director defendants expect to present this witness*)
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12. Bob Smerling (*the director defendants expect to present this witness*)
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13. Terri Moore (*the director defendants expect to present this witness*)
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14. Andrzej Matyczynski (*the director defendants expect to present this witness*)
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15. Linda Pham (*the director defendants expect to present this witness*)
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16. Debbie Watson (*the director defendants expect to present this witness*)
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17. Laura Batista (*the director defendants expect to present this witness*)
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18. David Roth (*the director defendants expect to present this witness*)
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24780 E South Ave.
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19. Michael Buckley (*the director defendants may call this witness if the need arises*)
Edifice Real Estate Partners
545 8th Ave.
New York, NY 10018
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20. Derek Alderton (*the director defendants expect to present this witness*)
Highpoint Associates
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El Segundo, CA 90245
310-616-0100

21. Mary Cotter (*the director defendants expect to present this witness*)
2818 Dumfries Road
Los Angeles, CA 90064
310-559-0581

22. Jill Van (*the director defendants expect to present this witness*)
Grant Thornton
515 S. Flower St., 7th Floor
Los Angeles, CA 90071
213-627-1717

23. Whitney Tilson (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
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Westlake Village, CA 91361
818-851-3850

24. Jon Glaser (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
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For Reading International, Ind.:

RDI does not intend to call witnesses, but reserves all rights to question witnesses identified by Plaintiff and/or the other defendants in this matter.

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2. Expert Witnesses and Summaries of Opinions

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding proper exercise of directors' fiduciary duties. Among other things, he will offer opinion testimony regarding appropriate corporate governance practices and activities where a board of directors is faced with circumstances in which directors lack or may lack independence and/or disinterestedness, including the appropriate practices and activities to address such circumstances, and to evaluate the success of such practices and activities, including with respect to the following matters (i) the process used to terminate James J. Cotter, Jr. as President and Chief Executive Officer of Reading International, Inc. ("RDI")., (ii) the use of the Executive Committee of RDI's Board of Directors, (iii) the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given and (iv) the rejection of the Offer.[3] Former Chief Justice Steele also will offer opinion

[3] As stated in the Steele Report, it is Justice Steele's understanding that Nevada courts look to Delaware case law when there is no Nevada statutory or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the Nevada Supreme Court frequently looks to the Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on questions of corporation law, this Court often looks to those sources to predict how the Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no Nevada statutory or case law on point or an issue of corporate law, this Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the Model Act relies heavily on New York

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testimony to rebut opinions offered by defendants' experts Michael Klausner and Alfred Osborne.

2. Richard Spitz will offer opinion testimony relating to executive and CEO searches and RDI's supposed CEO search. It is anticipated that he will offer opinion testimony that the execution of the (supposed) executive search process undertaken at RDI in 2015 to find a CEO was not conducted properly and that the search failed, including because the selection of Ellen Cotter as CEO was not the product of completing the search process undertaken and was not a result of the search activities conducted. Mr. Spitz also will offer opinion testimony to rebut opinions offered by defendants' expert Alfred Osborne.
3. Albert Nagy will offer opinion testimony in rebuttal to defendants' expert Alfred Osbourne. Among other things, it is anticipated that he will offer opinion testimony that Margaret Cotter's compensation from RDI is not within a reasonable range for a person with her experience and qualifications.
4. Tiago Duarte-Silva will offer opinion testimony about money damages Plaintiff seeks by this action. It is anticipated that his opinion testimony will include opinions that (i) Reading's earnings have declined and underperformed since Ellen Cotter became Reading's CEO, (ii) Reading's value has declined and

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and Delaware case law, we look to the Model Act and the law of those states in interpreting the Nevada statutes.").

Justice Steele is aware that the defendants in this action have filed a motion in limine because the Steele Report stated that the opinions therein were based on what a court that applied Delaware law would find. That phraseology was intended simply to refer to Justice Steele's years of experience in Delaware's well-versed body of law. The Delaware law on which Justice Steele relies neither supplants nor modifies the plain meaning of Nevada law, but only is used to inform Nevada law.

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underperformed since Ellen Cotter became Reading's CEO, and (iii) failing to respond favorably to an acquisition offer impeded an increase in Reading's market value. Mr. Duarte-Silva also will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll.

5. Dr. John Finnerty will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll. It is anticipated that his opinion testimony will include opinions that Dr. Roll's conclusions that (1) "the news regarding James Cotter, Jr.'s termination did not have an adverse effect on the price of RDI stock;" (2) "the risk adjusted performance of RDI Stock since the termination of James Cotter, Jr. through June 30,2016 does not support Plaintiff's contention that RDI Stock has underperformed and/or suffered irreparable harm;" and (3) "the risk adjusted performance of RDI Stock since the termination of James Cotter, Jr. through June 30, 2016, is not distinguishable from the performance of RDI Stock while he was CEO" are incorrect.

For the Director Defendants:

1. Michael Klausner – Mr. Klausner will offer opinion testimony regarding the Board of Directors' proper exercise of their duties and obligations in connection with their decision to terminate James Cotter, Jr. as President and CEO and their decision not to pursue the third-party indication of interest, including as a rebuttal to Plaintiffs' expert Justice Myron Steele.
2. Jon Foster – Mr. Foster will offer opinion testimony regarding the Board of Directors' decision-making and analysis in connection with their consideration of the third-party indication

RDI-A09748

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of interest, as a rebuttal to the expected testimony of Plaintiffs' expert Tiago Duarte-Silva.

3. Richard Roll – Dr. Roll will offer opinion testimony about the claimed money damages being sought by Plaintiff in this action based on fluctuations or changes in RDI's stock price, including as a rebuttal to Plaintiffs' purported damages experts.
4. Bruce Strombom – Mr. Strombom will offer opinion testimony to rebut the purported damages analysis set forth by Plaintiffs' exert Tiago Duarte-Silva.
5. Alfred Osborne – Dr. Osborne will offer opinion testimony on matters relating to corporate governance and assess Williams Gould's role, responsibilities and conduct in certain corporate governance processes at RDI. He will also offer opinion testimony to rebut opinions offered by Plaintiffs' experts Justice Myron Steele and Mr. Richard Spitz regrading purported breaches of fiduciary duty by members of the Board of Directors.

For Reading international, Inc.:

RDI joins in the expert designations of the Director Defendants.

H. Issues of Law

Plaintiff's Position:

Plaintiff's position is that any such issues will be raised with the Court in the context of jury instructions.

Director Defendants' Position:

As described in detail in the Director Defendants' pending Motions for Partial Summary Adjudication, the Director Defendants believe that for each purported breach of fiduciary described in the Second Amended Complaint, each of them (1) were subject to the protections and

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presumptions afforded by Nevada's business judgment rule, (2) properly exercised their fiduciary obligations, (3) did not engage in any "intentional misconduct, fraud or a knowing violation of law" required by N.R.S. 78.138 to impose individual liability on corporate directors, and, although not relevant under Nevada law, (4) were independent for each relevant decision made by the Board in which they participated. Moreover, as previously argued in the context of the Director Defendants' Motion for Partial Summary Judgment No. 1 and Opposition to Plaintiff's Motion for Partial Summary Judgment, Plaintiff lacks standing to bring this derivative action or to derivatively assert certain claims that are wholly-personal to him, such as his termination claim. Similarly, the equitable relief that Plaintiff seeks—*i.e.*, reinstatement as President and CEO of RDI—is not available as a matter of law.

RDI's Position:

RDI's business decisions challenged by Plaintiff were the result of valid business judgment. Additionally, RDI joins in the position of the Director Defendants.

I. Previous Orders on Motions in Limine

a. Defendants' Motion In Limine to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty

i. Granted in Part. With respect to Chief Justice Steele, he may testify only for the limited purpose of identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. Withdrawn as to Dr. Finnerty. Denied as to all

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other experts. See December 21, 2016 Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion In Limine to Exclude Expert Testimony ("December 21, 2016 Order"), attached as Ex. __.

J. Previous Orders on Motions for Partial Summary Judgement

a. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims
   i. Denied. See December 21, 2016 Order.

b. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence
   i. Continued. See December 21, 2016 Order.

c. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer
   i. Continued. See December 21, 2016 Order.

d. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee
   i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.

e. Individual Defendant's Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO

RDI-A09751

i. Continued. See December 21, 2016 Order.

f. Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams

i. Continued. See December 21, 2016 Order.

g. Plaintiff James J. Cotter, Jr.'s Motion for Partial Summary Judgment.

i. Denied. See October 3, 2016 Order Denying James J. Cotter Jr.'s Motion for Partial Summary Judgment and Granting RDI's Countermotion for Summary Judgment.

h. Defendant William Gould's Motion for Summary Judgment

i. Continued.

K. Estimated Length of Trial

The parties estimate 15 to 19 days; 80-100 trial hours.

L. Other Issues

Plaintiff's Statement:

Plaintiff is unable to locate an answer from defendant Gould to the Second Amended Complaint, which the individual defendants should have answered long ago.

Director Defendants' Statement:

Plaintiff's list of claims above neither complies with the rules for pre-trial disclosures nor provides *any* clarity about what claims Plaintiff

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actually intends to prove at trial or what damages (money or equitable) he seeks. Eighth District Rule of Practice 2.67(b)(2) requires Plaintiff to provide "[a] list of all claims for relief designated by reference to each claim or paragraph of a pleading and a description of the claimant's theory of recovery with each category of damage requested." The Director Defendants intend to address at trial any purported breaches of fiduciary duty—and will show that Plaintiff's claims are baseless—but must be told which specific actions are at issue in order to properly prepare their defense.

Plaintiff states that he will pursue claims for breaches of fiduciary duty potentially based on each and every allegation in the Second Amended Complaint by, for example, stating his intent to pursue "[b]reach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC." This provides no more information than if Plaintiff had never made his pre-trial disclosures—he may or may not pursue a claim based on any act or omission mentioned or alluded to anywhere in the Second Amended Complaint. Plaintiff's witness list similarly fails to shed any light on the claims Plaintiff intends to pursue—his list strays so far afield that Plaintiff has stated his intent to call Defendant Guy Adams' ex-wife (Lois Marie Kwasigroch) at trial.

Plaintiff also fails to disclose the actual monetary damages or equitable relief he intends to seek at trial. For example, Plaintiff states that his damages resulting from Defendants' alleged breaches of the duty of care are "injury to RDI's reputation and goodwill" and "impairment of shareholder rights due to SEC filings." If these are supposed money damages, Plaintiff does not state his claim for damages, or even explain what shareholder rights are purportedly impacted. With the exception of the equitable relief he seeks in connection with his termination from RDI (*i.e.*, being reinstated as President and CEO), Plaintiff does not link any

particular claim to any particular category or amount of damages. For example, Defendants have no idea what relief Plaintiff is seeking in connection with the "involuntary retirement of Storey" or "process/process failures in connection with nomination and retention of directors, including Codding and/or Wrotniak." Plaintiff's list of claims/damages is indecipherable and nonsensical; Plaintiff has attempted to reserve the right at trial to pursue any claim he wants and seek whatever damages he wants. Defendants cannot prepare for trial based on these inadequate disclosures, which amount to nothing but gamesmanship and are highly prejudicial.

RDI's Position:

RDI contends the equitable relief sought would result in significant disruption of RDI management and the pursuit of its long term business strategy. Additionally, RDI joins in the statement of the Director Defendants regarding Plaintiff's purported damages.

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By: /s/ AKKE LEVIN
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Akke Levin, Bar No. 9102
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Mark G. Krum, Bar No. 10913
YURKO, SALVESEN & REMZ, P.C.
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Attorneys for Plaintiff
James J. Cotter, Jr.

H. Stan Johnson (00265)
Cohen | Johnson | Parker | Edwards
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Las Vegas, NV 89119
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1875 Century Park East, 23rd Floor
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310.201.2100

RDI-A09755

EXHIBIT 8

Gmail

Laura Batista <laurabatista310@gmail.com>

Visitor at Cecelia

Karen Vargas <kvargas@ceceliapack.com> Mon, Apr 23, 2018 at 1:50 PM
To: Laura Batista <LauraBatista310@gmail.com>
Cc: David Roth <droth@ceceliapack.com>

Hi Laura,

Please see the attached incident description provided by our office staff Laura Lopez. We make every effort here to shield our employees from any personal complications. We do not allow visitors in the packing house for that very reason. We try to keep the drama down and make this a pleasant environment in which to work. I hope we do not receive any more visitors like this.

Thank you,
Karen and David

WHAT YOU DO TODAY CAN IMPROVE ALL YOUR TOMORROWS

Karen C. Vargas, CPA

Controller
Cecelia Packing Corporation
Phone: (559) 626-5000 Fax: (559) 626-7561
kvargas@ceceliapack.com

Incident 3-29-18.pdf
59K

A gentlemen came in on 03/29/2018 looking for James Cotter Jr. I told him that Jim Jr. did not work out of this office. He started asking me if Jr. lived up at the front house. I told him no Jr. did not live at the house up front. He started asking for Jim Jr's address or what office he worked out of or if I had a phone number for him and I told him that I could not give out that kind of information. He was very persistent trying to get information about Jim Jr. which made me uncomfortable because I'm not to give out personal information. He did not look like any kind of professional person, just a scruffy off the street looking guy. He then asked me to mail a paper to Jim Jr and left.

Laura Lopez

EXHIBIT 9

Ellen Cotter

From: amcotter1@aol.com
Sent: Monday, April 23, 2018 12:06 PM
To: Ellen Cotter
Subject: Fwd: Letter 03/29/2018
Attachments: Jim Jr. 03-29-2018.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

> **From:** David Roth <droth@ceceliapack.com>
> **Date:** April 17, 2018 at 2:22:56 PM EDT
> **To:** Margaret Cotter <amcotter1@aol.com>
> **Subject: Fwd: Letter 03/29/2018**

David Roth

Cecelia Packing Corporation

559-626-5000

www.ceceliapack.com

www.facebook.com/dimplescitrus

---------- Forwarded message ----------
From: **David Roth** <droth@ceceliapack.com>
Date: Tue, Apr 17, 2018 at 11:20 AM
Subject: Fwd: Letter 03/29/2018
To: Margaret Cotter <margaret.cotter@readingrdi.com>

David Roth

RDI-A09760

Cecelia Packing Corporation

559-626-5000

www.ceceliapack.com

www.facebook.com/dimplescitrus

---------- Forwarded message ----------
From: **David Roth** <droth@ceceliapack.com>
Date: Tue, Apr 17, 2018 at 11:15 AM
Subject: Fwd: Letter 03/29/2018
To: Margaret Cotter <margaret.cotter@readingrdi.com>

David Roth

Cecelia Packing Corporation

559-626-5000

www.ceceliapack.com

www.facebook.com/dimplescitrus

---------- Forwarded message ----------
From: **Laura Lopez** <llopez@ceceliapack.com>
Date: Thu, Mar 29, 2018 at 1:56 PM
Subject: Letter 03/29/2018
To: David Roth <droth@ceceliapack.com>

A gentleman came in today with a letter for Jim Jr. I told him that Jim Jr didn't work out of this office, so he asked me to email this sheet to him. Should I email it to him.

--

Thank you.

Laura Lopez

Cecelia Packing Corp.

RDI-A09761

559-626-5000

llopez@ceceliapack.com

RDI-A09762

Urgent Message

March 28, 2018

Name: James Cotters

Account Number: 12690226

Concerning: Alix Partners LLP

Address:

24780 east South Avenue

Orange Cove, CA 93646

Dear Sir or Madam:

This is an URGENT message to inform you that your account is in a delinquent status. Since you have not responded to our continued efforts to reach you via telephone and mail, I have been forced to send your account for a field visit. I ask that upon receipt of this letter you immediately phone me so we can discuss this matter further.

Sincerely,

Account Manager:

Larry Klein

847-407-2666 Ext: 295

Manager:

Peter Gonzalez

847-407-2328 Ext:

Urgent Message... Urgent Message...

RDI-A09763

EXHIBIT 10

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865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL (213) 443-3000 FAX (213) 443-3100

WRITERS DIRECT DIAL NO.
(213) 443-3152

WRITER'S EMAIL ADDRESS
marshallsearcy@quinnemanuel.com

May 7, 2018

VIA E-MAIL

Mark G. Krum, Esq.
Yurko, Salvesen & Remz, P.C.
One Washington Mall, 11th Floor
Boston, MA 02108-2603
mkrum@bizlit.com

Re: *James J. Cotter, Jr., v. Margaret Cotter, et al.*,
Case No. A-15-719860-B / P-14-082942-E

Dear Counsel:

We recently learned that a debt collector purporting to represent AlixPartners LLP, the consulting firm that employs Dr. John D. Finnerty (Plaintiff James J. Cotter, Jr.'s rebuttal damages expert), appeared at the offices of Cecelia Packing Corporation and demanded to see Plaintiff regarding unpaid bills to AlixPartners. Apparently, this field visit was triggered by the fact that Plaintiff's account was in a delinquent status and Plaintiff had not responded to earlier debt collection inquiries made via telephone and mail.

In the parties' December 8, 2017 Joint Pretrial Memorandum, submitted on the eve of the initial trial date for this matter, Plaintiff represented to the Court and Defendants that each of his disclosed experts—including Dr. Finnerty—would appear at trial and "will offer opinion testimony.„ (*See* 12/8/17 J. Pretrial Mem. at 24-25.) Plaintiff made similar representations to the Court and Defendants regarding the anticipated appearances of each of his experts at the final pretrial conference held on January 5, 2018. (*See* 1/5/18 Hr'g Tr. at 28:4-32:10.)

The recent visit from the AlixPartners representative calls into question the continued accuracy of Plaintiff's previous representations regarding the anticipated appearances of his experts. As you are aware, Nevada Rule of Civil Procedure 26(e)(1) creates a duty "to supplement at appropriate intervals„ a party's initial disclosures, disclosures regarding expert testimony, and pretrial disclosures whenever the previously-disclosed information "is incomplete or incorrect and if the additional or corrective informative has not otherwise been made known to the other

RDI-A09765

parties during the discovery process or in writing.„ In light of Plaintiff's obligations under NRCP 26(e)(1), and given the parties' need to file another Joint Pretrial Memorandum in less than two weeks, we ask that Plaintiff confirm by Wednesday, May 9, 2018 which of Plaintiff's disclosed experts will appear at the forthcoming trial.

In addition, in each of the deposition subpoenas (duces tecum) that they served upon Plaintiff and his experts, Defendants sought the production of all communications between the expert "and Plaintiff, Plaintiff's counsel, or anyone acting on their behalf, relating to this litigation„ and "documents sufficient to identify the total fees paid to [the expert] for any work [the expert] performed on behalf of Plaintiff or Plaintiff's counsel during the course of this litigation.„ (*See, e.g.*, Dep. Subpoena (Duces Tecum) to John Finnerty, Req. Nos. 2, 6.) Information pertaining to the expert fees incurred by Plaintiff and his payment—or nonpayment—thereof is captured by these requests. Such information should be produced to Defendants, as it is not privileged. *See Subpoenaed Witness v. United States*, 171 F.3d 511, 513 (7th Cir. 1999) ("[I]nformation regarding . . . fees is not protected by the attorney-client privilege because the payment of fees is not a confidential communication.„); *Ralls v. United States*, 52 F.3d 223, 225 (9th Cir. 1995) (the attorney-client privilege "applies only to confidential professional communications, and the payment of fees is usually incidental to the attorney-client relationship„); *Vingelli v. United States*, 992 F.2d 449, 452 (2d Cir. 1993) ("fee arrangements do not fall within the attorney-client privilege because they are not the kinds of disclosures that would not have been made absent the privilege and their disclosure does not incapacitate the attorney from rendering legal advice„); *Washington v. Sheppard*, 52 Wash. App. 707, 711, 763 P.2d 1232, 1234 (Wash. Ct. App. 1988) ("the amount, source, and manner of payment of the fee [must] be disclosed„).

Accordingly, we further request that Plaintiff confirm by Wednesday, May 9, 2018 that, pursuant to Defendants' ongoing document requests and Plaintiff's obligation to timely supplement his document production, he will produce forthwith all correspondence with his expert witnesses regarding their fees and his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services in this matter. Should Plaintiff fail to provide the requested assurances or fail to agree to produce all responsive information regarding his (non)payments to his experts, Defendants will be compelled to bring a motion before the Court. Defendants are available to meet and confer on Wednesday morning if any of this is unclear.

Very truly yours,

Marshall M. Searcy, III

cc: All Counsel

RDI-A09766

David Armillei

From: Marshall Searcy
Sent: Wednesday, May 09, 2018 4:21 PM
To: 'Mark G. Krum'; 'hendricksk@gtlaw.com'; 'ferrariom@gtlaw.com'
Cc: 'sm@morrislawgroup.com'; 'al@morrislawgroup.com'; 'Sanford F. Remz'; 'Noemi A. Kawamoto'; Noah Helpern; 'sbannett@birdmarella.com'; 'sheffieldm@gtlaw.com'; Cotter Team
Subject: RE: Cotter/RDI

Mark, I have not received a response to my letter from Monday. In light of the urgency of this matter, we again ask that you confer with us tomorrow morning or else we will be obligated to seek relief from the Court.

From: Marshall Searcy
Sent: Monday, May 07, 2018 9:23 PM
To: Mark G. Krum <mkrum@bizlit.com>; hendricksk@gtlaw.com; ferrariom@gtlaw.com
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; sbannett@birdmarella.com; sheffieldm@gtlaw.com; Cotter Team <CotterTeam@quinnemanuel.com>
Subject: Cotter/RDI

Mark,
Please see the attached letter.

EXHIBIT 12

David Armillei

From: Mark G. Krum <mkrum@bizlit.com>
Sent: Thursday, May 10, 2018 11:59 AM
To: Marshall Searcy; 'hendricksk@gtlaw.com'; 'ferrariom@gtlaw.com'
Cc: 'sm@morrislawgroup.com'; 'al@morrislawgroup.com'; Sanford F. Remz; Noemi A. Kawamoto; Noah Helpern; 'sbannett@birdmarella.com'; 'sheffieldm@gtlaw.com'; Cotter Team
Subject: RE: Cotter/RDI

Marshall,

I have your letter transmitted at approximately 9:30 p.m. on Monday night, which demands a response within less than 48 hours. As a pretext for demanding a response in less than 48 hours, you claim to have "recently" learned that AlixPartners, who employs Dr. John D. Finnerty, an expert designated by plaintiff, apparently has a fee dispute with plaintiff. When I did not meet your less than 48 hour deadline, you sent an email last night at 7:22 p.m. eastern demanding that I be available this morning to speak because the matter is "urgent."

That is utter fiction. Counsel for defendants have known about this matter for months, as evidenced by the fact that Mr. Ferrario raised it months ago. He likewise referred to it in court last week when he opted to obfuscate and accuse rather than speak to the failure of defense counsel to produce and/or log certain documents regarding the "ratifications" upon which they seek to have the case dismissed. Simply put, there is nothing "urgent" about the matter raised in your letter of Monday, which matter you delayed raising by months.

For those reasons and others, your letter is recognized for what it is, namely, a pretext to create a dispute you intend to use to raise with the Court in an effort to prejudice plaintiff and deflect attention from the machinations of defense counsel that resulted in the rulings of May 2. This squarely is in the category of Mr. Ferrario's unfounded and shameless implications last week to the effect that what transpired in January precipitating a trial continuance was a fiction perpetrated by plaintiff. We have no obligation to acquiesce to, much less facilitate, additional misuse of the litigation process by defense counsel.

As to Dr. Finnerty, you may and should understand that we do not intend to call him as a witness at trial presently anticipated to occur in July. That advice moots both the claimed "urgency" and any reason to meet and confer. If you maintain something remains, kindly advise what it is and we can speak at a mutually convenient time. For me, the first such time will be Monday, when I can be available until 5 p.m. eastern.

Mark

Mark G. Krum, Esq.
YURKO, SALVESEN & REMZ, P.C.
One Washington Mall, 11th Floor
Boston, Massachusetts 02108
T: (617) 723 6900
F: (617) 723 6905
http://www.bizlit.com

YURKO, SALVESEN & REMZ, P.C.

From: Marshall Searcy [mailto:marshallsearcy@quinnemanuel.com]
Sent: Wednesday, May 9, 2018 7:21 PM
To: Mark G. Krum <mkrum@bizlit.com>; 'hendricksk@gtlaw.com' <hendricksk@gtlaw.com>; 'ferrariom@gtlaw.com' <ferrariom@gtlaw.com>
Cc: 'sm@morrislawgroup.com' <sm@morrislawgroup.com>; 'al@morrislawgroup.com' <al@morrislawgroup.com>; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; 'sbannett@birdmarella.com' <sbannett@birdmarella.com>; 'sheffieldm@gtlaw.com' <sheffieldm@gtlaw.com>; Cotter Team <CotterTeam@quinnemanuel.com>
Subject: RE: Cotter/RDI

Mark, I have not received a response to my letter from Monday. In light of the urgency of this matter, we again ask that you confer with us tomorrow morning or else we will be obligated to seek relief from the Court.

From: Marshall Searcy
Sent: Monday, May 07, 2018 9:23 PM
To: Mark G. Krum <mkrum@bizlit.com>; hendricksk@gtlaw.com; ferrariom@gtlaw.com
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; sbannett@birdmarella.com; sheffieldm@gtlaw.com; Cotter Team <CotterTeam@quinnemanuel.com>
Subject: Cotter/RDI

Mark,
Please see the attached letter.

EXHIBIT 13

quinn emanuel trial lawyers | los angeles
865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL (213) 443-3000 FAX (213) 443-3100

WRITERS DIRECT DIAL NO.
(213) 443-3152

WRITER'S EMAIL ADDRESS
marshallsearcy@quinnemanuel.com

May 10, 2018

VIA E-MAIL

Mark G. Krum, Esq.
Yurko, Salvesen & Remz, P.C.
One Washington Mall, 11th Floor
Boston, MA 02108-2603
mkrum@bizlit.com

Re: *James J. Cotter, Jr., v. Margaret Cotter, et al.*,
Case No. A-15-719860-B / P-14-082942-E

Dear Mark:

I write in response to the numerous inaccuracies in your May 10, 2018 email to me, which purports to "moot"—but does not actually address—the two simple questions posed in my May 7, 2018 letter to you.

First, my letter asked that you "confirm by Wednesday, May 9, 2018 which of Plaintiff's disclosed experts will appear at the forthcoming trial." (5/7/18 Searcy Ltr. at 2.) There is no reason that you could not answer this basic question over a 48-hour period. Indeed, this inquiry was perfectly reasonable in light of the potential consequences of Plaintiff's apparent unpaid debt to AlixPartners (and possibly other experts), the rapidly-approaching trial for which Defendants need to prepare, the parties' upcoming Joint Pretrial Memorandum (due in about one week), Plaintiff's previous representations to the Court, and Plaintiff's continuing obligations under NRCP 26(e)(1). You have now informed us that Dr. Finnerty will not be appearing at trial, but have avoided my actual question, which was not specific to him. Are there any other experts, previously disclosed by Plaintiff, that will not be appearing at trial? If so, who?

Second, my letter requested that you "confirm by Wednesday, May 9, 2018 that, pursuant to Defendants' ongoing document requests and Plaintiff's obligation to timely supplement his document production, [Plaintiff] will produce forthwith all correspondence with his expert witnesses regarding their fees and his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services in this matter." (5/7/18 Searcy Ltr. at 2.) Plaintiff

RDI-A09772

previously produced some of these materials prior to expert depositions in 2016. (*See, e.g.*, Dep. Exs. 428, 467, 476.) Such communications are responsive, relevant, and not privileged, and Plaintiff has a duty under Rule 26(e)(1) to supplement his production. Again, there is no reason that you could not answer this "yes/no" question in a 48-hour period. You did not, and your May 10 email ignores this question entirely. Please answer the question: Are you producing the requested communications? If so, when can we expect them?

Finally, the attorney colloquy in your email is irrelevant, incorrect, and unnecessarily vituperative. Defendants were informed about the visit to Cecelia Packing Corporation by the AlixPartners debt collector in late April—which is far from "months" ago, as you inaccurately assert. Similarly, Defendants' request that Plaintiff supplement his existing production to include relevant, newly-generated documents is in no way a "misuse of the litigation process by defense counsel"; rather, it is something that Plaintiff—like all litigants—is required to do by Nevada procedure. And your insinuation that Defendants' request has anything to do with issues surrounding the production of ratification documents is sadly misguided.

I ask that you actually respond to my two simple questions, originally posed on Monday, by the end of the day today. Should Plaintiff agree to produce the requested documents (as he is obligated), we are happy to meet and confer with you regarding a production schedule, including on Monday, May 14 as you suggest. But there is no reason for further baseless delay, especially in light of the rapidly-approaching trial.

Very truly yours,

Marshall M. Searcy, III

cc: All Counsel

RDI-A09773

Electronically Filed
5/18/2018 2:50 PM
Steven D. Grierson
CLERK OF THE COURT

PTM

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc.,	) Case No. A-15-719860-B) Dept. No. XI
Plaintiff,	) Coordinated with:
v.	) Case No. P-14-0824-42-E) Dept. No. XI
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK,	) Jointly Administered) **PLAINTIFF'S PRE-TRIAL MEMORANDUM**
Defendants.	
And	
READING INTERNATIONAL, INC., a Nevada corporation,	
Nominal Defendant.	

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The Plaintiff, through his counsel of record, hereby submits the following pre-trial memorandum in accordance with this Court's 2nd Amended Order Setting Civil Jury Trial, Pre-trial Conference and Calendar Call dated May 4, 2018 and Local Rule 2.67. This pretrial memorandum is substantively the same as the joint pretrial memorandum previously submitted by the parties on December 8, 2017, except that it has been updated to reflect the Court's order of December 29, 2017 with respect to motions for partial summary judgment, for summary judgment and motions *in limine* on which the Court ruled on December 11, 2017. A draft of this pretrial memorandum was provided to counsel for defendants at 2:40 p.m. on Tuesday, May 15, 2018, after counsel for nominal defendant Reading International, Inc. ("RDI") had asked if counsel for plaintiff would modify the joint pretrial memorandum filed previously "given the grant of judgment to five of the defendants." Notwithstanding the modest and straightforward edits required, counsel for defendants and RDI provided no response to the May 15, 2018 draft until approximately 2:10 p.m. Friday, May 18, the afternoon the pretrial memorandum was to be filed and a courtesy copy provided to the Court. The lateness of this response was only half of the problem; defendants included in their revised draft of the joint pretrial memorandum matter not appropriately included, as well as arguments to which counsel for plaintiff would respond, but for the eleventh hour provision of defendants' draft. Faced with such gamesmanship by counsel for defendants, counsel for plaintiff had little if any choice but to file this separate pretrial memorandum.

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I. MATTER REFERENCED IN MAY 4, 2018 ORDER, PARAGRAPH D

A. Motions in Limine

See Section II.H.

B. Motions for Summary Judgment

See Section II. I.

II. OTHER PRETRIAL MATTER

A. Statement of Facts

In view of the significant prior proceedings in this case, including motions to dismiss and summary judgment motions, as well as the detail in the pending Second Amended Complaint (the particular allegations of which have been or will be admitted or denied in the individual defendants' respective answers), and the Court's resulting familiarity with this case, the parties respectfully provide the following abbreviated, summary statement of facts of the case:

Plaintiff James J. Cotter, Jr. ("Mr. Cotter" or "Plaintiff") was and is a substantial shareholder and a director of nominal defendant Reading International, Inc. ("RDI" or the "Company"), as well as a former President and Chief Executive Officer ("CEO"). Defendants Ellen Cotter and Margaret Cotter were and are members of the RDI board of directors (the "Board") and at all times relevant hereto have purported to be and/or been the controlling shareholder(s) of RDI. Each of the remaining individual defendants was at relevant times and is a member of the RDI Board, as well of certain Board committees.

The facts of this case include and concern acts and omissions of individual director defendants which the Plaintiff claims give rise to entail breaches of fiduciary duties individually and/or together with other acts and omissions, including with respect to the following matters: the threat to terminate Mr. Cotter as President and CEO of RDI, the termination of Mr.

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Cotter as President and CEO of RDI, the demand that he resign from the Board, RDI Board governance matters, RDI SEC filings and press releases, the search for a permanent CEO that resulted in Ellen Cotter becoming permanent CEO, the hiring and compensation of Margaret Cotter as EVP RED NY, the payment of certain monies to certain of the individual defendants and the actions and or lack of actions by each of the individual defendants in response to offers or expressions of interest by Patton Vision and others to purchase all of the outstanding stock of RDI.

B. List of Claims

Plaintiff's list of claims for relief is as follows:

1. Breaches of the Duty of Care (SAC 1 - 179) (First Cause)

- **Process in connection with termination, including aborting ombudsman and lack of process/process failures (SAC 3, 35, 36, 43, 50 – 57, 61 – 94) (EC, MC, GA) (equitable relief)**[1]
- **Breach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC (SAC - all), including paragraph A. 1. above and the following:**
- Use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams/WG, JC, MW)
- Process/process failures from aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: All)
- Erroneous and/or materially misleading statements in board materials such as agendas and minutes, and in public disclosures

[1] Arabic numbered bold typeface paragraphs indicate matters which Plaintiff contends give rise to and/or constitute breaches of fiduciary duty independently, as well as together with other matter.

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including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

- Process/process failures in connection with nomination and retention of directors, including adding Codding and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the $200,000 pre-employment bonus (committees - members) (Board - all)
- $50,000 to Adams (SAC 153, 166*)* (Committees – members) (Board – all but GA)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
- Damages/injury (SAC 163 – 168)

  a. injury to RDI's reputation and goodwill (164)

  b. impairment of shareholder rights due to SEC filings (165)

2. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)

- **Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EC, MC)**
- **Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EC, MC) (equitable relief also sought)**
- **Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)**
- **Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC) (Board: all)**
- **Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (Committee members) (Board: all)**
- **Breach of the duty of loyalty (all) and misuse of their position**

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as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
- $50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
- Damages/injury (SAC 163 – 168)
    a. diminution in value of RDI (163)
    b. injury to reputation and goodwill (164)
    c. impairment of shareholder rights due to SEC filings (165)
    d. other monetary damages (166)
        i. $200,000 and job to MC
        ii. $50,000 to Adams
        iii. duplicate cost of paying consultants to perform MC's position's responsibilities

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iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

3. Breaches of the Duty of Candor (SAC 1 – 172, 187 – 192) (Third Cause)

- SEC filings and press releases (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (EC - all) (WG - Form 8-Ks and press releases about termination and CEO) (each as to disclosures regarding themselves (e.g., proxies))
- Damages/injury (SAC 163 – 168)
  a. diminution in value of RDI (163)
  b. impairment of shareholder rights due to SEC filings (165)
  c. injury to reputation and goodwill (168)

4. Aiding and Abetting Breaches of Fiduciary Duty (SAC 193 – 200) (Fourth Cause)

- Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)
- Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
- Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
- Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
- Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (EC, MC)
- Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (EC, MC)
- Damages/injury (SAC 163 – 168)
  a. diminution in value of RDI (163)

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b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. Claims or Defenses to be Abandoned.

None. However, Plaintiff will not seek equitable relief with respect to historical or past actions relating to the executive committee, to corporate governance of RDI such as misleading or inaccurate meeting agendas and/or minutes, to the addition or removal of persons to and/or from the RDI board of directors and to SEC filings and press releases. Plaintiff will seek equitable relief with respect to the vote to terminate James J. Cotter Jr. as President and CEO and reserves the right to do so with respect to authorization of the exercise of the so-called 100,000 share option.

D. List of Exhibits

Under paragraph (F) of the Second Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (dated May 4, 2018), the parties' exhibit lists are to be provided to the Court prior to the final Pre-Trial Conference, the date for which has not yet been set.

E. Agreements to Limit or Exclude Evidence

None presently.

F. Witness List

(a) Nonexpert Witnesses

<u>For Plaintiff</u>:

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1. James Cotter, Jr. (*plaintiff expects to present this witness*)
   c/o Mark Krum
   Yurko, Salvesen & Remz. P.C.
   One Washington Mall, 11th Floor
   Boston, MA 02108
   617.723.6900

2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)
   c/o Mark E. Ferrario, Esq.
   Leslie S. Godfrey, Esq.
   Greenberg Traurig LLP
   773 Howard Hughes Parkway, Suite 400 North
   Las Vegas, Nevada 89169
   702-792-3773

3. Margaret Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

4. Ellen Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

5. Douglas McEachern (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

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6. Guy Adams (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

7. Edward Kane (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

8. William Gould (*plaintiff expects to present this witness*)
   Donald A. Lattin, Esq.
   Carolyn K. Renner, Esq.
   MAUPIN, COX & LeGOY
   4785 Caughlin Parkway
   Reno, Nevada 89519
   775-827-2000

9. Timothy Storey (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
   Donald A. Lattin, Esq.
   Carolyn K. Renner, Esq.
   MAUPIN, COX & LeGOY
   4785 Caughlin Parkway
   Reno, Nevada 89519
   775-827-2000

10. John Hunter (*plaintiff may call this witness if the need arises*)
    Milken Institute, Chief Financial Officer
    1250 4th Street
    Santa Monica, CA 90401

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11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)
10488 Eastborne Avenue, Unit #211
Los Angeles, California 90024
310-293-7384

12. Eric Barr (*plaintiff may call this witness if the need arises*)
9 Park Street, Brighton, VIC 3186
Southern Melbourne, Australia
011-61-488-096-616
ebarr@optushome.com.au

13. Al Villasenor (*plaintiff may call this witness if the need arises*)
116 – 19th Street
Manhattan Beach, California 90266
Home- 310-546-5193
Mobile- 310-897-0407

14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*
20100 Wells Drive
Woodland Hills, California 91364
(805) 447-6265

15. Harry P. Susman (*plaintiff may call this witness if the need arises*)
Susman Godfrey, LLP
1000 Louisiana, Suite 5100
Houston, Texas 77002
713-653-7875 (w)
hsusman@susmangodfrey.com

16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)
The Karahan Companies
7200 Bishop Road, Suite 250
Plano, Texas 75024
214-473-9700 (w)
fehmi@karahaninc.com

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17. Judy Codding (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
2266 Canyon Back Road
Los Angeles, California 90049

18. Michael J. Wrotniak (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
Aminco Resources USA
World Headquarters
81 Main Street Suite 110
White Plains, NY 10601
914 949 4400
M.Wrotniak@Aminco.biz

19. Gil Borok (*plaintiff may call this witness if the need arises*)
3835 Hayvenhurst Avenue
Encino, California 91436
Mobile- 818-0528-3689
Email- gborok@me.com

20. Robert Wagner (*plaintiff may call this witness if the need arises*)
Korn Ferry
1900 Avenue of the Stars Suite 2600
Los Angeles, CA 90067
310-226-2672 (w)
Robert.wagner@kornferry.com

21. John M. Genovese (*plaintiff may call this witness if the need arises*)
7584 Coastal View Drive
Los Angeles, CA 90045
Mobile: 310-245-1760
Email- jmgenovese@yahoo.com

22. William D. Ellis (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP

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3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

23. Craig Tompkins (*plaintiff may call this witness if the need arises*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
310-728-3358

25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
310-728-3358

26. Robert Mayes (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
Korn Ferry
c/o Samantha Goodman
1900 Avenue of the Stars, Suite 2600
Los Angeles, CA 90067
310.556.8557

27. Andrew Shapiro (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Jahan Raissi

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Shartsis Freise LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
415.421.6500

28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818.851.3850

29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818.851.3850

30. Andrez Matycynski (*plaintiff may call this witness if the need arises*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169

31. Dev Ghose (*plaintiff may call this witness if the need arises*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
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(b) Expert Witnesses and Summaries of Opinions

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding

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proper exercise of directors' fiduciary duties. Among other things, he will offer opinion testimony regarding appropriate corporate governance practices and activities where a board of directors is faced with circumstances in which directors lack or may lack independence and/or disinterestedness, including the appropriate practices and activities to address such circumstances, and to evaluate the success of such practices and activities, including with respect to the following matters (i) the process used to terminate James J. Cotter, Jr. as President and Chief Executive Officer of Reading International, Inc. ("RDI")., (ii) the use of the Executive Committee of RDI's Board of Directors, (iii) the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given and (iv) the rejection of the Offer.[2] Former Chief Justice Steele also will offer opinion

[2] As stated in the Steele Report, it is Justice Steele's understanding that Nevada courts look to Delaware case law when there is no Nevada statutory or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the Nevada Supreme Court frequently looks to the Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on questions of corporation law, this Court often looks to those sources to predict how the Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no Nevada statutory or case law on point or an issue of corporate law, this Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the Model Act relies heavily on New York and Delaware case law, we look to the Model Act and the law of those states in interpreting the Nevada statutes.").

Justice Steele is aware that the defendants in this action have filed a motion in limine because the Steele Report stated that the opinions therein were based on what a court that applied Delaware law would find. That phraseology was intended simply to refer to Justice Steele's years of experience in Delaware's well-versed body of law. The Delaware law on

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testimony to rebut opinions offered by defendants' experts Michael Klausner and Alfred Osborne.

2. Richard Spitz will offer opinion testimony relating to executive and CEO searches and RDI's supposed CEO search. It is anticipated that he will offer opinion testimony that the execution of the (supposed) executive search process undertaken at RDI in 2015 to find a CEO was not conducted properly and that the search failed, including because the selection of Ellen Cotter as CEO was not the product of completing the search process undertaken and was not a result of the search activities conducted. Mr. Spitz also will offer opinion testimony to rebut opinions offered by defendants' expert Alfred Osborne.
3. Albert Nagy will offer opinion testimony in rebuttal to defendants' expert Alfred Osbourne. Among other things, it is anticipated that he will offer opinion testimony that Margaret Cotter's compensation from RDI is not within a reasonable range for a person with her experience and qualifications.
4. Tiago Duarte-Silva will offer opinion testimony about money damages Plaintiff seeks by this action. It is anticipated that his opinion testimony will include opinions that (i) Reading's earnings have declined and underperformed since Ellen Cotter became Reading's CEO, and (ii) Reading's value has declined and underperformed since Ellen Cotter became Reading's CEO. Mr. Duarte-Silva also will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll.

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which Justice Steele relies neither supplants nor modifies the plain meaning of Nevada law, but only is used to inform Nevada law.

G. Issues of Law

Plaintiff's position is that any such issues will be raised with the Court in the context of jury instructions.

H. Previous Orders on Motions in Limine

a. Defendants' Motion In Limine to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty

   i. Granted in Part. With respect to Chief Justice Steele, he may testify only for the limited purpose of identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. Withdrawn as to Dr. Finnerty. Denied as to all other experts. *See* December 21, 2016 Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion In Limine to Exclude Expert Testimony ("December 21, 2016 Order"), on file.

b. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1 Regarding Advice of Counsel.

   ii. **Denied** (see Order filed on 12/28/18)

c. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.

   iii. **Denied** (*see* Order filed on 12/28/18)

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d. Plaintiff James Cotter Jr.'s Motion In Limine No. 3 Regarding After-Acquired Evidence.

iv. **Denied**, however, "to the extent that Plaintiff's retention and use of Highpoint Associates and Derek Alderton is admitted at trial, it will be admitted with an instruction limiting the evidence solely to the issue of Plaintiff's suitability as President and CEO of RDI." (*see* Order filed on 12/28/18).

e. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative

v. **Denied** (*see* Order filed on 12/28/18).

f. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority

vi. **Denied** (*see* Order filed on 12/28/18).

g. Defendant William Gould's Motion In Limine Exclude Irrelevant Speculative Evidence

vii. **Denied as premature** (*see* Order filed on 12/28/18).

I. Previous Orders on Motions for Partial Summary Judgment

a. Ellen Cotter, Margaret Cotter, and Guy Adams' Motion Summary Judgment (motion is not to be filed until Plaintiff has a chance to review the discovery ordered on May 2, 2018);

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b. Motion for Leave to File Dispositive Motion/Motion to Dismiss for Lack of Subject Matter Jurisdiction Due to Failure to Show Demand Futility (Hearing scheduled for May 25, 2018);

c. RDI's Motion to Dismiss for Failure to Show Demand Futility.

viii. Denied, without prejudice to renew after obtaining leave of Court to file renewed motion. (See Transcript on Hearing for Motion on Continuance (January 8, 2018 – Public), 10:22 – 11:1.)

d. The Remaining Director Defendants' Motion for Judgment as a Matter of Law.

ix. Denied, without prejudice to renew after obtaining leave of Court to file renewed motion. (See Transcript on Hearing for Motion on Continuance (January 8, 2018 – Public), 10:22 – 11:1.)

e. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims.

x. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.

f. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence.

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xi. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.

g. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer.

xii. Granted. See Order dated December 28, 2017.

h. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee.

xiii. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.

i. Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO.

xiv. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See December 28, 2017 Order.

j. Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and

Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams.

xv. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.

k. Plaintiff James J. Cotter, Jr.'s Motion for Partial Summary Judgment.

xvi. Denied. See October 3, 2016 Order Denying James J. Cotter Jr.'s Motion for Partial Summary Judgment and Granting RDI's Countermotion for Summary Judgment.

l. Defendant William Gould's Motion for Summary Judgment.

xvii. Granted. See Order dated December 28, 2017.

J. Estimated Length of Trial.

Plaintiff estimates 15 to 19 days; 80-100 trial hours.

MORRIS LAW GROUP

By: /s/ Akke Levin
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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: **PLAINTIFF'S PRETRIAL MEMORANDUM,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 18th day of May, 2018.

By: /s/ Judy Estrada

ELECTRONICALLY SERVED
5/18/2018 5:26 PM

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Ellen Cotter, and Guy Adams

(Additional attorneys listed on signature page)

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)) **DEFENDANTS' PRE-TRIAL**) **MEMORANDUM**)))))))

Case Number: A-15-719860-B

DEFENDANTS' PRE-TRIAL MEMORANDUM

Defendants Margaret Cotter, Ellen Cotter, and Guy Adams, and Nominal Defendant Reading International, Inc., through their counsel of record, hereby submit the following pre-trial memorandum in accordance with this Court's 2nd Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call, dated May 4, 2018, and Local Rule 2.67. Defendants are filing separately because, after providing their redline edits to Plaintiff's "discussion draft" of the Pre-Trial Memorandum, Plaintiff unilaterally filed his own Pre-Trial Memorandum separately. When Defendants provided their proposed edits, Plaintiff's counsel responded at 2:53 p.m. that Defendants had "included material not properly included in a pre trial memorandum." *See* Ex. A (May 18, 2018 email chain). Also at 2:53 p.m., Defendants' counsel asked Plaintiff's counsel to explain what he was referring to. *Id.* Rather than providing any explanation, Plaintiff's counsel proceeded to file his own Pre-Trial Memorandum separately. After Plaintiff's Pre-Trial Memorandum had already been filed, Plaintiff's counsel responded and stated: "For example, it argues the not yet filed 'ratification' summary judgment motion. I am out to dinner and will leave it at that." However, Defendants' proposed edits properly described ratification as a defense. Thus, Defendants are now forced to file their own version of the Pre-Trial Memorandum separately.

I. MATTER REFERENCED IN MAY 4, 2018 ORDER, PARAGRAPH D

A. Motions in Limine

1. None currently pending. See Section II.I for motions *in limine* previously ruled upon.

B. Motions for Summary Judgment

1. See Section II. J. Defendants contend there are several potentially dispositive issues that must be resolved prior to trial.

II. OTHER PRETRIAL MATTER

A. Statement of Facts

Plaintiff's Statement:

In view of the significant prior proceedings in this case, including motions to dismiss and summary judgment motions, as well as the detail in the pending Second Amended Complaint (the particular allegations of which have been or will be admitted or denied in the individual defendants' respective answers), and the Court's resulting familiarity with this case, the parties respectfully provide the following abbreviated, summary statement of facts of the case:

Plaintiff James J. Cotter, Jr. ("Mr. Cotter" or "Plaintiff") was and is a substantial shareholder and a director of nominal defendant Reading International, Inc. ("RDI" or the "Company"), as well as a former President and Chief Executive Officer ("CEO"). Defendants Ellen Cotter and Margaret Cotter were and are members of the RDI board of directors (the "Board") and at all times relevant hereto have purported to be and/or been the controlling shareholder(s) of RDI. Each of the remaining individual defendants was at relevant times and is a member of the RDI Board, as well of certain Board committees.

The facts of this case include and concern acts and omissions of individual director defendants which the Plaintiff claims give rise to entail breaches of fiduciary duties individually and/or together with other acts and omissions, including with respect to the following matters: the threat

to terminate Mr. Cotter as President and CEO of RDI, the termination of Mr. Cotter as President and CEO of RDI, the demand that he resign from the Board, RDI Board governance matters, RDI SEC filings and press releases, the search for a permanent CEO that resulted in Ellen Cotter becoming permanent CEO, the hiring and compensation of Margaret Cotter as EVP RED NY, the payment of certain monies to certain of the individual defendants and the actions and or lack of actions by each of the individual defendants in response to offers or expressions of interest by Patton Vision and others to purchase all of the outstanding stock of RDI.

Director Defendants' Statement:

On June 12, 2015, the Board of Directors of Reading International, Inc. ("RDI") voted to terminate Plaintiff James J. Cotter, Jr. as President and CEO of RDI. Plaintiff claims that this decision was a breach of fiduciary duty. Plaintiff also claims various other breaches of fiduciary duty, including with respect to the search for a new President and CEO of RDI, the hiring of Margaret Cotter as an Executive Vice President for Real Estate -- NYC, and the approval by the Compensation Committee of the use of Class A stock by the Estates of James J. Cotter, Sr. (the "Cotter Estate") to exercise an option held by the Cotter Estate to purchase 100,000 shares of RDI Class B voting stock (the "Cotter Estate Stock Option Exercise").. The Director Defendants contend that they acted in the best interests of RDI stockholders at all times and fulfilled their fiduciary duties to the Company. The Director Defendants further contend that the actions taken by the Board and its committees is protected by the Business Judgment Rule and, furthermore, that none of the actions of which Plaintiff complains caused any damage to the Company.

In December 2017, this Court entered judgment on behalf of five of the nine current Directors of RDI—William Gould, Douglas McEachern, Edward Kane, Judy Codding, and Michael Wrotniak—because there is no material issue of fact that these Directors were independent and disinterested. As a result, all of the corporate "transactions" alleged by Plaintiff James J. Cotter, Jr. to be actionable breaches of fiduciary duty were indisputably approved by a majority of disinterested, independent directors, save for two: (1) the actions taken by Board members leading up to and including the termination of Plaintiff as CEO and President of RDI; and (2) the RDI Compensation Committee's approval of the Cotter Estate Stock Option Exercise. Following the Court's decision, the full RDI Board convened a Special Meeting on December 29, 2017 at the request of these five disinterested, independent directors to reevaluate these two remaining transactions.

After discussing Plaintiff's allegations as to the potential interestedness or non-independence of Mr. Adams, Ellen Cotter, and Margaret Cotter, the independent directors addressed the challenged termination and stock-option decisions at the Special Meeting. In doing so, they were informed by the Company's counsel, their own extensive knowledge of the applicable facts, their previous corporate-board experience, and a further review of the contemporaneous RDI Board materials relevant to those decisions. The Board also allowed additional debate and comment. Ultimately, with Mr. Adams, Ellen Cotter, and Margaret Cotter not voting, the RDI Board voted 5-1 (with only Plaintiff dissenting) to ratify Plaintiff's termination and the Compensation Committee's stock-option decision. With the RDI Board having met all of the legally required criteria, Nevada's business judgment rule therefore

applies to those "transactions," as it does to the other corporate decisions questioned by Plaintiff in this derivative suit. Given the principal purpose of the Business Judgement Rule—to prevent the second-guessing of Board decisions—none of the actions of which Plaintiff complains (including these two actions specifically ratified in December) can now be invalidated or be a basis for a claim of damages regardless of any decision with respect to the independence of Guy Adams, Ellen Cotter, or Margaret Cotter. The five independent directors have exercised the authority vested in them by the Nevada Corporations Code, and their determination must under such law, be respected.

RDI's Statement:

RDI joins in the Director Defendants' Statement above.

B. List of Claims

Plaintiff's list of claims for relief is as follows:

A. Breaches of the Duty of Care (SAC 1 - 179) (First Cause)

1. **Process in connection with termination, including aborting ombudsman and lack of process/process failures (SAC 3, 35, 36, 43, 50 – 57, 61 – 94) (EC, MC, GA) (equitable relief)**[1]
2. **Breach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC (SAC - all), including paragraph A. 1. above and the following:**

[1] Arabic numbered bold typeface paragraphs indicate matters which Plaintiff contends give rise to and/or constitute breaches of fiduciary duty independently, as well as together with other matter.

- Use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams/WG, JC, MW)
- Process/process failures from aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: All)
- Erroneous and/or materially misleading statements in board materials such as agendas and minutes, and in public disclosures including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
- Process/process failures in connection with nomination and retention of directors, including adding Codding and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the $200,000 pre-employment bonus (committees - members) (Board - all)
- $50,000 to Adams (SAC 153, 166) (Committees – members) (Board – all but GA)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)

3. Damages/injury (SAC 163 – 168)

a. injury to RDI's reputation and goodwill (164)

b. impairment of shareholder rights due to SEC filings (165)

B. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EC, MC)

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2. **Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EC, MC) (equitable relief also sought)**
3. **Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)**
4. **Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC) (Board: all)**
5. **Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (Committee members) (Board: all)**
6. **Breach of the duty of loyalty (all) and misuse of their position as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:**

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
- $50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

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7. Damages/injury (SAC 163 – 168)

a. diminution in value of RDI (163)

b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. Breaches of the Duty of Candor (SAC 1 – 172, 187 – 192) (Third Cause)

1. SEC filings and press releases (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (EC - all) (WG - Form 8-Ks and press releases about termination and CEO) (each as to disclosures regarding themselves (e.g., proxies))
2. Damages/injury (SAC 163 – 168)
   a. diminution in value of RDI (163)
   b. impairment of shareholder rights due to SEC filings (165)
   c. injury to reputation and goodwill (168)

D. Aiding and Abetting Breaches of Fiduciary Duty (SAC 193 – 200) (Fourth Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)

2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
4. Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
5. Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (EC, MC)
6. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
7. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (EC, MC)
8. Damages/injury (SAC 163 – 168)
    a. diminution in value of RDI (163)
    b. injury to reputation and goodwill (164)
    c. impairment of shareholder rights due to SEC filings (165)
    d. other monetary damages (166)
        i. $200,000 and job to MC
        ii. $50,000 to Adams
        iii. duplicate cost of paying consultants to perform MC's position's responsibilities
        iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. List of Affirmative Defenses

Plaintiff has not abandoned any purported claims identified in the Second Amended Complaint. Director Defendants therefore cannot abandon any affirmative defenses asserted in its Answer to the Second Amended Complaint. Depending on which particular claims for relief

Plaintiff actually pursues at trial, Director Defendants may raise the following affirmative defenses:

- Failure to State a Cause of Action;
- Statute of Limitations and Repose;
- Laches;
- Unclean Hands;
- Spoliation;
- Illegal Conduct and Fraud;
- Waiver, Estoppel, and Acquiescence;
- Ratification and Consent;
- No Unlawful Activity;
- No Reliance;
- Failure to Plead Fraud with Particularity;
- Uncertain and Ambiguous Claims;
- Privilege and Justification;
- Good Faith and Lack of Fault;
- No Entitlement to Injunctive Relief;
- Damages too Speculative;
- No Entitlement to Punitive Damages;
- Failure to Mitigate;
- Comparative Fault;
- Business Judgment Rule;
- Equitable Estoppel;
- Election of Remedies;
- N.R.S. 78.138;
- Failure to Make Appropriate Demand; and

- Conflict of Interest and Unsuitability to Serve as a Derivative Representative.

RDI

- Failure To State A Claim;
- Failure To Make Demand;
- Corporate Governance;
- Irreparable Harm To Company;
- Unclean Hands;
- Spoliation;
- Waiver, Estoppel, And Acquiescence;
- Ratification And Consent;
- No Unlawful Activity;
- Privilege And Justification;
- Good Faith And Lack Of Fault;
- No Entitlement To Injunctive Relief;
- Damages Too Speculative;
- Mitigation Of Damages;
- Comparative Fault;
- Equitable Estoppel;
- Nevada Revised Statute 78.138; and
- Conflict Of Interest And Unsuitability To Serve As Representative.

D. Claims or Defenses to be Abandoned

None. However, Plaintiff will not seek equitable relief with respect to historical or past actions relating to the executive committee, to corporate governance of RDI such as misleading or inaccurate meeting agendas

and/or minutes, to the addition or removal of persons to and/or from the RDI board of directors and to SEC filings and press releases. Plaintiff will seek equitable relief with respect to the vote to terminate James J. Cotter Jr. as President and CEO and reserves the right to do so with respect to authorization of the exercise of the so-called 100,000 share option.

E. List of Exhibits

Under paragraph (B) of the Second Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (dated May 4, 2018), the parties' exhibit lists are to be provided to the Court at the Calendar Call on June 18, 2018.

F. Agreements to Limit or Exclude Evidence

None presently.

G. Witness List

A. Nonexpert Witnesses

For Plaintiff:

1. James Cotter, Jr. (*plaintiff expects to present this witness*)
   c/o Mark Krum
   Yurko, Salvesen & Remz. P.C.
   One Washington Mall, 11th Floor
   Boston, MA 02108
   617.723.6900

2. Person Most Knowledgeable, Reading International, Inc.
   (*plaintiff may call this witness if the need arises*)
   c/o Mark E. Ferrario, Esq.
   Leslie S. Godfrey, Esq.
   Greenberg Traurig LLP
   773 Howard Hughes Parkway, Suite 400 North
   Las Vegas, Nevada 89169
   702-792-3773

3. Margaret Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

4. Ellen Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
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5. Douglas McEachern (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

6. Guy Adams (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

7. Edward Kane (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

RDI-A09809

8. William Gould (*plaintiff expects to present this witness*)
Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
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4785 Caughlin Parkway
Reno, Nevada 89519
775-827-2000

9. Timothy Storey (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
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Carolyn K. Renner, Esq.
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775-827-2000

10. John Hunter (*plaintiff may call this witness if the need arises*)
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Santa Monica, CA 90401

11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)
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12. Eric Barr (*plaintiff may call this witness if the need arises*)
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Southern Melbourne, Australia
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ebarr@optushome.com.au

13. Al Villasenor (*plaintiff may call this witness if the need arises*)
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Manhattan Beach, California 90266

RDI-A09810

Home- 310-546-5193
Mobile- 310-897-0407

14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*
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15. Harry P. Susman (*plaintiff may call this witness if the need arises*)
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16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)
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17. Judy Codding (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
2266 Canyon Back Road
Los Angeles, California 90049

18. Michael J. Wrotniak (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
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World Headquarters
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M.Wrotniak@Aminco.biz

19. Gil Borok (*plaintiff may call this witness if the need arises*)
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Encino, California 91436
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20. Robert Wagner (*plaintiff may call this witness if the need arises*)
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Robert.wagner@kornferry.com

21. John M. Genovese (*plaintiff may call this witness if the need arises*)
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Email- jmgenovese@yahoo.com

22. William D. Ellis (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
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Las Vegas, Nevada 89169
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23. Craig Tompkins (*plaintiff may call this witness if the need arises*)

c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
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24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)
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25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
310-728-3358

26. Robert Mayes (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
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c/o Samantha Goodman
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310.556.8557

27. Andrew Shapiro (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Jahan Raissi
Shartsis Freise LLP
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415.421.6500

28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818.851.3850

29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818.851.3850

30. Andrez Matycynski (*plaintiff may call this witness if the need arises*)
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3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169

31. Dev Ghose (*plaintiff may call this witness if the need arises*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169

<u>For the Director Defendants</u>:

1. Ellen Cotter (*the director defendants expect to present this witness*)
c/o COHEN|JOHNSON|PARKER|EDWARDS
375 E. Warm Springs Road, Ste. 104
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702-823-3500
And
Quinn Emanuel Urquhart & Sullivan, LLP

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213-443-3000

2. Margaret Cotter (*the director defendants expect to present this witness*)
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And
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, 90017
213-443-3000

3. James Cotter, Jr. (*the director defendants expect to present this witness*)
c/o Mark Krum
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One Washington Mall, 11th Floor
Boston, MA 02108
617-723-6900

4. Guy Adams (*the director defendants expect to present this witness*)
c/o COHEN|JOHNSON|PARKER|EDWARDS
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702-823-3500
And
Quinn Emanuel Urquhart & Sullivan, LLP
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Los Angeles, 90017
213-443-3000

5. Edward Kane (*the director defendants expect to present this witness*)
c/o COHEN|JOHNSON|PARKER|EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, NV 89119
702-823-3500
And
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, 90017
213-443-3000

6. Douglas McEachern (*the director defendants expect to present this witness*)
c/o COHEN|JOHNSON|PARKER|EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, NV 89119
702-823-3500
And
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, 90017
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7. Michael Wrotniak (*the director defendants expect to present this witness*)
c/o COHEN|JOHNSON|PARKER|EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, NV 89119
702-823-3500
And
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, 90017
213-443-3000

8. Judy Codding (*the director defendants expect to present this witness*)
c/o COHEN|JOHNSON|PARKER|EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, NV 89119
702-823-3500
And
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, 90017
213-443-3000

9. William Gould (*the director defendants expect to present this witness*)
c/o Maupin Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
775-827-2000
And
c/o Bird, Marella, Boxer, Wolpert,
Nessim, Drooks, Lincenberg & Rhow
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067
310-201-2100

10. Timothy Storey (*the director defendants may call this witness if the need arises*)
c/o Maupin Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
775-827-2000
And
c/o Bird, Marella, Boxer, Wolpert,
Nessim, Drooks, Lincenberg & Rhow
1875 Century Park East, 23rd Floor

Los Angeles, CA 90067
310-201-2100

11. Craig Tompkins (*the director defendants may call this witness if the need arises*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169
702-792-3773

12. Bob Smerling (*the director defendants expect to present this witness*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169
702-792-3773

13. Terri Moore (*the director defendants expect to present this witness*)
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3773 Howard Hughes Pkwy., Ste. 400N
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702-792-3773

14. Andrzej Matyczynski (*the director defendants expect to present this witness*)
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Las Vegas, NV 89169
702-792-3773

15. Linda Pham (*the director defendants expect to present this witness*)
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Las Vegas, NV 89169
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16. Debbie Watson (*the director defendants expect to present this witness*)
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17. Laura Batista (*the director defendants expect to present this witness*)
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18. David Roth (*the director defendants expect to present this witness*)
Cecelia Packing Corp.
24780 E South Ave.
Orange Cove, CA 93646
559-626-5000

19. Michael Buckley (*the director defendants may call this witness if the need arises*)
Edifice Real Estate Partners
545 8th Ave.
New York, NY 10018
347-826-4569

20. Derek Alderton (*the director defendants expect to present this witness*)
Highpoint Associates
100 N Sepulveda Blvd.
El Segundo, CA 90245
310-616-0100

21. Mary Cotter (*the director defendants expect to present this witness*)
2818 Dumfries Road

Los Angeles, CA 90064
310-559-0581

22. Jill Van (*the director defendants expect to present this witness*)

Grant Thornton
515 S. Flower St., 7th Floor
Los Angeles, CA 90071
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23. Whitney Tilson (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818-851-3850

24. Jon Glaser (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818-851-3850

For Reading International, Inc.:

RDI does not intend to call witnesses, but reserves all rights to question witnesses identified by Plaintiff and/or the other defendants in this matter.

B. Expert Witnesses and Summaries of Opinions

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding proper exercise of directors' fiduciary duties. Among

other things, he will offer opinion testimony regarding appropriate corporate governance practices and activities where a board of directors is faced with circumstances in which directors lack or may lack independence and/or disinterestedness, including the appropriate practices and activities to address such circumstances, and to evaluate the success of such practices and activities, including with respect to the following matters (i) the process used to terminate James J. Cotter, Jr. as President and Chief Executive Officer of Reading International, Inc. ("RDI")., (ii) the use of the Executive Committee of RDI's Board of Directors, (iii) the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given and (iv) the rejection of the Offer.[2] Former Chief Justice Steele

[2] As stated in the Steele Report, it is Justice Steele's understanding that Nevada courts look to Delaware case law when there is no Nevada statutory or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross Gold U.S.A., Inc.,* 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the Nevada Supreme Court frequently looks to the Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on questions of corporation law, this Court often looks to those sources to predict how the Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v. ITT Corp.,* 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no Nevada statutory or case law on point or an issue of corporate law, this Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the Model Act relies heavily on New York and Delaware case law, we look to the Model Act and the law of those states in interpreting the Nevada statutes.").

also will offer opinion testimony to rebut opinions offered by defendants' expert Michael Klausner.

2. Richard Spitz will offer opinion testimony relating to executive and CEO searches and RDI's supposed CEO search. It is anticipated that he will offer opinion testimony that the execution of the (supposed) executive search process undertaken at RDI in 2015 to find a CEO was not conducted properly and that the search failed, including because the selection of Ellen Cotter as CEO was not the product of completing the search process undertaken and was not a result of the search activities conducted.
3. Tiago Duarte-Silva will offer opinion testimony about money damages Plaintiff seeks by this action. It is anticipated that his opinion testimony will include opinions that (i) Reading's earnings have declined and underperformed since Ellen Cotter became Reading's CEO, and (ii) Reading's value has declined and underperformed since Ellen Cotter became Reading's CEO. Mr. Duarte-Silva also will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll.

For the Director Defendants:

Justice Steele is aware that the defendants in this action have filed a motion in limine because the Steele Report stated that the opinions therein were based on what a court that applied Delaware law would find. That phraseology was intended simply to refer to Justice Steele's years of experience in Delaware's well-versed body of law. The Delaware law on which Justice Steele relies neither supplants nor modifies the plain meaning of Nevada law, but only is used to inform Nevada law.

1. Michael Klausner – Mr. Klausner will offer opinion testimony regarding the Board of Directors' proper exercise of their duties and obligations in connection with their decision to terminate James Cotter, Jr. as President and CEO and their decision not to pursue the third-party indication of interest, including as a rebuttal to Plaintiffs' expert Justice Myron Steele.
2. Jon Foster – Mr. Foster will offer opinion testimony regarding the Board of Directors' decision-making and analysis in connection with their consideration of the third-party indication of interest, as a rebuttal to the expected testimony of Plaintiffs' expert Tiago Duarte-Silva.
3. Richard Roll – Dr. Roll will offer opinion testimony about the claimed money damages being sought by Plaintiff in this action based on fluctuations or changes in RDI's stock price, including as a rebuttal to Plaintiffs' purported damages experts.
4. Bruce Strombom – Mr. Strombom will offer opinion testimony to rebut the purported damages analysis set forth by Plaintiffs' expert Tiago Duarte-Silva.

For Reading international, Inc.:

RDI joins in the expert designations of the Director Defendants.

H. Issues of Law

Plaintiff's Position:

Plaintiff's position is that any such issues will be raised with the Court in the context of jury instructions.

Director Defendants' Position:

In order to allow Director Defendants to adequately prepare for trial, they request an early conference on jury instructions.

Director Defendants believe that for each purported breach of fiduciary described in the Second Amended Complaint, each of them (1) were subject to the protections and presumptions afforded by Nevada's business judgment rule, (2) properly exercised their fiduciary obligations, (3) did not engage in any "intentional misconduct, fraud or a knowing violation of law" required by N.R.S. 78.138 to impose individual liability on corporate directors, and, although not relevant under Nevada law, and (4) were independent for each relevant decision made by the Board in which they participated. Their decisions were duly ratified by a majority of the Board consisting entirely of independent directors, and also did not result in any damages to RDI. Moreover, Plaintiff lacks standing to bring this derivative action or to derivatively assert certain claims (a) that are wholly personal to him, such as his termination claim and his claims that he was somehow "threatened" by one or more of the Defendant Directors, and (b) since he has not proven his allegations that demand would have been futile. Similarly, the equitable relief that Plaintiff seeks—*i.e.*, reinstatement as President and CEO of RDI—is not available as a matter of law. Finally, Director Defendants' contend that the Board's December 29, 2017 vote ratifying the Board's earlier decisions with respect to Plaintiff's termination and the exercise of the 100,000 share option eliminated any potential issues remaining for trial.[3]

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[3] Additionally, certain documents remain which may be subject to in camera review regarding production shortly. *See James J. Cotter, Jr. v. The Eighth Judicial District Court of the State of Nevada*, Case No. 18-16774, 134 Nev., Advance Opinion 32 (Nev. May 3, 2018).

RDI's Position:

RDI joins in the Director Defendants' request for an early conference on jury instructions.

RDI contends that Plaintiff lacks standing to act on behalf of RDI, because he is unable to show that it would have been futile for him to make a demand on RDI's Board of Directors with respect to his most recently amended Complaint. Because standing is jurisdictional, this Court lacks jurisdiction to proceed with this matter.

RDI notes that all decisions related to the compensation of any board member in any capacity, are presumed pursuant to Nevada statute, regardless of any contention of personal interest, to be fair to RDI, pursuant to NRS 78.240(5).

All board decisions challenged by Plaintiff, with the exception of the termination of Cotter, Jr., were approved by a majority of directors whose decisions in that regard this Court has already determined were the exercise of valid business judgment. Additionally, the termination of Cotter, Jr, and the decision by the Compensation Committee to permit the Estate of Cotter, Sr. to pay for the exercise of its option to purchase shares with shares that it already owned are decisions that have been ratified by a majority of the independent members of RDI's board. Accordingly, Plaintiff will be unable to prove any damages incurred by RDI.

Additionally, as the result of the Court's Dember 2017 ruling, much of the proposed testimony of former Justice Steele (specifically, that related to his conclusions (ii)-(iv)) has been rendered irrelevant. The Court's dismissal of the claim related to the rejected "offer" also renders testimony related to Steele's conclusion (iv) irrelevant. Moreover, because Steele's testimony involves application of the "entire fairness" doctrine, a doctrine

inconsistent with Nevada law, Steele's proposed testimony with respect to his conclusion (i) is likely to confuse the jury.

Additionally, RDI joins in the position of the Director Defendants.

I. Previous Orders on Motions in Limine

a. Defendants' Motion In Limine to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty

i. Granted in Part. With respect to Chief Justice Steele, he may testify only for the limited purpose of identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. Withdrawn as to Dr. Finnerty. Denied as to all other experts. See December 21, 2016 Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion In Limine to Exclude Expert Testimony ("December 21, 2016 Order"), on file.

b. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1 Regarding Advice of Counsel

i. **Denied** (see Order filed on 12/28/18)

c. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.
    i. **Denied** (see Order filed on 12/28/18)

d. Plaintiff James Cotter Jr.'s Motion In Limine No. 3 Regarding After Acquired Evidence
    i. **Denied**, however, "to the extent that Plaintiff's retention and use of Highpoint Associates and Derek Alderton is admitted at trial, it will be admitted with an instruction limiting the evidence solely to the issue of Plaintiff's suitability as President and CEO of RDI." (see Order filed on 12/28/18)

e. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative
    i. **Denied** (see Order filed on 12/28/18)

f. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority
    i. **Denied** (see Order filed on 12/28/18)

g. Defendant William Gould's Motion In Limine To Exclude Irrelevant Speculative Evidence

i. **Denied as premature** (see Order filed on 12/28/18)

J. Previous Orders on Motions for Partial Summary Judgment

a. Ellen Cotter, Margaret Cotter, and Guy Adams' Motion For Summary Judgment (motion is not to be filed until Plaintiff has an opportunity to review the discovery ordered on May 2, 2018);

b. Motion for Leave to File Dispositive Motion/Motion to Dismiss for Lack of Subject Matter Jurisdiction Due to Failure to Show Demand Futility (Hearing scheduled for May 25, 2018);

c. RDI's Motion to Dismiss for Failure to Show Demand Futility

i. Denied, without prejudice to renew after obtaining leave of Court to file renewed motion. (See Transcript on Hearing for Motion on Continuance (January 8, 2018 – Public), 10:22 – 11:1.)

d. The Remaining Director Defendants' Motion for Judgment as a Matter of Law

i. Denied, without prejudice to renew after obtaining leave of Court to file renewed motion. (See Transcript on Hearing for Motion on

Continuance (January 8, 2018 – Public), 10:22 – 11:1.)

e. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims
    i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
f. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence
    i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
g. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer
    i. Granted. See Order dated December 28, 2017.
h. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee

i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order. Included among the claims dismissed against Directors Codding, Gould, Kane, McEachern and Wrotniak.

i. Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO
    i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See December 28, 2017 Order.

j. Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams
    i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.

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k. Judgment in favor of Defendants Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak GRANTED on all claims asserted by Plaintiff. See Order dated December 28, 2017.

l. Plaintiff James J. Cotter, Jr.'s Motion for Partial Summary Judgment.

    i. Denied. See October 3, 2016 Order Denying James J. Cotter Jr.'s Motion for Partial Summary Judgment and Granting RDI's Countermotion for Summary Judgment.

m. Defendant William Gould's Motion for Summary Judgment

    i. Granted. See Order dated December 28, 2017.

K. Estimated Length of Trial

Defendants estimate 15 days; 80 trial hours.

L. Other Issues

Director Defendants' Statement:

Plaintiff's list of claims above neither complies with the rules for pre-trial disclosures nor provides *any* clarity about what claims Plaintiff actually intends to prove at trial or what relief (money or equitable) he seeks. Eighth District Rule of Practice 2.67(b)(2) requires Plaintiff to provide "[a] list of all claims for relief designated by reference to each claim or paragraph of a pleading and a description of the claimant's theory of recovery with each category of damage requested." The Director Defendants intend to address at trial any purported breaches of fiduciary

duty—and will show that Plaintiff's claims are baseless—but must be told which specific actions are at issue in order to properly prepare their defense.

Plaintiff states that he will pursue claims for breaches of fiduciary duty potentially based on each and every allegation in the Second Amended Complaint by, for example, stating his intent to pursue "[b]reach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC." This provides no more information than if Plaintiff had never made his pre-trial disclosures—he may or may not pursue a claim based on any act or omission mentioned or alluded to anywhere in the Second Amended Complaint.

Plaintiff's list of claims also fails to recognize that Directors Codding, Gould, Kane, McEachern and Wrotniak are no longer defendants in this case, and purports to continue to assert claims of wrongdoing against each of these individuals. He apparently seeks to end-run the determination of this Court that the actions taken by these individuals are protected by the Nevada Business Judgment Rule and seeks to overturn decisions (for example, hiring Margaret Cotter or promoting Ellen Cotter) that the Board made by arguing, nevertheless, that these actions constituted breaches of fiduciary duty. Once independence and disinterestedness is established, however, such corporate action is protected.

Plaintiff's witness list similarly fails to shed any light on the claims Plaintiff intends to pursue—his list strays so far afield that Plaintiff has stated his intent to call Defendant Guy Adams' ex-wife (Lois Marie Kwasigroch) at trial.

Plaintiff also fails to disclose the actual monetary damages or equitable relief he intends to seek at trial. For example, Plaintiff states that

his damages resulting from Defendants' alleged breaches of the duty of care are "injury to RDI's reputation and goodwill" and "impairment of shareholder rights due to SEC filings." If these are supposed money damages, Plaintiff does not state his claim for damages, or even explain what shareholder rights are purportedly impacted. With the exception of the equitable relief he seeks in connection with his termination from RDI (*i.e.*, being reinstated as President and CEO), Plaintiff does not link any particular claim to any particular category or amount of damages. For example, Defendants have no idea what relief Plaintiff is seeking in connection with the "involuntary retirement of Storey" or "process/process failures in connection with nomination and retention of directors, including adding Codding and/or Wrotniak." Moreover, Plaintiff's damages expert is unable to testify to any causal link between any alleged breach of duty and any alleged damage to the Company. In connection with his claims related to the Cotter Estate Stock Option, Plaintiff "reserves" the right to seek equitable relief, but he does not disclose what equitable relief he may seek.

Plaintiff's list of claims/damages is indecipherable and nonsensical; Plaintiff has attempted to reserve the right at trial to pursue any claim he wants and seek whatever damages he wants. Defendants cannot prepare for trial based on these inadequate disclosures, which amount to nothing but gamesmanship and are highly prejudicial.

///

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RDI's Position:

RDI joins in the Statement of the Director Defendants.

DATED this 18th day of May 2018.

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ CJ Barnabi Nevada Bar No.: 14477 for
H. Stan Johnson (00265)
Cohen | Johnson | Parker | Edwards
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702.792.3773

Attorneys for Reading International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May 2018, I served a copy of the foregoing **DEFENDANTS' PRE-TRIAL MEMORANDUM** upon each of the parties, and any other parties so identified, via Odyssey E-Filing System pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 to:

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Mark Krum (mkrum@bizlit.com)
Steve Morris (sm@morrislawgroup.com)

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WTM Tami Cowden . (cowdent@gtlaw.com)
ZCE Lee Hutcherson . (hutcherson@gtlaw.com)
Erik Foley (efoley@lrrc.com

Dated this 18th day of May, 2018.

__/s/ CJ Barnabi_____
An employee of Cohen Johnson Parker Edwards

RDI-A09837

RDI-A09838

EXHIBIT A

From: Mark G. Krum <mkrum@bizlit.com>
Sent: Friday, May 18, 2018 3:09 PM
To: Lauren Lindsay; Noemi A. Kawamoto; hendricksk@gtlaw.com; Christopher Tayback
Cc: sm@morrislawgroup.com; Marshall Searcy; Noah Helpern; ferrariom@gtlaw.com; cowdent@gtlaw.com; sbannett@birdmarella.com; erhow@birdmarella.com
Subject: Re: Cotter/RDI - Pre trial Memo

For example, it argues the not yet filed "ratification" summary judgment motion. I am out to dinner and will leave it at that.

Get Outlook for Android

From: Christopher Tayback <christayback@quinnemanuel.com>
Sent: Friday, May 18, 2018 5:53:35 PM
To: Mark G. Krum; Lauren Lindsay; Noemi A. Kawamoto; hendricksk@gtlaw.com
Cc: sm@morrislawgroup.com; Marshall Searcy; Noah Helpern; ferrariom@gtlaw.com; cowdent@gtlaw.com; sbannett@birdmarella.com; erhow@birdmarella.com
Subject: RE: Cotter/RDI - Pre trial Memo

Mark: what are you referring to?

From: Mark G. Krum [mailto:mkrum@bizlit.com]
Sent: Friday, May 18, 2018 2:53 PM
To: Lauren Lindsay <laurenlindsay@quinnemanuel.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; hendricksk@gtlaw.com
Cc: sm@morrislawgroup.com; Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; ferrariom@gtlaw.com; cowdent@gtlaw.com; sbannett@birdmarella.com; erhow@birdmarella.com
Subject: Re: Cotter/RDI - Pre trial Memo

Defendants have included material not properly included in a pre trial memorandum. Whether by design ot oversight, you provided it to us too late to have any discussion, much less reach agreement. We therefore need to file separately.

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From: hendricksk@gtlaw.com <hendricksk@gtlaw.com>
Sent: Friday, May 18, 2018 5:39:59 PM
To: laurenlindsay@quinnemanuel.com; Noemi A. Kawamoto
Cc: Mark G. Krum; sm@morrislawgroup.com; christayback@quinnemanuel.com; marshallsearcy@quinnemanuel.com; noahhelpern@quinnemanuel.com; ferrariom@gtlaw.com; cowdent@gtlaw.com; sbannett@birdmarella.com; erhow@birdmarella.com
Subject: RE: Cotter/RDI - Pre trial Memo

RDI's comments are attached and have been added to the document circulated by Quinn Emanuel.

From: Lauren Lindsay [mailto:laurenlindsay@quinnemanuel.com]
Sent: Friday, May 18, 2018 2:10 PM
To: nkawamoto@bizlit.com
Cc: mkrum@bizlit.com; sm@morrislawgroup.com; Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>; Cowden, Tami D. (OfCnsl-LV-LT) <cowdent@gtlaw.com>; Shoshana E. Bannett <sbannett@birdmarella.com>; Ekwan E. Rhow <erhow@birdmarella.com>
Subject: RE: Cotter/RDI - Pre trial Memo

Noemi,

Attached is the pre-trial memo with our edits in redline. Let us know if there is anything you would like to discuss before filing with the court today.

We did not change this in the document, but think that a 10-15 day estimate for the trial length may be more appropriate.

Thanks,

Lauren Lindsay
Associate
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
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From: Noemi A. Kawamoto [mailto:nkawamoto@bizlit.com]
Sent: Tuesday, May 15, 2018 2:40 PM
To: Noah Helpern <noahhelpern@quinnemanuel.com>; cowdent@gtlaw.com; Mark G. Krum <mkrum@bizlit.com>; sm@morrislawgroup.com; al@morrislawgroup.com
Cc: ferrariom@gtlaw.com; hendricksk@gtlaw.com; Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>; sbannett@birdmarella.com; erhow@birdmarella.com
Subject: RE: Cotter/RDI - Pre trial Memo

Attached is a draft of the pre-trial memo for review and discussion.

Thanks,

Noemi

From: Noah Helpern [mailto:noahhelpern@quinnemanuel.com]
Sent: Tuesday, May 15, 2018 12:52 PM
To: Noemi A. Kawamoto <nkawamoto@bizlit.com>; cowdent@gtlaw.com; Mark G. Krum <mkrum@bizlit.com>; sm@morrislawgroup.com; al@morrislawgroup.com
Cc: ferrariom@gtlaw.com; hendricksk@gtlaw.com; Christopher Tayback <christayback@quinnemanuel.com>; Marshall

Searcy <marshallsearcy@quinnemanuel.com>; sbannett@birdmarella.com; erhow@birdmarella.com
Subject: RE: Cotter/RDI - Pre trial Memo

Noemi:

Can you let us know when we can expect to see a draft?

Thanks,

Noah

From: Noemi A. Kawamoto [mailto:nkawamoto@bizlit.com]
Sent: Monday, May 14, 2018 11:04 AM
To: cowdent@gtlaw.com; Mark G. Krum <mkrum@bizlit.com>; sm@morrislawgroup.com; al@morrislawgroup.com
Cc: ferrariom@gtlaw.com; hendricksk@gtlaw.com; Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>; sbannett@birdmarella.com; erhow@birdmarella.com; Noah Helpern <noahhelpern@quinnemanuel.com>
Subject: RE: Cotter/RDI - Pre trial Memo

Hi Tami,

We are working on this and expect to circulate a draft for discussion shortly.

Thanks,

Noemi

From: cowdent@gtlaw.com [mailto:cowdent@gtlaw.com]
Sent: Thursday, May 10, 2018 1:15 PM
To: Mark G. Krum <mkrum@bizlit.com>; sm@morrislawgroup.com; al@morrislawgroup.com
Cc: ferrariom@gtlaw.com; hendricksk@gtlaw.com; christayback@quinnemanuel.com; marshallsearcy@quinnemanuel.com; sbannett@birdmarella.com; erhow@birdmarella.com; noahhelpern@quinnemanuel.com; Noemi A. Kawamoto <nkawamoto@bizlit.com>
Subject: Cotter/RDI - Pre trial Memo

Mark, Steve and Akke,

Looking ahead, based on the new scheduling order, we need to file the Pretrial Memo by May 18. The one filed Dec. 8 needs to be modified, given the grant of judgment to five of the defendants.

Would you like to take the lead on this, and circulate a new draft?

Thanks,

Tami D. Cowden
Of Counsel

Greenberg Traurig, LLP
Suite 400 North
3773 Howard Hughes Parkway | Las Vegas, Nevada 89169
T 702.938.6874
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If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information.

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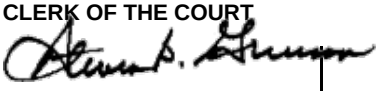
Steven D. Grierson
CLERK OF THE COURT



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANTS' MOTION TO COMPEL

MONDAY, MAY 21, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	MARSHALL M. SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. TAMI COWDEN, ESQ.

LAS VEGAS, NEVADA, MONDAY, MAY 21, 2018, 8:54 A.M.

(Court was called to order)

THE COURT: That takes me to page 3, which is the Cotter case. Good morning.

MR. KRUM: Good morning, Your Honor.

MR. SEARCY: Good morning.

THE COURT: Who's arguing the motion?

MR. SEARCY: I'm arguing the motion, Your Honor.

THE COURT: All right?

MR. SEARCY: And, again, it's Marshall Searcy for defendants Ellen Cotter, Margaret Cotter, and Don Adams.

Your Honor, this motion is about seeking answers to basic questions, questions that are fundamental to the trial that we're supposed to have in July and the one that we were supposed to have in January.

THE COURT: No. The one we had in January. We actually almost started. The jury was here.

MR. SEARCY: That's right. The jury was here, Your Honor. And that question --

THE COURT: Just no Mr. Cotter.

MR. SEARCY: -- is has plaintiff paid his experts, does he have expert testimony to put on, and were those experts available to testify when he called in sick.

The opposition that's been submitted and all the correspondence in the case show that there are no answers to

these questions. There's no answer anywhere in plaintiff's brief. The only answer that we've received has to do with plaintiff's expert Mr. Finnerty [phonetic], and Mr. Finnerty, as we saw, has sent out a bill collector to Mr. Cotter and said, you haven't paid me.

When we presented that to plaintiff the answer we got back basically, Your Honor, was, you got me, I'm not going to call Finnerty.

Well, we're entitled to know about the rest of those experts, because we have reason to believe based upon Mr. Finnerty's, the fact that he hasn't been paid, that those other experts haven't been paid, either. Mr. Finnerty was a rebuttal expert, and his bill should actually be much smaller than the other experts that plaintiff, we suspect, hasn't paid. And if plaintiff isn't going to call those experts because he hasn't paid those experts, then we should be entitled to know that, and the Court should be entitled to know that, and the Court should be entitled to know whether or not those experts were paid at the time we were supposed to go to trial back in January.

The only answer that we've gotten back from plaintiff on this is a lot of excuses. And, Your Honor, this is really a straightforward application of Rule 26. Rule 26, especially Rule 26(e), says that there's a duty to supplement materials relating to a claim or defense when a party learns

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that in some material respect the information disclosed is incomplete or incorrect. Clearly the information about payments to experts here is incomplete, because we haven't received it. But we don't know as a result of that whether or not those experts will be coming to trial.

THE COURT: You received it at the time you took their depositions. You haven't received updated information since the trial was cancelled at the last minute due to Mr. Cotter's illness.

MR. SEARCY: That's correct, Your Honor. We have not received updated information to know whether the bills that we received at the deposition have actually been paid.

THE COURT: Okay.

MR. SEARCY: And we're entitled to that information under Rule 26(e), particularly in light of the fact that that pertains to trial that's right around the corner, hopefully on July 9th, as Your Honor indicated.

THE COURT: No, no. It is July 9th. There's no questions about that.

MR. SEARCY: Well, okay. As we learned from the last hearing. Thank you, Your Honor.

THE COURT: Yes.

MR. SEARCY: And that's what this goes to. Rule 26(e), plaintiff is required to supplement that information. There's no question that information about payments to experts

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is relevant to claims and it's relevant to issues as to whether or not plaintiff may have misled this Court about whether or not he was ready to go to trial back in January.

THE COURT: That's really what you're trying to do; right? It's really about whether I was misled.

MR. SEARCY: That is-

THE COURT: It's not really as much about what the bills are and what happened; it's whether they lied to me about Mr. Cotter being ill or whether there was some other reason.

MR. SEARCY: That is a fundamental issue here, Your Honor. Absolutely. However --

THE COURT: Just be straight up and say it.

MR. SEARCY: Let me be absolutely clear. That is 100 percent one of the reasons. However, it's not the only reason.

THE COURT: All right.

MR. SEARCY: The other reason is we do have a trial coming up.

THE COURT: Because, you know, there's still some people who don't believe Mr. Cotter was actually sick.

MR. SEARCY: There's some who are skeptical.

THE COURT: I required a letter from the doctor and an affidavit before I believed him. And I got it, and I believe the doctor would not have put his medical license on

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the line to say Mr. Cotter's too sick to come for trial. But that's up to you guys whether you believe it or not.

MR. SEARCY: There's some skepticism, Your Honor --

THE COURT: I am aware of that.

MR. SEARCY: -- especially in light of these expert bills that we're seeking information about whether or not there was payment. And, frankly, Your Honor, with the July 9th trial coming up we should know whether or not those experts are going to be coming to trial. That's also a fundamental issue.

THE COURT: You should know that.

MR. SEARCY: Okay. Thank you, Your Honor.

THE COURT: Let's see. Ms. Levin, are you handling this one?

MS. LEVIN: I am.

THE COURT: Thank you.

MS. LEVIN: Your Honor, this is -- I think the Court alluded to it, but this motion is really about something different. It's disingenuous, and it's a distraction. Apart from the delay in filing the motion and the absence of making any meaningful efforts to meet and confer, Mr. Krum was ready to discuss these matters on May 14. And even though Mr. Krum mooted the issue on which it was based, which is Mr. Finnerty's bill collector arriving at one of the sister companies, nevertheless they filed this motion. But the

motion was moot before it was filed, because, as I said, the expert -- Mark Krum already advised opposing counsel that Mr. Finnerty would not be an expert at trial.

The other thing is, Your Honor, there are no outstanding document requests to the plaintiff. They repeatedly say in their motion, well, you know --

THE COURT: But don't you have a duty to supplement?

MS. LEVIN: Maybe experts do. There were subpoenas served on the experts in 2016.

THE COURT: Well, but the parties have a duty to supplement, too; right?

MS. LEVIN: But in response to what? I mean, they haven't identified any outstanding document requests to the plaintiff that these documents are responsive to. Remember, they're asking for correspondence between the plaintiff and his experts regarding to the payment or nonpayment of the fees. They haven't pointed to a single document request to what that is that's responsive to -- that's outstanding. And although they are saying that this is clearly relevant, they're saying clearly relevant, they're not bothering to explain to the Court or to us what relevance --

THE COURT: Well, you got the relevance a minute ago, didn't you?

MS. LEVIN: Well, yeah. But if that's the relevance, then we're talking about a whole different motion,

Your Honor.

THE COURT: Yes. It's a different issue.

MS. LEVIN: Yeah. And I think that -- the trial prep, there's a time and place to disclose experts. We both served pretrial memorandums -- memoranda, and so it's a distraction. I think it's too late, and there's nothing outstanding. And they're speculating about other experts, but they don't know.

THE COURT: Okay. Thanks.

MS. LEVIN: Thank you, Your Honor.

THE COURT: So the motion's granted in part. The plaintiffs will produce updated billing statements for each of the experts they intend to use at trial. They are not required to produce their own correspondence with the experts at this point, but updated billing information is something that falls within the scope that is required to be provided.

I am denying the request for sanctions and attorneys' fees.

So that takes me to your pretrial conference. So what experts are coming for trial?

MR. KRUM: Well, Your Honor --

THE COURT: See how I managed to hit that, the next step that it's relevant to?

MR. KRUM: Yeah. That's good, Your Honor. We received even later than usual by the -- you know,

understanding some sandbagging is a methodology that they've employed. So we received about 2:15 on Friday their first proposed redline of the pretrial, and then a second one about a half hour later. So we didn't have a chance to process that. I note, by the way, Your Honor, the track changes showed most of the changes they made were made on Tuesday. There were some made on Thursday, and a single change beyond Friday.

So, among other things, to go to the point you raised, Your Honor, they changed the experts that are being called. So we'll have to look at that. I don't know if I [inaudible].

THE COURT: So answer my question. Just tell me. Are there any of your experts, other than Mr. Finnerty, that you know are not coming?

MR. KRUM: Not today. But that may change. And we will apprise them as you've just ordered. Well, that's not what you ordered, but --

THE COURT: I ordered billing statements and up-to-date payment ledgers.

So previously we had identified the jury notebooks, we'd worked on the electronic exhibits, we'd done the preinstructions, we'd done the jury instructions. You guys had talked to me about PowerPoint issues. We have previously been through this all once before because we were starting

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trial when Mr. Cotter became ill.

So is there anything from that last pretrial conference, other than a reselection of alternate jurors that we will do at our final pretrial conference, that we need to talk about?

MR. KRUM: No.

THE COURT: Do you still think it's going to take the full three weeks?

MR. KRUM: 80 hours is the estimate that we had, Your Honor, so, yeah, we expect the two weeks. I believe that plaintiff has a longer estimate.

MR. SEARCY: Three weeks is fine, Your Honor.

THE COURT: Okay. Is there anything that you are going to update, other than arguably the list of experts, from which you previously provided me for our January trial that failed?

MR. SEARCY: That may well be, Your Honor. Well, so, for example, as you know, we've had discovery ordered which has not yet been provided. There was some provided before. We had motion practice and so forth. So there might be exhibits. I say might.

THE COURT: So the reason I'm asking you is, remember, we have an electronic exhibit protocol in place in this case --

MR. KRUM: Right.

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THE COURT: -- and I have things I have to do if we're going to have stuff --

Did you return all their drives to them?

Okay. So we're going to have to start over with all the drives. So if you're going to add them, make sure that you give me enough advance notice so we can have the guys from our IT department be here for your calendar call, which should be on June 25th --

Am I correct?

THE CLERK: 18th.

THE COURT: -- June 18th with all your drives so we can run that.

MR. KRUM: Understood.

THE COURT: Okay. All right. Final pretrial conference. Anything else you want to update me on, other than you're going to file a nasty motion after you get the bills? I got that part.

MR. SEARCY: That's right, Your Honor. And, if I may, I don't believe that the Court set a time frame on production of the invoices, the updating billing statements.

MR. KRUM: Well, how about three weeks after they produce what you ordered them to produce?

THE COURT: How about a week.

MR. KRUM: Two weeks, Your Honor.

THE COURT: How about a week?

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MR. KRUM: It's a Memorial Day holiday.

MR. SEARCY: A week is acceptable to us, Your Honor.

THE COURT: How about 10 days?

MR. SEARCY: Ten days.

THE COURT: Ten real days, not ten judicial days.

MR. KRUM: Well, that still puts me in the Memorial Day weekend, Your Honor. In fairness to me, I have to spend the day on the plane going back to my office. I do my best, Your Honor. When you scheduled that evidentiary hearing I was in Minneapolis on my way back.

THE COURT: I understand, Mr. Krum, when we moved that up. I understand. I'm not criticizing you about your travelling from the East Coast to here on a regular basis.

What I am concerned about is that you are trying to get to June 4th to produce this, which will then put any motion that I'm having up on the eve your trial. I don't want that happening. I want them produced by May 30th.

MR. KRUM: Okay, Your Honor. That'll be on the timetable that we'll be filing our motion.

THE COURT: Mr. Krum, May 30th.

MR. KRUM: Of course, Your Honor.

THE COURT: Thank you.

MR. KRUM: I'm just tired of not getting what you ordered them to produce until the day before it's too late. As I said, what you ordered on May 2nd we still don't have,

and I'll be reporting on whatever the state of play is later this week.

THE COURT: Thanks.

MR. KRUM: Thank you.

MR. SEARCY: Thank you, Your Honor.

THE COURT: All right. What else?

MR. SEARCY: Nothing else, Your Honor.

THE COURT: Okay. So please make sure -- we're going to need all new drives.

MR. SEARCY: Understood, Your Honor.

MR. KRUM: Understood.

THE COURT: Okay. 'Bye, guys.

THE PROCEEDINGS CONCLUDED AT 9:07 A.M.

* * * * *

RDI-A09857

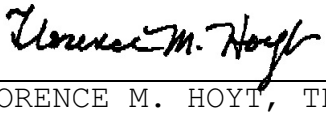
CERTIFICATION

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

5/21/18

DATE

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6/1/2018 1:26 PM
Steven D. Grierson
CLERK OF THE COURT

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' MOTION FOR SUMMARY JUDGMENT

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

TO ALL PARTIES, COUNSEL, AND THE COURT:

Pursuant to Nevada Rule of Civil Procedure 56, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (collectively, "Defendants"), by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Motion for Summary Judgment.

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

Dated: June 1, 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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

RDI-A09860

NOTICE OF MOTION

TO: ALL PARTIES, COUNSEL, AND THE COURT:

PLEASE TAKE NOTICE that the above Motion will be heard on **July 5**, 2018 at **8:30 AM** in Department XI of the above designated Court or as soon thereafter as counsel can be heard.

Dated: June 1, 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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

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. 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, 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 Minutes of the Meeting of the Reading International, Inc. ("RDI") Board of Directors held on December 29, 2017.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Minutes of the RDI Board of Directors held on January 8, 2016.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Minutes of the RDI Board of Directors held on March 10, 2016.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Minutes of the RDI Board of Directors held on June 23, 2016.

7. Attached hereto as **Exhibit F** is a true and correct copy of the RDI Form 8-K, filed with the Securities and Exchange Commission on November 13, 2015.

8. Attached hereto as **Exhibit G** is a true and correct copy of correspondence between counsel for Plaintiff and Defendants regarding the potential deposition of Plaintiff.

9. Attached hereto as **Exhibit H** is a true and correct copy of RDI's 1999 Stock Option Plan.

10. Attached hereto as **Exhibit I** is a true and correct copy of the Minutes of the RDI Board of Directors held on May 15, 2014.

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

Executed on June 1, 2018, in Los Angeles, California.

/s/ Noah Helpern
Noah Helpern

RDI-A09863

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In December 2017, this Court entered judgment on behalf of five of the nine current Directors of RDI—William Gould, Douglas McEachern, Edward Kane, Judy Codding, and Michael Wrotniak—because these Directors are independent as a matter of law. As a result, all of the corporate "transactions" alleged by Plaintiff James J. Cotter, Jr. to be actionable breaches of fiduciary duty were indisputably approved by a majority of disinterested, independent directors, save for two: (1) the actions taken by Board members leading up to and including the termination of Plaintiff as CEO and President of RDI; and (2) the RDI Compensation Committee's approval of the exercise of a stock option held by the Estate of James J. Cotter, Sr. With respect to those transactions, the outcome-determinative vote was cast by Director Guy Adams, and the Court concluded there were issues of material fact as to his independence that precluded judgment as a matter of law in his favor.

Following the Court's decision, the full RDI Board convened a Special Meeting on December 29, 2017 at the request of five disinterested, independent directors to reevaluate these two remaining transactions. Such reconsideration made logical sense, given that Plaintiff is asking that those Board decisions be re-reviewed through this litigation. This reexamination was also appropriate 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), which provide that a transaction involving or depending on an interested director shall become "valid" and subject to the business judgment rule following an informed ratification at any time.

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

only Plaintiff dissenting) to ratify Plaintiff's termination and the Compensation Committee's stock option decision. With the RDI Board having met all of the legally-required criteria, Nevada's business judgment rule therefore applies to those "transactions," as it does to the other corporate decisions questioned by Plaintiff in this derivative suit. Because Plaintiff's breach of fiduciary duty claims cannot survive upon an application of Nevada's business judgment rule and his aiding and abetting breach of fiduciary duty claim also fails without a cognizable breach, and judgment in favor of Defendants as to all claims is fully warranted.

FACTUAL BACKGROUND

A. Plaintiff Failed to Show a Genuine Disputed Material Issue of Fact as to the Disinterestedness of William Gould, Edward Kane, Judy Codding, Michael Wrotniak, or Douglas McEachern

Plaintiff filed his currently-operative Second Amended Complaint in this action on September 2, 2016, which asserts broad derivative claims for breach of the fiduciary duties of care, loyalty, candor, and disclosure against the other eight current members of the RDI Board: Douglas McEachern, Edward Kane, William Gould, Judy Codding, Michael Wrotniak, Guy Adams, Ellen Cotter, and Margaret Cotter—as well as an additional claim for aiding and abetting breach of fiduciary duty against Ellen and Margaret Cotter. (*See* Second Am. Compl. ("SAC") ¶¶ 173-200.) As Plaintiff subsequently clarified, his Second Amended Complaint identifies six "actions or transactions" by these RDI directors that he claimed were "independently entailing or constituting breaches of fiduciary duty": (1) the supposed threat to terminate Plaintiff "if he did not resolve [the Cotter family] trust disputes"; (2) Plaintiff's actual termination; (3) the authorization of the exercise of the 100,000 share option by the Estate of James J. Cotter, Sr.; (4) the permanent CEO search, which resulted in Ellen Cotter's selection; (5) the decision to hire Margaret Cotter as Executive Vice President, Real Estate Development-New York; and (6) the Board's response to the indications of interest presented by Patton Vision. (*See, e.g.*, Pl.'s Opp'n to Ind. Defs.' Suppl. Mot. for Summ. J. Nos. 1 & 2 at 5-6, filed on Dec. 1, 2017.)

In conformity with the case management schedule set forth by the Court, the Director Defendants moved for summary judgment on each of these issues, as well as generally as to all claims with respect to their independence and disinterestedness. At the hearing on the Director

Defendants' motions held on December 11, 2017, the Court determined that Plaintiff failed to raise a genuine issue of triable fact as to the disinterestedness and/or independence of Directors Wrotniak, Codding, McEachern, Kane, and Gould. (*See* Helpern Dec., Ex. A (12/29/17 Notice of Entry of Order).) In light of Nevada's strong business judgment rule and consistent with well-established law, the Court granted summary judgment in favor of these directors on all breach of fiduciary duty claims asserted by Plaintiff. (*Id*.) Separately, the Court granted summary judgment in favor of *all* directors on the claims related to Patton Vision "because of Plaintiff's failure to show damages related to an unenforceable, unsolicited, nonbinding offer." (*Id*.) Shortly thereafter, Plaintiff moved for reconsideration of the Court's ruling, which the Director Defendants opposed. At a hearing held on December 28, 2017, the Court denied Plaintiff's motion for reconsideration and indicated it would enter a written order later that day granting summary judgment in favor of Directors Wrotniak, Codding, McEachern, Kane, and Gould on all claims—which it subsequently did. (*Id*.)

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

Plaintiff cannot reasonably dispute that a majority of disinterested, independent RDI directors approved two of the transactions identified as "breaches" by Plaintiff, thereby triggering the application of Nevada's business judgment rule as to those decisions: the search for a permanent CEO of RDI, which culminated in the hiring of Ellen Cotter, and the hiring of Margaret Cotter as Executive Vice President, Real Estate Development-New York.[1] *See Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79; NRS 78.138(3), (7); *see also Goldman v. Pogo.com, Inc.*, No. Civ. A. 18532-NC, 2002 WL 1358760, at *2 (Del. Ch. June 14, 2002) ("Only upon a showing by a challenger that raises a reasonable doubt as to the independence and/or disinterestedness of a majority of a company's directors who approved the challenged transaction

[1] Discounting the votes of Guy Adams and Margaret Cotter, the selection of Ellen Cotter was approved by a vote of 5-1, with Plaintiff voting "no" and Ellen Cotter abstaining. (*See* Helpern Dec., Ex. C). Discounting the vote of Mr. Adams, the decision to hire Margaret Cotter was approved by a vote of 5-0, with each of the Cotters abstaining. (*See* Helpern Dec., Ex. D).

will the presumption of director fealty which lies at the core of the business judgment rule be rebutted.") (citation omitted).

Accordingly, only the following RDI Board decisions were arguably made without a majority of disinterested, independent RDI directors voting in favor: (1) Plaintiff's June 12, 2015 termination, which was approved by legally-independent directors McEachern and Kane, as well as Mr. Adams and the Cotter sisters, for whom independence/disinterestedness remains a jury question; and (2) the September 21, 2015 decision by RDI's Compensation Committee, consisting of legally-independent director Kane and director Adams, to approve the use of Class A Stock to pay the exercise price of an option held by the Estate of James J. Cotter, Sr.[2]

The full RDI Board subsequently met on December 29, 2017. (*See* Helpern Dec., Ex. B (12/29/17 RDI Board Minutes) at 1.) Counsel for the Company was present, and updated the Board both on the status of this litigation as well as the content of Plaintiff's allegations as to why Mr. Adams was purportedly not "independent" with respect to the at-issue decisions. (*Id.* at 3.) Counsel further informed the Board as to the scope of NRS 78.140 ("Restrictions on Transactions Involving Interested Directors or Officers"), as well as the Board's fiduciary duties under Nevada law, including the duties of due care and loyalty. (*Id.* at 4.) Without conceding the independence or disinterestedness of any directors that remain as Defendants in this action, the RDI Board then proceeded to consider the actions taken leading up and including Plaintiff's termination, as well as the option decision. (*Id.* at 4-5.) Mr. Adams, as well as Margaret and Ellen Cotter, did not vote on either issue—leaving the ultimate decisions to the five disinterested, independent directors. (*Id.* at 4-6.)

1. <u>The Ratification of Actions Taken by Board Members Relating to the Termination of Plaintiff as President and CEO of RDI</u>

Following the introduction by counsel, Lead Independent Director Gould summarized the

[2] The Board's decision not to further pursue the Patton Vision indication of interest is no longer at issue because of the Court's prior ruling that Plaintiff has failed to show any damages resulting from that decision. However, that claim would also be untenable due to the vote of a majority of disinterested directors in favor of not pursuing that indication of interest; discounting the votes of Mr. Adams and the Cotter sisters, the Board's response to the Patton Vision indication of interest was approved by a vote of 5-0. (*See* Helpern Dec., Ex. E.)

first issue for consideration: ratification of the actions taken by the Board members relating to the termination of Plaintiff as President and CEO of RDI, as such actions are outlined in the Minutes of the Board Meetings held on May 21, May 29, and June 12, 2015. (*Id.* at 4.) All directors were provided copies of the referenced Minutes. (*Id.*) In addition to their "thorough" review of the relevant Board materials, Directors Codding and Wrotniak, who were not yet members of the RDI Board at the time of Plaintiff's termination, stated that they were drawing on their "extensive knowledge about the Board's reasons for the termination of Mr. Cotter, Jr.," including their observations of Plaintiff's "behavior and demeanor in Board meetings" since each joined over two years ago. (*Id.*) Director Codding expressed her view that Plaintiff "did not possess the knowledge, experience, ability, temperament or demeanor to be chief executive officer of the Company," an opinion with which Mr. Wrotniak concurred. (*Id.*) Discussion then ensued regarding the Board materials, including the fact that Plaintiff had retained an outside consultant, Highpoint Associates, to assist him in his CEO duties—a fact that he did not disclose to the Board prior to his termination. (*Id.* at 4-5.)

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

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

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

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

Director Gould then introduced the second issue for consideration: ratification of the September 21, 2015 decision by RDI's Compensation Committee to permit the Estate of James J.

Cotter, Sr. to use Class A non-voting stock as the means of payment (as opposed to cash) for the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI. (*Id.* at 5.) Counsel for the Company summarized the information regarding the matter considered by the Compensation Committee in 2015, including the fact that acceptance of stock was within the discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan under which the stock option was granted. (*Id.* at 5-6.) The disinterested, independent Board members then generally expressed their awareness of the information as well as their review of the relevant Board materials and Compensation Committee minutes, and opened the floor up for debate, including comment by Plaintiff. (*Id.*) The independent directors noted, among other things, that the Compensation Committee had discretion under the 1999 Stock Option Plan to allow the use of Class A Shares to exercise options to acquire Class B Stock, that the Company was at the time buying in its Class A Shares under its stock repurchase plan, that the market price of Class A shares has significantly increased since the date of the transaction, and that, from the point of view of the Cotter Estate, the same economic results could have been achieved by the sale of Class A shares into the market and using those sale proceeds to exercise the options to acquire Class B Stock. (*Id.*)

A motion was made and seconded, as follows:

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

(*Id.* at 6.) The proposed resolution was then adopted by Directors Codding, Gould, Kane, McEachern, and Wrotniak, with Plaintiff casting the sole vote in opposition. (*Id.*) Plaintiff failed to offer and substantive or material objection to the ratification, complaining simply that it was taken for a "litigation purpose." (*Id.* at 5-6.)

The Board then moved, without objection, that its resolutions include the "authorization to take such other actions as may be necessary to accomplish the matters approved herein." (*Id.* at 6.) Given the legal impact of the ratification of these previous decisions by a majority of

disinterested, independent directors under NRS 78.140 and Nevada Supreme Court precedent, Defendants now bring this Motion for Summary Judgment as to all claims asserted by Plaintiff.

C. Plaintiff Took Full and Complete Discovery Regarding the Board's Ratification Decision and Does Not Challenge the Accuracy of the Relevant Board Meeting Minutes

After the Court reopened discovery regarding the Board's December 29, 2017 vote on ratification, Plaintiff pursued discovery on this subject, including through interrogatories, requests for production, subpoenas, and depositions. Plaintiff deposed William Gould, Edward Kane, Judy Codding, Ellen Cotter, Douglas McEachern, and Michael Wrotniak regarding the Board's ratification decisions. Plaintiff served document subpoenas on Judy Codding, William Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak. Plaintiff served interrogatories and requests for production of documents on Guy Adams, Ellen Cotter, and Margaret Cotter. Defendants (and dismissed former defendants) searched for, produced, and/or logged all documents relating to the Board's ratification vote, searching for documents dating back to 2015 (well before ratification was even being discussed) and using expansive search terms designed to capture all documents even potentially relevant.

During this process, Defendants sought to take Plaintiff's deposition. However, rather than appearing for deposition, Plaintiff (through his counsel) stipulated that he would not offer any written or oral testimony regarding the ratification process or meeting. In the words of Plaintiff's counsel: "Based on the deposition testimony and documents provided by defendants, we do not intend to offer testimony by Mr. Cotter about what happened regarding the ratifications at the December 29 telephonic board meeting, including the content of discussions, the accuracy of minutes and the reasons he voted against the ratifications." (*See* Helpern Dec., Ex. G (Correspondence between counsel regarding Plaintiff's deposition).) Accordingly, the accuracy of the minutes of the December 29, 2017 meeting of the Board of Directors cited and referenced throughout this Motion is not in dispute.

ARGUMENT

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

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

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

Moreover, as required by NRS 78.140(2)(a), the RDI Board ratified each of the remaining challenged "transactions" by a 5-1 vote, counting only the votes of those directors whose disinterestedness and independence Plaintiff cannot reasonably challenge. (*See* Helpern Dec., Ex. B (12/29/17 RDI Board Minutes) at 5-6.) And the December 29, 2017 ratification vote was certainly "in good faith": the directors who were not present at the time these matters were initially decided, Directors Wrotniak and Codding, reasonably informed themselves of the relative merits of the decisions, including by reviewing contemporaneous materials and drawing on their personal knowledge gleaned in their two years of Board service; corporate counsel was present and advised the entire Board of its fiduciary duties under Nevada law, as well as the history of each decision; no ratifying director had a personal stake in the derivative litigation brought by Plaintiff or in the particular transaction ratified; and discussion and debate occurred prior to the final votes, with all directors—including Plaintiff—afforded the chance to ask questions or make comments. (*See id.*) Accordingly, all of the preconditions necessary for a "valid interested director transaction" under NRS 78.140(2)(a), and thus the application of the business judgment rule under *Shoen*, are present.[3]

Significantly, nothing in the text of NRS 78.140 places any deadline or time limitation upon ratification. In fact, the Nevada Supreme Court in *In re Amerco Deriv. Litig.*, 127 Nev. 196, 252 P.3d 681 (2011), acknowledged that a ratification that occurred years after the challenged conduct could have a potentially case-dispositive effect. *See* 127 Nev. at 217, 252 P.3d at 697, n. 6 (noting that a ratification that had apparently occurred in 2007, after the *Shoen* remand, could have had a dispositive effect, but refusing to reach the issue because it was raised for the first time on appeal); *see also id.*, 127 Nev. at 233, 252 P.3d at 707 n.4 (Pickering, J., concurring in part and dissenting in part) (noting that "this issue is potentially dispositive in this case"). Nor should a deadline be unilaterally imposed here, especially given that Plaintiff

[3] In taking this ratification action and making this argument, Defendants do not concede that Mr. Adams, Ellen Cotter, or Margaret Cotter are interested or not independent; rather, they continue to believe that Mr. Adams was not on both sides of any disputed transaction and satisfies the legal definition of a disinterested, independent director. Similarly, Defendants do

continues to seek injunctive relief to reverse his June 12, 2015 termination and to be forcibly reinstated as RDI's CEO and President nearly three years after he was removed. As such, it makes logical sense that the present RDI Board can and should evaluate the actions leading up to and involving his termination, and either reverse or ratify the earlier decisions. Moreover, in the instant case, it would have been fruitless as a practical matter for the Board to have considered a motion for ratification prior to the Court's determination of the independence and disinterest of Directors Codding, Gould, Kane, McEachern, and Wrotniak; the effectiveness of any earlier ratification would have been subject to Plaintiff's claim that these directors were in fact not independent or disinterested.

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

II. JUDGMENT ON ALL BREACH OF FIDUCIARY DUTY CLAIMS IN FAVOR OF DEFENDANTS IS WARRANTED UNDER THE BUSINESS JUDGMENT RULE

In this litigation, Plaintiff has never contested that if the business judgment rule were to apply, his fiduciary duty claims would fail as a matter of law; instead, his entire argument has been that the business judgment rule does not apply. The business judgment rule is a "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79 (citation omitted); *see also* NRS 78.138(3) (codifying the rule under Nevada law). "The business judgment rule postulates that if directors' actions can arguably be taken to have been done for the benefit of the corporation, then the directors are presumed to have been exercising their sound business judgment rather than to have been responding to self-interest motivation." *Horwitz v. SW. Forest Indus., Inc.*, 604 F. Supp. 1130, 1135 (D. Nev. 1985).

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not concede the relevance of any independence/disinterestedness determination under Nevada law to any of the claims at issue.

Plaintiff has advocated, and the Court has accepted, a legal framework governing Plaintiff's Nevada law claims under which, "with respect to the challenged actions the individual director defendants [can] . . . invok[e] the business judgment rule" if "the majority of those making the challenged decisions were independent generally and independent specifically with respect to the challenged decisions." (Pl.'s Opp'n to Ind. Defs.' Mot. for Partial Summ. J. (No. 2) re: Director Independence at 1, filed October 13, 2016.) "The business judgment rule does not only protect individual directors from personal liability, rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision." *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cty. of Clark,* 399 P.3d 334, 342 (Nev. 2017). Where "a majority of informed and disinterested directors of the Board voted in favor of the Transaction" at issue, the business judgment rule applies. *Benihana of Tokyo, Inc. v. Benihana, Inc.,* 891 A.2d 150, 173 (Del. Ch. 2005) (examining whether the "voting directors" were disinterested and independent such that the business judgment rule should apply); *Blackmore Partners, L.P. v. Link Energy LLC,* No. Civ. A. 454-N, 2005 WL 2709639, at *7 (Del. Ch. 2005) ("The protections of the business judgment rule may still insulate a board decision from challenge so long as a majority of the directors approving the transaction remain disinterested."). Where a corporate decision is approved by a majority of independent, disinterested directors, the plaintiff's claim "fails for lack of a valid premise." *In re Frederick's of Hollywood, Inc. S'holder Litig.*, No. C.A. 15944, 2000 WL 130630, at *7-8 (Del. Ch. Jan. 31, 2000) (granting a motion to dismiss because the merger was approved by a majority of disinterested directors); *In re NYMEX S'holder Litig.*, C.A. Nos. 3621-VCN, 3835-VCN, 2009 WL 3206051, at *6 (Del. Ch. Sept. 30, 2009) (to state a duty of loyalty claim, a plaintiff "must plead sufficient facts to show that a majority of the Board of Directors breached the fiduciary duty of loyalty"); *Benihana*, 891 A.2d at 191 (dismissing breach of duty of loyalty claim after finding that a majority of disinterested and independent directors approved the transaction at issue).

As the Nevada Supreme Court has stressed, "even a bad decision is generally protected by the business judgment rule" *Shoen*, 122 Nev. at 636, 137 P.3d at 1181, and the rule protects corporate decisions whenever they can be "attributed to any rational business purpose." *Katz v. Chevron Corp.*, 22 Cal. App. 4th 1352, 1366 (1994). Courts have routinely found that the same concerns that animated the majority of RDI directors in their termination decisions to be valid business judgments, immune from any claims under the operation of the business judgment rule. *See, e.g., In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 72-73 (Del. 2006) (fact that a company's CEO cannot "work well" with its directors or executives, and requires "close and constant supervision," is a valid basis for terminating the officer, and is a decision protected by the business judgment rule); *Carlson v. Hallinan*, 925 A.2d 506, 540 n.232 (Del. Ch. 2006) (where "the evidence indicated that Carlson was not effective in the role of President of CR and that he had important managerial shortcomings," "firing him could have fostered CR's welfare" and was thus protected by the business judgment rule); *Franklin v. Tex. Int'l Petroleum Corp.*, 324 F. Supp. 808, 813 (W.D. La. 1971) (an officer's "inability to perform adequately" and lack of "experience, expertise, and proper degree of affability" are protected reasons under the business judgment rule for his or her termination). Defendants have identified no cases where such matters were found not to support a determination to terminate.

The business judgment rule also protects the Compensation Committee's decision regarding the Estate's option exercise. *See Friedman v. Khosrowshahi*, No. CIV.A. 9161-CB, 2014 WL 3519188, at *12 (Del. Ch. July 16, 2014), *aff'd*, No. 442, 2014, 2015 WL 1001009 (Del. Mar. 6, 2015) (Absent "a clear or intentional violation of a compensation plan," compensation decisions made by a disinterested Board of Directors are protected by the business judgment rule). The Compensation Committee's decision was made in accordance with the Company's 1999 Stock Option Plan, which designates the Board as the ultimate controlling body with respect to stock option matters, the power held by the Compensation Committee being by delegation. (*See* Helpern Dec., Ex. H). Well before the Estate sought to exercise the option at issue, RDI had implemented this Stock Option Plan allowing exercise of options using Class A shares and a Company policy of repurchasing Class A shares when they were available. (*See*

Helpern Dec., Exs. H (1999 Stock Option Plan) and I (Minutes of 5/15/14 Board Meeting).) The votes attributable to the Class B shares issued in the transaction have had no impact on any election.[4] Moreover, the options were exercisable as a matter of right for cash; the only element of the transaction that was discretionary with the Compensation Committee and/or the Board was the use of Class A shares to pay the exercise price. Plaintiff has failed to provide any evidence whatsoever that the acceptance of Class A Shares to pay the exercise price caused any harm to RDI. The indisputable evidence is that such shares trade at a materially higher price today, then the price at which they were effectively repurchased by the Company.

In light of the Board's recent ratifications, all of the RDI Board transactions challenged by Plaintiff are protected by Nevada's strong business judgment rule. Because Plaintiff has not shown, and cannot establish, that the challenged transactions were not attributable to any rational business purpose, all of his breach of fiduciary duty claims are legally untenable. No trial on them is necessary. Summary judgment should be entered in favor of Defendants on all breach of fiduciary duty claims.

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

In addition to his untenable breach of fiduciary duty claims against Mr. Adams, Ellen Cotter, and Margaret Cotter, Plaintiff has also asserted a claim against Ellen and Margaret Cotter for aiding and abetting breach of fiduciary duty, in which he contends that his sisters "solicited and aided and abetted the decisions and actions of" the other RDI Directors that he claims constituted breaches of his fiduciary duties. (*See* SAC ¶¶ 193-200.) In Nevada, "[a]iding and abetting the breach of a fiduciary duty has four required elements: (1) there must be a fiduciary relationship between the two parties, (2) that the fiduciary breached, (3) the defendant knowingly

[4] Every director elected to the Board at the 2015 Annual Stockholders' Meeting received approximately 1.3 million votes, *i.e.*, the votes of more than 75% of the Class B stockholders. (*See* Helpern Dec. Ex. F (RDI 11/13/15 Form 8-K).) The 100,000 shares obtained by the Estate through exercising the option did not make, and could not have made, any difference to the outcome of the vote, rendering nonsensical Plaintiff's argument, made throughout this litigation, about the Compensation Committee helping Ellen and Margaret Cotter supposedly perpetuate control.

and substantially participated in or encouraged that breach, and (4) the plaintiff suffered damage as a result of the breach." *Guilfoyle v. Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. Adv. Op. 78, 335 P.3d 190, 198 (2014); *see also In re Amerco Deriv. Litig.*, 127 Nev. at 225, 252 P.3d at 701 (same).

Given that the Court has awarded summary judgment to Directors Gould, Kane, McEachern, Codding, and Wrotniak on all breach of fiduciary duty claims against them, Plaintiff cannot sustain an "aiding and abetting" claim against Ellen and Margaret Cotter based on any of those directors' purported "breaches," as one cannot aid and abet a breach that does not exist. *See Lift Certification Co. v. Thomas*, No. A521533, 2008 WL 8588925 (Nev. Dist. Ct. Dec. 2, 2008) (because "Thomas did not breach his duty of loyalty to his employer Lift, while he prepared to change employment and compete with Lift, . . . it is not legally possible for American Equipment to have committed the Tort of Civil Aiding and Abetting"); *Manzo v. Rite Aid Corp.*, No. Civ. A. 18451-NC, 2002 WL 31926606, at *6 (Del. Ch. Dec. 19, 2002) ("Because the breach of fiduciary duty claims are dismissed with prejudice, the claim against KPMG for aiding and abetting breach of fiduciary duty is similarly dismissed with prejudice.").

With respect to Director Adams, the fact that a majority of disinterested, independent RDI directors has now either approved or ratified all challenged transactions involving Mr. Adams is further evidence that he did not commit any breach of fiduciary duty, since his decisions were fully consistent with those of legally disinterested, independent directors. Moreover, since Adams is only one of eight directors and he voted either along with a majority of disinterested directors or had his decisions ratified by a majority of such directors means that any purported "breach" by him could not have caused any damages to RDI. Plaintiff's failure to show causal damages with respect to Mr. Adams, another required element, provides yet another reason why Plaintiff's aiding and abetting claim against Ellen and Margaret Cotter is unsustainable. Accordingly, judgment also should be entered in favor of Ellen and Margaret Cotter on Plaintiff's aiding and abetting breach of fiduciary duty claim—leaving no viable claims for trial.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion for Summary Judgment.

Dated: June 1, 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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

RDI-A09881

CERTIFICATE OF SERVICE

I hereby certify that, on June 1, 2018, I caused a true and correct copy of the foregoing **ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' MOTION FOR SUMMARY JUDGMENT** 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

RDI-A09882

Exhibit A

Exhibit A

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

NEO

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Akke Levin, Bar No. 9102
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James J. Cotter, Jr.

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered))) **NOTICE OF ENTRY OF ORDER**

Case Number: A-15-719860-B

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

MORRIS LAW GROUP

By: /s/ Akke Levin
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
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Mark G. Krum, Bar No. 10913
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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 28th day of December, 2017.

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

MORRIS LAW GROUP
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EXHIBIT A

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

ORDR

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Telephone: (213) 443-3000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

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

RDI-A09888

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

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

RDI-A09889

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;

RDI-A09890

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

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

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

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

RDI-A09891

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

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

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

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

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

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

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

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

RDI-A09892

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

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

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

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

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

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

DATED this 28th day of December, 2017.

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

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

RDI-A09894

Exhibit B

FILED UNDER SEAL

Exhibit B

Exhibit C

FILED UNDER SEAL

Exhibit C

Exhibit D

FILED UNDER SEAL

Exhibit D

Exhibit E

FILED UNDER SEAL

Exhibit E

Exhibit F

Exhibit F

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): November 1 3 , 2015

Reading International, Inc.
(Exact Name of Registrant as Specified in its Charter)

Nevada	**1-8625**	**95-3885184**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

6100 Center Drive, Suite 900, Los Angeles, California	**90045**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(213) 235-2240**

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.07. Submission of Matters to a Vote of Security Holders.

The Company held its Annual Meeting of Stockholders on November 10, 2015 . The stockholders considered two proposals which are included in its proxy statement on Form DEF 14A filed with the Securities and Exchange Commission on October 20, 2015 . The proposals voted upon and the results of the vote were the following:

Proposal 1: To elect nine Directors to serve until the Company's 2016 Annual Meeting of Stockholders and thereafter until their successors are duly elected and qualified

	FOR	WITHHOLD
Ellen M. Cotter	1,294 , 544	138 , 968
Guy W. Adams	1 , 324 , 103	109,409
Judy Codding	1 , 325 , 103	108 , 409
James J. Cotter, Jr.	1 , 291 , 860	141 , 652
Margaret Cotter	1 , 294 , 544	138 , 968
William D. Gould	1 , 294 , 792	138 , 720
Edward L. Kane	1 , 324 , 103	109 , 409
Douglas J. McEachern	1 , 331 , 094	102 , 418
Michael Wrotniak	1 , 325 , 103	108,409

Proposal 2: To ratify the appointment of Grant Thornton LLP as the Company's independent auditors for the fisca l year ended December 31, 2015

FOR	AGAINST	ABSTAIN
1 , 649 , 828	3 , 135	1 , 048

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

READING INTERNATIONAL, INC.

Date: November 1 3 , 201 5

By: /s/ Ellen M. Cotter
Name: Ellen M. Cotter
Title: Chief Executive Officer

Exhibit G

Exhibit G

Noah Helpern

From: Mark G. Krum <mkrum@bizlit.com>
Sent: Tuesday, April 10, 2018 1:04 PM
To: Noah Helpern
Cc: Christopher Tayback; Marshall Searcy; Akke Levin; Steve Morris; Noemi A. Kawamoto
Subject: RE: Cotter/RDI -- Deposition of James Cotter, Jr.

Noah,

Yes, "testimony" as used in my email below includes written testimony with respect to motion practice regarding the purported ratifications. To clarify, my reference to the May and June 2015 board minutes was an illustration, not a limited exception, of matters otherwise raised in the litigation, independent of being raised in connection with what we in shorthand have called the ratifications.

Mark

Dictated to smartphone.
Get Outlook for Android

From: Noah Helpern <noahhelpern@quinnemanuel.com>
Sent: Tuesday, April 10, 2018 1:48:03 PM
To: Mark G. Krum
Cc: Christopher Tayback; Marshall Searcy; Akke Levin; Steve Morris; Noemi A. Kawamoto
Subject: RE: Cotter/RDI -- Deposition of James Cotter, Jr.

Mark:

Based on your representations below, we can likely agree to forego taking Plaintiff's deposition on the subject of ratification. However, before we do so, I want to confirm that where you indicate Plaintiff will not offer "testimony" about the Board's ratification decision—with the limited exception of possible testimony regarding minutes of *prior* Board meetings that were re-circulated in connection with the ratification decision—you are including written testimony (*i.e.*, declarations and affidavits) in addition to oral testimony. To the extent there is motion practice regarding the ratification decision, does Plaintiff agree not to submit any fact declarations or affidavits about that Board decision or the December 29 meeting?

Best,

Noah

From: Mark G. Krum [mailto:mkrum@bizlit.com]
Sent: Monday, April 09, 2018 2:06 PM
To: Noah Helpern <noahhelpern@quinnemanuel.com>
Cc: Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>; Akke Levin <al@morrislawgroup.com>; Steve Morris <sm@morrislawgroup.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>
Subject: Re: Cotter/RDI -- Deposition of James Cotter, Jr.

Noah,

I almost lost track of your 2 a.m. email below. We appreciate receiving an explanation of why defenddants contend they need and are entitled to take the deposition of Plaintiff with respect to what we collectively have called the ratifications.

Based on the deposition testimony and documents provided by defenddants, we do not intend to offer testimony by Mr. Cotter about what happened regarding the ratifications at the December 29 telephonic board meeting, including the content of discussions, the accuracy of minutes and the reasons he voted against the ratifications. Insofar as "the Board's preparation for that meeting" refers to deposition exhibit 525 (and the same document bearing a different production number and including redactions, which marked at the deposition of Bill Gould), we do not intend to offer his testimony about that exhibit (which of course is different than testimony regarding certain of the exhibits in it, such as the May and June 2015 board minutes about which he has been examined previously). So that obviates the stated need for his deposition.

Mark

Dictated to a smartphone.
Get Outlook for Android

From: Noah Helpern <noahhelpern@quinnemanuel.com>
Sent: Monday, April 9, 2018 1:55:35 AM
To: Mark G. Krum
Cc: Christopher Tayback; Marshall Searcy; Akke Levin; Steve Morris; Noemi A. Kawamoto
Subject: Cotter/RDI -- Deposition of James Cotter, Jr.

Mark:

To follow up on our recent conversation, Defendants are entitled to take Plaintiff's deposition. Plaintiff participated in the December 29 Board meeting and to the extent he intends to offer any testimony about what happened at that meeting, including but not limited to the content of discussions, the accuracy of minutes, the reasons he voted against ratification, and/or the Board's preparation for that meeting, Defendants are entitled to know what Plaintiff intends to say. Please let us know by the end of the day Monday if you will agree to make Plaintiff available for deposition or if Defendants need to raise this issue with the Court.

Best,

Noah Helpern
Quinn Emanuel Urquhart & Sullivan, LLP
(213) 443-3653 / noahhelpern@quinnemanuel.com

Exhibit H

FILED UNDER SEAL

Exhibit H

Exhibit I

FILED UNDER SEAL

Exhibit I

RDI-A9908-9968
Filed Under Seal

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5/15/2018 11:32 AM
Steven D. Grierson
CLERK OF THE COURT

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO PRODUCE COMMUNICATIONS RELATING TO EXPERT FEE PAYMENTS

APPLICATION FOR ORDER SHORTENING TIME

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: May 21, 2018
Time of Hearing: 8:30 a.m.

Case Number: A-15-719860-B

Docket 75053 Document 2019-23839

TO ALL PARTIES, COUNSEL, AND THE COURT:

Pursuant to EDCR 2.34 and Nevada Rules of Civil Procedure 26(b)(1), 26(e)(1), 34(c), and 45, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (collectively, "Defendants"), by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments. Defendants request that this matter be heard on an order shortening time.

This Motion is based upon the following Memorandum of Points and Authorities, the Declaration of Marshall M. Searcy, III, the pleadings and papers on file, and any oral argument that the time of a hearing on this motion.

Dated: May 11, 2018

COHEN|JOHNSON|PARKER|EDWARDS

By: */s/ H. Stan Johnson*
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

RDI-A09634

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, "Defendants") Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments shall be heard before the above-entitled Court in Department XI, on the 21 day of May, 2018 at 8:30 a.m./p.m., or as soon thereafter as counsel can be heard.

Dated this 15th day of May, 2018

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

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RDI-A09635

DECLARATION OF MARSHALL M. SEARCY III

I, Marshall M. Searcy, III, state and declare as follows:

1. I am a member of the bar of the State of California, and am a partner with Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams ("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, 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 1** is a true and correct copy of Defendants' Notice of Taking Depositions – Duces Tecum (of Dr. John Finnerty, Tiago Duarte-Silva, and Myron T. Steele), served on Plaintiff on October 12, 2016, which attaches Deposition Subpoenas (Duces Tecum) for Dr. Finnerty, Mr. Duarte-Silva, and Mr. Steele.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Defendants' Notice of Taking Depositions – Duces Tecum (of Albert S. Nagy), served on Plaintiff on November 23, 2016, which attaches a Deposition Subpoena (Duces Tecum) for Mr. Nagy.

4. Attached hereto as **Exhibit 3** is a true and correct copy of Defendants' Notice of Taking Depositions – Duces Tecum (of Richard Spitz), served on Plaintiff on December 2, 2016, which attaches a Deposition Subpoena (Duces Tecum) for Mr. Spitz.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a September 14, 2016 invoice from AlixPartners LLP to Mark G. Krum, counsel for Plaintiff, marked as Exhibit 428 in the deposition of Dr. John D. Finnerty, held in this case on October 16, 2016.

6. Attached hereto as **Exhibit 5** is a true and correct copy of an August 16, 2016 invoice from Realty Capital Solutions, LLC to Mark G. Krum, counsel for Plaintiff, marked as Exhibit 467 in the deposition of Albert Nagy, held in this case on November 29, 2016.

7. Attached hereto as **Exhibit 6** is a true and correct copy of an August 16, 2016 invoice from Strong Force IP Strategies to Mark G. Krum, counsel for Plaintiff, marked as Exhibit 476 in the deposition of Richard Spitz, held in this case on December 7, 2016.

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8. Attached hereto as **Exhibit 7** is a true and correct copy of the parties' Joint Pretrial Memorandum, filed on December 8, 2017.

9. Attached hereto as **Exhibit 8** is a true and correct copy of an April 23, 2018 email regarding "Visitor at Cecelia" from Karen Vargas, Controller of Cecelia Packing Corporation ("Cecelia"), to Laura Batista, executive assistant to Ellen Cotter, and David Roth, President of Cecelia, which attaches a March 29, 2018 Incident Report prepared by Laura Lopez, an employee in Cecelia's accounting department.

10. Attached hereto as **Exhibit 9** is a true and correct of a March 29–April 17, 2018 email chain regarding "Letter 03/29/2018" between Laura Lopez, David Roth, and Margaret Cotter, which attaches an "Urgent Message" for James J. Cotter, Jr., left at Cecelia's offices by a purported representative of AlixPartners LLP.

11. I subsequently learned that a purported representative of AlixPartners LLP also called the offices of Reading International, Inc. ("RDI") regarding the collection of Plaintiff's apparent expert fee debt on January 22, 2018.

12. Attached hereto as **Exhibit 10** is a true and correct copy of a May 7, 2018 letter from me to Mark G. Krum, counsel for Plaintiff, requesting that Plaintiff update and supplement his document production to include communications between Plaintiff and his experts regarding his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services in this matter. Consistent with their obligations, Defendants offered to meet and confer telephonically with Plaintiff regarding this request.

13. Attached hereto as **Exhibit 11** is a true and correct copy of a May 9, 2018 email from me to Mark G. Krum, counsel for Plaintiff, requesting a response to Defendants' May 7, 2018.

14. Attached hereto as **Exhibit 12** is a true and correct copy of a May 10, 2018 email from Mark G. Krum, counsel for Plaintiff, to me.

15. Attached hereto as **Exhibit 13** is a true and correct copy of a May 10, 2018 letter from me responding to Mark G. Krum's May 10, 2018 email.

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16. I believe that the foregoing efforts, made in good faith to resolve this matter without Court intervention, satisfy the parties' obligations to meet and confer under Eighth District Rule of Practice 2.34.

17. Defendants respectfully submit that this Motion should be heard on an Order Shortening Time because of the need to prepare for the rapidly-approaching trial, which the Court has anticipated will take place between July 9 and July 27, 2018, and given Plaintiff's previous representations to the Court and Defendants as to the expected appearances and testimony of his expert witnesses at trial. Plaintiff's failure to provide full and complete document productions in response to Defendants' previous requests threatens to impair Defendants' trial preparations.

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

Executed on May 11, 2018, in Los Angeles, California.

Marshall M. Searcy III

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

It has become apparent that, at the time Plaintiff was declaring that he was "unfit" to attend trial on his own case, Plaintiff was also in arrears to one—and likely all—of the experts he promised to present at trial. For instance, in late March 2018, a debt collector purporting to represent AlixPartners LLP (the consulting firm that employs Plaintiff's rebuttal damages expert, Dr. John D. Finnerty) made a field visit to a Cotter-owned company, looking for repayment of outstanding amounts owed to Plaintiff's expert and leaving behind an "urgent" letter. And, an apparent debt collector also called RDI's offices regarding Plaintiff's significant debt to AlixPartners in January 2018.

Defendants' motion to compel presents a simple, narrowly-tailored request that can be easily fulfilled. Defendants' preexisting document requests cover all communications between Plaintiff, his experts, and their representatives that pertain to the expert fees incurred by Plaintiff and his payment (or nonpayment) of those fees. Plaintiff produced such correspondence prior to expert depositions in late 2016. The 2018 contacts by AlixPartners establish that more recent communications exist between Plaintiff and his experts concerning their bills. As evidenced by Plaintiff's previous production and as is clear under established law, this correspondence is not privileged. Given that these communications are relevant to Defendants' trial preparations, Plaintiff's previous representations to the Court regarding the appearances of his experts, and Plaintiff's ability to make out a *prima facie* case for his claims at trial, Plaintiff should be ordered to supplement his production in conformity with his indisputable obligations under Nevada Rule of Civil Procedure 26(e)(1) and provide forthwith all correspondence between him, his experts, or their representatives regarding expert fees and his payment (or nonpayment) of them to date.

FACTUAL BACKGROUND

A. Defendants Request, and Plaintiff Produces, Communications Between Plaintiff and His Experts Concerning The Billing of Their Fees

In his Initial Expert Disclosure Statement, served on August 25, 2016, Plaintiff identified Myron T. Steele, Esq., Tiago Duarte-Silva, and Richard Spitz as affirmative experts. In a

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Rebuttal Expert Disclosure Statement served on September 19, 2016 and supplemented on September 28, 2016, Plaintiff also disclosed Dr. John D. Finnerty and Albert S. Nagy, along with Messrs. Steele and Duarte-Silva, as rebuttal experts. Following Plaintiff's disclosures, Defendants served Plaintiff on October 12, 2016 with a Notice of Taking Depositions – Duces Tecum (of Dr. John Finnerty, Tiago Duarte-Silva, and Myron T. Steele) that attached Deposition Subpoenas (Duces Tecum) for Dr. Finnerty, Mr. Duarte-Silva, and Mr. Steele. (*See* Searcy Decl. Ex. 1.) Defendants served Plaintiff with similar Notices of Taking Depositions – Duces Tecum, along with Deposition Subpoenas (Duces Tecum), for Messrs. Nagy and Spitz on November 23, 2016 and December 2, 2016, respectively. (*See* Searcy Decl. Exs. 2-3.)

In each of the Deposition Subpoenas that Defendants served on Plaintiff and his experts, Defendants requested "all communications" between the expert and "Plaintiff, Plaintiff's counsel, or anyone acting on their behalf, relating to this litigation." (*See, e.g.*, Searcy Decl. Ex. 1, Duarte-Silva Dep. Subpoena, Req. No. 2.) Similarly, Defendants requested "documents sufficient to identify the total fees paid to [the expert] for any work [the expert] performed on behalf of Plaintiff or Plaintiff's counsel during the course of this litigation." (*See id.*, Req. No. 6.) In response to these requests, Plaintiff produced bills, invoices, and other communications with his experts reflecting the charges Plaintiff had incurred as of September 2016 for the expert services he had engaged. (*See, e.g.*, Searcy Decl. Exs. 4-6.)

Following expert discovery, the parties submitted a Joint Pretrial Memorandum on December 8, 2017, in which Plaintiff promised the Court that each of his disclosed experts would appear at trial and "will offer opinion testimony." (Searcy Decl. Ex. 7 at 24-25.) At the parties' final pretrial conference, held on January 5, 2018, Plaintiff similarly represented to the Court that, while it was "likely" that he was going to have "some expert scheduling issues," those issues involved accommodating expert witnesses who may have a small subset of days they were not available during a four-week trial. (*See* 1/5/18 Hr'g Tr. at 28:4-32:10.) Plaintiff noted that, "I've got to put them in order that accommodates them," but, when asked "Are there any particular witnesses who can't be here for the whole four weeks to testify?", he informed the Court, "I don't think so" and "I know of no one." (*Id.* at 28:18-29:22.) Accordingly, both the

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Court and Defendants were left with the impression at the final pretrial conference that all experts disclosed by Plaintiff would be appearing at some point during the imminent trial.

B. Evidence Emerges Indicating That Plaintiff Needs to Supplement His Production of Communications Between Him and His Experts Concerning the Billing of Their Fees and His (Non)Payment of Them

Evidence has emerged following the last-minute continuance of trial on January 8, 2018 indicating that there are additional, not-yet-produced communications between Plaintiff and his experts concerning the billing and collection of their expert fees in this matter. For instance, on March 29, 2018, a gentleman representing himself as a debt collector for AlixPartners LLP appeared as the offices of Cecelia Packing Corporation ("Cecelia"), and interacted with Laura Lopez, an employee in Cecelia's accounting department that handles payroll and accounts payable for company's farming operations, and also provides certain secretarial services. (*See* Searcy Decl. Ex. 8.)

Purporting to represent the consulting firm that employs Dr. Finnerty, Plaintiff's rebuttal damages expert, this individual apparently demanded to see Plaintiff regarding an unpaid debt, and threatened to search all of Cecelia's offices until he could be located. (*Id.*) Prior to his departure from Cecelia's facilities, the AlixPartners debt collector left with Ms. Lopez an "Urgent Message" directed to Mr. Cotter, Jr., dated March 28, 2018. (*Id.*; *see also* Searcy Decl. Ex. 9.) According to this message, Plaintiff's "account" with AlixPartners "is in a delinquent status" and "a field visit" was necessary because Plaintiff had "not responded" to the firm's "continued efforts" to reach him "via telephone and mail." (Searcy Decl. Ex. 9.) It turns out that a purported representative of AlixPartners also contacted RDI's offices regarding Plaintiff's expert fee debt on January 22, 2018. (*See* Searcy Decl. ¶ 11.)

Upon receiving and reviewing information relating to this March 29, 2018 visit, Defendants sent a letter to Plaintiff's counsel, dated May 7, 2018. (*See* Searcy Decl. Ex. 10.) Defendants' letter noted that the debt collector's visit called into question the continued accuracy of Plaintiff's previous representations regarding the anticipated appearances of his experts. (*See id.* at 1.) Accordingly, it requested that Plaintiff confirm, by Wednesday, May 9, 2018, which of Plaintiff's disclosed experts will appear at the forthcoming trial. (*See id.*) In addition,

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emphasizing Plaintiff's ongoing duty to supplement his document productions, it requested that Plaintiff (1) produce forthwith all correspondence with his expert witnesses regarding their fees and his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services in this case, and (2) notify Defendants by Wednesday, May 9, 2018 whether he intended to make such a production. (*See id.* at 2.) Defendants offered to meet and confer with Plaintiff as necessary regarding their requests. (*See id.*)

Plaintiff did not respond to Defendants' May 7, 2018 letter for over two days. Defendants checked in again with Plaintiff on the afternoon of May 9, 2018 via email, requesting an immediate response to their letter and emphasizing that they would be forced to file a motion to compel should Plaintiff fail to respond. (*See* Searcy Decl. Ex. 11.) Finally, in an email on May 10, 2018 long on irrelevant and vituperative attorney colloquy but short on content, Plaintiff informed Defendants that—contrary to his prior representations—Dr. Finnerty would not be appearing at trial; however, Plaintiff's response failed to address the actual questions posed by Defendants concerning the appearances of his other experts or whether he was going to supplement his production to include additional communications relating to expert fees. (*See* Searcy Decl. Ex. 12.) Defendants pointed out that Plaintiff had avoided these questions in a letter on May 10, 2018, and asked for answers by the end of the day. (*See* Searcy Decl. Ex. 13.) Plaintiff failed to respond. After unsuccessfully attempting on multiple occasions to obtain from Plaintiff the requested assurances and required supplemental production concerning his disclosed experts, Defendants were compelled to bring this motion.

ARGUMENT

I. COMMUNICATIONS BETWEEN PLAINTIFF AND HIS EXPERT WITNESSES REGARDING THEIR FEES AND HIS (NON)PAYMENT OF THEM ARE RELEVANT, NOT PRIVILEGED, AND RESPONSIVE TO EXISTING REQUESTS

It is beyond dispute that documents or communications pertaining to the expert fees incurred by Plaintiff and his payment (or nonpayment) of those fees are captured by Defendants' existing document requests. (*See* Searcy Decl. Exs. 1-3, Dep. Subpoenas, Req. Nos. 2, 6.) Moreover, such correspondence is certainly not privileged. Plaintiff himself produced examples

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of such correspondence prior to the depositions of his experts in this action, taken in the Fall of 2016, and such communications were often entered into evidence—without objection from Plaintiff—as exhibits during those experts' depositions. (*See, e.g.*, Searcy Decl. Exs. 4-6.)

Indeed, it is well settled as a matter of law that documents and communications concerning expert billing and collection efforts should be produced, as those materials are not privileged. *See Subpoenaed Witness v. United States*, 171 F.3d 511, 513 (7th Cir. 1999) ("[I]nformation regarding . . . fees is not protected by the attorney-client privilege because the payment of fees is not a confidential communication."); *Ralls v. United States*, 52 F.3d 223, 225 (9th Cir. 1995) (the attorney-client privilege "applies only to confidential professional communications, and the payment of fees is usually incidental to the attorney-client relationship"); *Vingelli v. United States*, 992 F.2d 449, 452 (2d Cir. 1993) ("fee arrangements do not fall within the attorney-client privilege because they are not the kinds of disclosures that would not have been made absent the privilege and their disclosure does not incapacitate the attorney from rendering legal advice"); *Washington v. Sheppard*, 52 Wash. App. 707, 711, 763 P.2d 1232, 1234 (Wash. Ct. App. 1988) ("the amount, source, and manner of payment of the fee [must] be disclosed").

Communications between Plaintiff and his expert witnesses or their representatives regarding expert fees, as well as documents relating to Plaintiff's payment (or nonpayment) of any amounts he owes or has owed resulting from expert services, are also clearly relevant. Not only has Plaintiff produced such material in the past, attesting to its relevance, but his previous representations to the Court and Defendants promising the appearances of his experts at trial render these documents especially relevant. Moreover, lengthy delinquencies in payment by Plaintiff to his experts, such as the type apparently complained of by AlixPartners, could potentially imperil the appearance of Plaintiff's experts at trial and lead to a directed verdict if Plaintiff lacks the expert testimony needed to make out a required *prima facie* element of his breach of fiduciary claims. And, of course, such correspondence is also likely to be easy to locate and is not anticipated to be voluminous.

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In light of their responsiveness, relevance, and non-privileged nature, Plaintiff should be required to produce all communications between him and his experts (or any representatives thereof) concerning expert fees incurred in this litigation and Plaintiff's payment—or nonpayment—of such fees.

II. PLAINTIFF HAS AN ONGOING DUTY UNDER THE NEVADA RULES TO SUPPLEMENT HIS DOCUMENT PRODUCTION

Nevada Rule of Civil Procedure 16.1(a)(1)(B) requires litigants such as Plaintiff to produce "all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b)." A party's obligation to produce responsive documents is ongoing; pursuant to Nevada Rule of Civil Procedure 26(e)(1), litigants have "a duty to supplement at appropriate intervals its disclosures under Rule 16.1(a) or 16.2(a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties." *See also Riccel Enters. v. Howe Arden Bus. Park, LLC*, No. A09-590904C, 2011 WL 1527239, at *1 (Nev. Dist. Ct. Jan. 27, 2011) ("N.R.C.P. 26(e) provides the basis for a duty to provide continued supplements of witnesses and documents."); *Robbins & Myers, Inc. v. J.M. Huber Corp.*, 274 F.R.D. 63, 79 (W.D.N.Y. 2011) ("Rule 26(e) imposes a continuing obligation upon a responding party to supplement prior discovery responses based on later acquired information when the party learns of its existence and materiality."); *Arthur v. Atkinson Freight Lines Corp.*, 164 F.R.D. 19, 19-21 (S.D.N.Y. 1995) (medical records created after plaintiff's initial response subject to continuing duty to supplement as relevant information of which plaintiff's attorney should have been aware as being subject to defendant's earlier document request—defendant was under no obligation to serve "successive requests" for updated records).

Given that documents or communications pertaining to the expert fees incurred by Plaintiff and his payment (or nonpayment) of those fees are captured by Defendants' existing document requests, and Plaintiff previously produced such documents on behalf of his experts prior to their depositions, Plaintiff has an indisputable duty under Nevada Rule of Civil

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Procedure 26(e)(1) to supplement his existing production on an ongoing basis. The evidence concerning AlixPartners' recent debt collection efforts shows that additional responsive documents have been sent or received by Plaintiff since his prior production; indeed, the "Urgent Message" left by Dr. Finnerty's firm (not yet produced by Plaintiff) is one such example and, in light of that document's reference to previous "efforts" to reach Plaintiff "via telephone ***and mail***," it is clear that there are also other new and relevant communications that render Plaintiff's previous production incomplete. (Searcy Decl. Ex. 9 (emphasis added).) Indeed, it is highly likely that there are additional communications concerning expert fees and the payment (or nonpayment) of them between Plaintiff and representatives of other experts engaged by him. Pursuant to Rule 26(e)(1), Plaintiff should be required to supplement his production and provide all correspondence between him and each of his experts (or their representatives) regarding their fees and his payment—or nonpayment—of them to date.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments.

Dated: May 11, 2018

COHENJOHNSONPARKEREDWARDS

By: */s/ H. Stan Johnson*

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RDI-A09646

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

RDI-A09647

CERTIFICATE OF SERVICE

I hereby certify that, on May 15 , 2018, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO PRODUCE COMMUNICATIONS RELATING TO EXPERT FEE PAYMENTS 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.

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

EXHIBIT 1

ELECTRONICALLY SERVED
10/12/2016 04:35:44 PM

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

NOTICE OF TAKING DEPOSITIONS – DUCES TECUM

RDI-A09650

NOTICE OF TAKING DEPOSITIONS – DUCES TECUM

TO: ALL PARTIES; and

TO: THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak ("Defendants") will take the following depositions in the above-captioned action on the dates and at the times and locations indicated below.

Deponent	**Date**	**Time**	**Location**
John Finnerty	October 17, 2016	9:00 a.m.	Quinn Emanuel Urquhart & Sullivan, LLP 51 Madison Avenue, 22nd Floor, New York, New York 10010
Tiago Duarte-Silva	October 18, 2016	9:00 a.m.	Greenberg Traurig, LLP One International Place Suite 2000 Boston, MA 02110
Myron Steele	October 19, 2016	9:00 a.m.	Greenberg Traurig, LLP 2700 Two Commerce Square 2001 Market Street Philadelphia, PA 19103

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The depositions will be upon oral examination before a Notary Public, or before some other officer authorized by law to administer oaths. Said depositions may be videotaped. Copies of the related subpoenas are attached hereto.

Dated: October 12, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

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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 on this day, I caused a true and correct copy of the foregoing **Notice of Taking Depositions – Duces Tecum** to be served via the Court's Wiznet E-Filing system on all registered and active parties.

Dated: October 12, 2016

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

RDI-A09653

CODE CC03
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEPOSITION SUBPOENA (DUCES TECUM)
(For Personal Appearance and Production of Documents and Things at Deposition)

RDI-A09654

THE STATE OF NEVADA TO:

John Finnerty
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: (702) 949-8200

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you make an agreement with the attorney or party submitting this subpoena:

Date: October 17, 2016
Time: 9:00 a.m.
Place: Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor,
New York, New York 10010

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

YOU ARE FURTHER ORDERED to bring with you at the time of your appearance the books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

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50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" for information regarding your rights and responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of counsel in this matter.

Dated: October 12, 2016.

By: /s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265

RDI-A09656

MATTERS ON WHICH TESTIMONY WILL BE TAKEN
(for witnesses designated pursuant to NRCP 30(b)(6) only)

RDI-A09657

ITEMS TO BE PRODUCED

DEFINITIONS

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean John Finnerty and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "FINNERTY REPORT" refers to the report that YOU submitted on September 28, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

RDI-A09658

ITEMS TO BE PRODUCED

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the FINNERTY REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the FINNERTY REPORT, as well as any draft versions of exhibits to the FINNERTY REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the FINNERTY REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

RDI-A09659

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 20_____.

_____
NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

RDI-A09660

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) ***Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) ***Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

RDI-A09661

Exhibit B

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RDI-A09662

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RDI-A09663

CODE CC03
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Telephone: (213) 443-3000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEPOSITION SUBPOENA (DUCES TECUM)
(For Personal Appearance and Production of Documents and Things at Deposition)

RDI-A09664

THE STATE OF NEVADA TO:

Myron Steele
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: (702) 949-8200

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you make an agreement with the attorney or party submitting this subpoena:

Date: October 19, 2016
Time: 9:00 a.m.
Place: Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

YOU ARE FURTHER ORDERED to bring with you at the time of your appearance the books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

RDI-A09665

50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" for information regarding your rights and responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of counsel in this matter.

Dated: October 12, 2016.

By: /s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265

RDI-A09666

MATTERS ON WHICH TESTIMONY WILL BE TAKEN
(for witnesses designated pursuant to NRCP 30(b)(6) only)

RDI-A09667

ITEMS TO BE PRODUCED

DEFINITIONS

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Myron Steele and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "STEELE REPORT" refers to the report that YOU submitted on August 25, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

RDI-A09668

ITEMS TO BE PRODUCED

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the STEELE REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the STEELE REPORT, as well as any draft versions of exhibits to the STEELE REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the STEELE REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

RDI-A09669

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 20_____.

_____
NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

RDI-A09670

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) ***Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) ***Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B

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RDI-A09672

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RDI-A09673

CODE CC03
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEPOSITION SUBPOENA (DUCES TECUM)
(For Personal Appearance and Production of Documents and Things at Deposition)

RDI-A09674

THE STATE OF NEVADA TO:

Tiago Duarte-Silva
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: (702) 949-8200

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you make an agreement with the attorney or party submitting this subpoena:

Date: October 18, 2016
Time: 9:00 a.m.
Place: Greenberg Traurig, LLP
One International Place
Suite 2000
Boston, MA 02110

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

YOU ARE FURTHER ORDERED to bring with you at the time of your appearance the books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

RDI-A09675

50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" for information regarding your rights and responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of counsel in this matter.

Dated: October 12, 2016.

By: /s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265

RDI-A09676

MATTERS ON WHICH TESTIMONY WILL BE TAKEN
(for witnesses designated pursuant to NRCP 30(b)(6) only)

RDI-A09677

ITEMS TO BE PRODUCED

DEFINITIONS

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Tiago Duarte-Silva and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "DUARTE-SILVA REPORT" refers to the report that YOU submitted on August 25, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

RDI-A09678

ITEMS TO BE PRODUCED

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the DUARTE-SILVA REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the DUARTE-SILVA REPORT, as well as any draft versions of exhibits to the DUARTE-SILVA REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the DUARTE-SILVA REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

RDI-A09679

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 20_____.

_____
NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

RDI-A09680

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) ***Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) ***Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B

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RDI-A09682

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Attorneys for Plaintiffs and Intervenors, T2 Partners Management, LP dba Kase Capital Management; T2 Accredited Fund, LP dba Kase Fund; T2 Qualified Fund, LP dba Kase Qualified Fund; Tilson Offshore Fund, LTD; T2 Partners Management I, LLC dba Kase Management; T2 Partners Management Group, LLC dba Kase Group; JMG Capital Management, LLC; Pacific Capital Management, LLC

RDI-A09683

EXHIBIT 2

ELECTRONICALLY SERVED
11/23/2016 11:57:45 AM

NOTC

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Telephone: (213) 443-3000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

NOTICE OF TAKING DEPOSITION – DUCES TECUM

RDI-A09685

NOTICE OF TAKING DEPOSITION – DUCES TECUM

TO: ALL PARTIES; and

TO: THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak ("Defendants") will take the following deposition in the above-captioned action on the date and at the time and location indicated below.

Deponent	Date	Time	Location
Albert Nagy	November 29, 2016	9:30 A.M.	Veritext 20 Corporate Park, Suite 350 Irvine, CA 92606

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RDI-A09686

The deposition will be upon oral examination before a Notary Public, or before some other officer authorized by law to administer oaths. Said deposition may be videotaped. A copy of the related subpoena is attached hereto.

Dated: November 23, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

RDI-A09687

CERTIFICATE OF SERVICE

I hereby certify that, on November 23, 2016, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION – DUCES TECUM** 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

RDI-A09688

CC03
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEPOSITION SUBPOENA (DUCES TECUM)
(For Personal Appearance and Production of Documents and Things at Deposition)

RDI-A09689

THE STATE OF NEVADA TO:

Albert Nagy
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: (702) 949-8200

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you make an agreement with the attorney or party submitting this subpoena:

Date: November 29, 2016
Time: 9:30 a.m.
Place: Veritext
20 Corporate Park, Suite 350
Irvine, CA 92606

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

YOU ARE FURTHER ORDERED to bring with you at the time of your appearance the books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

RDI-A09690

50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" for information regarding your rights and responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of counsel in this matter.

Dated: November 23, 2016.

By: /s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265

RDI-A09691

MATTERS ON WHICH TESTIMONY WILL BE TAKEN
(for witnesses designated pursuant to NRCP 30(b)(6) only)

RDI-A09692

ITEMS TO BE PRODUCED

DEFINITIONS

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Albert Nagy and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "NAGY REPORT" refers to the report that YOU submitted on September 28, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

RDI-A09693

ITEMS TO BE PRODUCED

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the NAGY REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the NAGY REPORT, as well as any draft versions of exhibits to the NAGY REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the NAGY REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

RDI-A09694

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 20_____.

_____
NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

RDI-A09695

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) ***Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B

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RDI-A09697

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Attorneys for Plaintiff James J. Cotter, Jr.

RDI-A09698

EXHIBIT 3

ELECTRONICALLY SERVED
12/02/2016 10:45:11 AM

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

NOTICE OF TAKING DEPOSITION – DUCES TECUM

RDI-A09700

NOTICE OF TAKING DEPOSITION – DUCES TECUM

TO: ALL PARTIES; and

TO: THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak ("Defendants") will take the following deposition in the above-captioned action on the date and at the time and location indicated below.

Deponent	Date	Time	Location
Richard Spitz	December 7, 2016	10:00 A.M.	Quinn Emanuel Urquhart & Sullivan, LLP 865 S. Figueroa Street, 10th Floor Los Angeles, CA 90017

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RDI-A09701

The deposition will be upon oral examination before a Notary Public, or before some other officer authorized by law to administer oaths. Said deposition may be videotaped. A copy of the related subpoena is attached hereto.

Dated: December 2, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

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

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

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

RDI-A09702

CERTIFICATE OF SERVICE

I hereby certify that, on December 2, 2016, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION – DUCES TECUM** 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

RDI-A09703

CC03
COHEN|JOHNSON|PARKER|EDWARDS
H. Stan Johnson, ESQ.
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sjohnson@cohenjohnson.com
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QUINN EMANUEL URQUHART & SULLIVAN, LLP
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865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEPOSITION SUBPOENA (DUCES TECUM)
(For Personal Appearance and Production of Documents and Things at Deposition)

RDI-A09704

THE STATE OF NEVADA TO:

Richard Spitz
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Telephone: (702) 949-8200

YOU ARE ORDERED TO APPEAR AS A WITNESS and give testimony at the following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you make an agreement with the attorney or party submitting this subpoena:

Date: December 7, 2016
Time: 10:00 a.m.
Place: Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017

If you are a public or private corporation, partnership, association, or governmental agency, you are ordered to designate one or more officers, directors, managing agents, or other persons who consent to testify on your behalf. The persons you designate will be examined, and are ordered to testify, on the matters set forth below that are known or reasonably available to the organization. NRCP 30(b)(6).

YOU ARE FURTHER ORDERED to bring with you at the time of your appearance the books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

WITNESS FEES: You are entitled to witness fees and mileage traveled, as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

RDI-A09705

50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" for information regarding your rights and responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of counsel in this matter.

Dated: December 2, 2016.

By: /s/ H. Stan Johnson
H. Stan Johnson, Esq.
Nevada Bar No. 00265

RDI-A09706

MATTERS ON WHICH TESTIMONY WILL BE TAKEN
(for witnesses designated pursuant to NRCP 30(b)(6) only)

RDI-A09707

ITEMS TO BE PRODUCED

DEFINITIONS

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Richard Spitz and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "SPITZ REPORT" refers to the report that YOU submitted on August 25, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

RDI-A09708

ITEMS TO BE PRODUCED

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the SPITZ REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the SPITZ REPORT, as well as any draft versions of exhibits to the SPITZ REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the SPITZ REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

RDI-A09709

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 20_____.

_____
NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

RDI-A09710

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) ***Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waive applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) ***Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B

COHEN|JOHNSON|PARKER|EDWARDS
H. STAN JOHNSON, ESQ.
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sjohnson@cohenjohnson.com
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christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com
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Los Angeles, CA 90017
Telephone: (213) 443-3000

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Reno, NV 89519

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW
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eer@birdmarella.com
1875 Century Park East, 23rd Floor
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Attorneys for Defendants William Gould

RDI-A09712

GREENBERG TRAURIG, LLP
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ferrariom@gtlaw.com
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Telephone: (702) 792-3773
Facsimile: (702) 792-9002

Attorneys for Nominal Defendant Reading International, Inc.

LEWIS ROCA ROTHGERBER LLP
MARK G. KRUM
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Las Vegas, Nevada 89169
Telephone: (702) 949-8200
Facsimile: (702) 949-8398

Attorneys for Plaintiff James J. Cotter, Jr.

RDI-A09713

EXHIBIT 4

AlixPartners
when it really matters

September 14, 2016

Mark G. Krum, Esq.
Partner
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Inv. No.: 2082943
Re: Cotter v. Cotter, et al.
Client: 010562

Federal Tax ID 38-3637158

Retainer	25,000.00
Total Amount Due	**USD 25,000.00**

EXHIBIT
428
DATE: 10/17/16
Cathi Irish, RPR, CRR

Please reference the invoice number noted above on any payment remittance. Thank You.

Send check remittance to:

AlixPartners LLP
P.O. Box 5838
Carol Stream, IL 60197-5838

If Remitting in USD:

Account Name: AlixPartners LLP
Account Number: 003-58897
Bank Name: Deutsche Bank
ABA: 021-001-033
SWIFT: BKTRUS33XXX

If Remitting in any other Currency:

Account Name: AlixPartners LLP
IBAN: GB27 DEUT 4050 8189 039614
Account Number: 89039614
Bank Name: Deutsche Bank AG London
SWIFT: DEUTGB2LXXX

909 Third Avenue
New York, NY 10022

T 212.490.2500
F 212.490.1344
alixpartners.com

EXHIBIT 5

REALTY CAPITAL SOLUTIONS

September 30, 2016

Mark G. Krum, Esquire
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Re: Real Estate Development Litigation Consulting
James J. Cotter, Jr. / Reading International, Inc. Matter,
Case No. P-14-082942-E, Dept. No. XI ~ District Court, Clark County, Nevada

Privileged and Confidential Attorney Work Product

This invoice is for Realty Capital Solutions' professional services from engagement start through and including September 30, 2016 associated with the above referenced consulting engagement. The work during this time period was primarily review of case documents, analysis, research and production of a rebuttal report by Albert Nagy.

Please note that all outstanding invoices must be paid prior to testimony at deposition or in court.

Nagy, Testifying Expert	13.3 hours @ $650 per hour	$8,645.00
Ferrell, RCS Principal	38.0 hours @ $550 per hour	20,900.00
Hawkins, RCS Principal	16.5 hours @ $550 per hour	9,075.00
Senior Consultants	3.6 hours @ $350 per hour	1,260.00
Research Assistant	38.0 hours @ $250 per hour	9,500.00
Clerical	2.5 hours @ $100 per hour	250.00
	Total Professional Services	**$49,630.00**
	Expenses	-0-
	TOTAL DUE	**$49,630.00**

Please remit to: Realty Capital Solutions, LLC
3100 East Warren Avenue
Denver, CO 80220

Or via wire: Account Name: Realty Capital Solutions, LLC
Bank: Wells Fargo N.A.
Account Number: 321-5938774
ABA Routing Number: 121000248
Tax I. D. # 26-3612513

EXHIBIT: 467
WITNESS: Nagy
DATE: 11/29/16
SHERRY CASE, CSR

Albert Nagy ~ RCS Principal / Litigation Consultant & Testifying Expert

2016	Hours	Tasks
9/13	.3	Call with RF
9/14	.3	RCS group call
9/17	5	Document review
9/24	2	Document review
9/25	1	Report outline
9/25	.25	Conference with RF
9/26	.7	Call with RF
9/27	1.5	Report
9/28	1.25	Report review and final edits
9/30	1	Document review
	13.3	**TOTAL HOURS during the billing period, Nagy**

R. Ferrell ~ RCS Principal / Engagement Manager

2016	Hours	Tasks
9/13	1.5	Initial review of some case docs, call w. Nagy, call w. Krum
9/14	2.2	RCS phone group meeting, organization, methods. Doc review
9/16	4.0	Doc review, internet research, draft report outline, call w. Hawkins
9/17	0.7	Assist with Nagy expert disclosure
9/18	1.6	Prepare Nagy disclosure, call w. Fitzpatrick re: docs, M. Cotter depo
9/19	4.5	Doc review, report drafting
9/20	2.7	Doc review, report drafting
9/25	2.1	Conference with Nagy, report drafting, study Union Sq & Cinemas 123
9/26	5.6	Report editing and drafting, 10-k & 8-k review, calls Krum, Fitzpatrick, call w. Nagy
9/27	5.5	Report review and final edits, calls w. Fitzpatrick, Nagy, Krum, Hawkins
9/28	2.1	Call w. Hawkins, edits, report production
9/29	2.5	Report production and edits
9/30	3.0	Final report review, editing, exhibit production, supervise clerical
	38.0	**TOTAL HOURS during the billing period, Ferrell**

Privileged and Confidential Attorney Work Product

RDI-A09718

J. Hawkins ~ RCS Principal

2016	Hours	Tasks
9/12/2016	0.60	telephone call Richard Ferrell, internet research
9/14/2016	0.90	telephone call Richard Ferrell, internet research, review documents
9/16/2016	5.20	telephone call Richard Ferrell, review documents, draft/edit declaration
9/18/2016	1.30	telephone call Richard Ferrell/Mike Fitzpatrick, edit declaration
9/26/2016	0.50	review documents
9/27/2016	6.90	telephone call Richard Ferrell, review documents, draft/edit declaration and exhibits
9/28/2016	1.10	Draft/edit declaration, telephone calls Richard Ferrell
	16.5	**TOTAL HOURS during the billing period, Hawkins**

B. Goodheim ~ Sr. Consultant / IT Tech / Discovery database professional

Date	Hours	Tasks
2/1/2016	80	t/c RWF, download & decompress RDI.rar; explore contents
9/7/2016	50	t/c Stephanie re discovery doc software; email RWF with options
	1.3	**TOTAL HOURS during the billing period, Goodheim**

S. Jennings ~ Sr. Consultant / RCS - NYC

2016	Hours	Tasks
9/19	0.5	Research Edifice, development agreement
9/21	1.0	Research NYC development fee market
9/22	0.8	Emails and calls – Edifice reputation research
	2.3	**TOTAL HOURS during the billing period, Goodheim**

M. Fitzpatrick ~ RCS Research Assistant

Date	Hours	Tasks
9/15/16	5.8	Depos, Docs and Fonecons
9/16/16	3.2	Depos, Docs Fonecons
9/17/16	1.8	Depos, Docs and Fonecon
9/18/16	2.6	Research, Conference Call, Fonecon
9/19/16	3.1	Depos and Misc. Dropbox Docs, Fonecon
9/22/16	2.3	Depos and Dropbox Docs, Fonecon
9/24/16	1.8	Docs and Review Draft, Fonecon
9/25/16	5.3	Depos, Docs, Review Draft, Fonecon
9/26/16	5.7	Depos, Docs, Review Draft, Fonecon
9/27/16	2.2	Depos, Review Draft, Fonecon

NAGY004392

RDI-A09719

9/28/16	0.8	Review Draft, Fonecon
9/29/16	0.4	Review Draft, Fonecon
9/30/16	1.3	Review Osbourne Rebuttals and Fonecon
	36.3	**TOTAL HOURS during the billing period, M. Fitzpatrick**

RCS Clerical

2016	Hours	Tasks
9/28	2.5	Report formatting and find clerical editing
	2.5	**TOTAL HOURS during the billing period, Clerical**

RDI-A09720

EXHIBIT 6

STRONG FORCE IP STRATEGIES

S4S INVOICE - Lewis Roca Rothgerber Christie

Invoice No. S4S81616
August 16, 2016

In reference to: James C. Cotter, Jr.

Date	Description	Amount
8/16/16	Retainer/Fee Deposit	$15,000
	TOTAL AMOUNT DUE	$15,000

Wire Transfer to:
First Republic Bank
111 Pine St
San Francisco, CA 94111
ABA No.: 321081669
Credit Account No.: 80001827089
Account Name: S4S, LLC

Δ π EXHIBIT 476
Deponent SPITZ
Date 12-7-16 Rptr. JS
WWW.DEPOBOOK.COM

SPITZ003215

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES J. COTTER, JR., DERIVATIVELY ON BEHALF OF READING INTERNATIONAL, INC.,

Appellant,

v.

EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, AND MICHAEL WROTNIAK, READING INTERNATIONAL, INC., A NEVADA CORPORATION,

Respondents

Electronically Filed
May 31 2019 07:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 75053

Dist. Court Case No.: A-15-719860-B

Related to Cases: 72261, 72356, 74759, 76981, 77648, 77333

VOLUME VII

APPELLANT READING INTERNATIONAL, INC.'S APPENDIX VOLUME VII of VIII FOR CASE 77733 (PAGES RDI-A09529 to RDI-A10552)

Tami D. Cowden, Esq.
Nevada Bar No. 8994
Mark E. Ferrario, Esq.
Nevada bar No. 1625
Kara B. Hendricks, Esq.
Nevada Bar No. 7743
GREENBERG TRAURIG, LLP
10845 Griffith Peaks Dr. Suite 600
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Telephone No. (702) 792-3773
E-mail: cowdent@gtlaw.com
ferrariom@gtlaw.com
hendricksk@gtlaw.com
Attorneys for Appellants

Docket 75053 Document 2019-23839

VOL.	PAGES	DATE	DOCUMENT	FILED UNDER SEAL
I	RDI-A00001-32	6/12/2015	Complaint (Business Court)	
I	RDI-A00033-64	8/3/2015	Plaintiff's Motion to Expedite Discovery and Set a Hearing on Motion for Preliminary Injunction on Order Shortening Time	
I	RDI-A00065-68	8/20/2015	Order Granting Plaintiffs-In-Intervention Motion to Intervene	
I	RDI-A00069-86	8/28/2015	Verified Shareholder Derivative Complaint	
I	RDI-A00087-136	10/22/2015	Plaintiff James J. Cotter, Jr.'s First Amended Verified Complaint	
I	RDI-A00137-153	10/23/2015	Stipulated Confidentiality and Protective Order	
I	RDI-A00154-182	11/6/2015	Transcript of Proceedings: Mandatory Rule 16 Conference and Hearing on Motions October 29, 2015	
I	RDI-A00183-204	3/14/2016	Cotter Defendants answer to JJC First Amended Complaint	
I	RDI-A00205-226	3/29/2016	Reading International, Inc.'s Answer to James Cotter, Jr.'s First Amended Complaint	
I	RDI-A00227-250	4/5/2016	Judy Codding and Michael Wrotniak's Answer to First Amended Complaint	
I	RDI-A00251-278	6/3/2016	Transcript of Hearing on May 26, 2016 re T2's Motion for Preliminary Injunction	
I	RDI-A00279-371	7/12/2016	Joint Motion for Preliminary Approval of Settlement, Notice to Stockholders and Scheduling of Settlement Hearing on Order Shortening Time	
I	RDI-A00372-401	8/3/2016	Transcript of Proceedings: Hearing on July 28, 2016 re Motion for Preliminary Approval of Settlement and Plaintiff's Motion to Compel (filed 8/3/2016)	
I	RDI-A00402-405	8/4/2016	Order Granting Preliminary Approval of Derivative Claim Settlement	
I	RDI-A00406-436	8/8/2016	James J. Cotter, Jr.'s Motion to Vacate and Reset Pending Dates and to Reopen Discovery on Order Shortening Time	
I	RDI-A00437-450	8/17/2016	Transcript of Proceedings: Hearing on Plaintiff's Motion to Vacate Pending Dates/Reopen Discovery August 12, 2016	
I	RDI-A00451-473	8/24/2016	James J. Cotter, Jr.'s Motion to Permit Certain Discovery Concerning the Recent "Offer" on Order Shortening Time	
I	RDI-A00474-477	8/29/2016	Declaration of Whitney Tilson	
I	RDI-A00478-481	8/29/2016	Declaration of Jon Glaser	
I	RDI-A00482-538	9/2/2016	Second Amended Complaint	
I & II	RDI-A00539-1211	9/23/2016	Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims	
II	RDI-A01212-2024	9/23/2016	Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims (Non- Public)	Filed Under Seal
II	RDI-A02025-2297	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence	
II	RDI-A02298-2707	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence (Non-Public)	Filed Under Seal
II	RDI-A02708-2801	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer	

II	RDI-A02802-3039	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer (Non-Public)	Filed Under Seal
II	RDI-A03040-3070	9/23/2016	Declaration of Ellen Cotter in Support of the Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer	
II	RDI-A3071-3134	9/23/2016	Declaration of Ellen Cotter in Support of the Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer (Non-Public)	Filed Under Seal
II	RDI-A03135-3240	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 4) on Plaintiff's Claims Related to the Executive Committee	
II	RDI-A03241-3351	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 4) on Plaintiff's Claims Related to the Executive Committee (Non-Public)	Filed Under Seal
II	RDI-A03352-3522	9/23/2016	Individual Defendants Motion For Partial Summary Judgment (No. 5) On Plaintiffs Claims Related To The Appointment Of Ellen Cotter As CEO	
II	RDI-A03523-3785	9/23/2016	Individual Defendants Motion For Partial Summary Judgment (No. 5) On Plaintiffs Claims Related To The Appointment Of Ellen Cotter As CEO (Non-Public)	Filed Under Seal
II	RDI-A03786-4261	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Related to the Estate's Option Exercise. the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams	
II	RDI-A04262-4792	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Related to the Estate's Option Exercise. the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams (Non-Public)	Filed Under Seal
II & III	RDI-A04793-5617	9/23/2016	Defendant William Gould's Motion for Summary Judgment	
III	RDI-A05618-5978	9/23/2016	Plaintiff James Cotter, Jr.'s Motion for Partial Summary Judgment	
IV	RDI-A05979-6036	9/27/2016	Sealed Exhibits 15, 17, 18, 21, 22, 23, 24, 25, 26, 29, 30 to Plaintiff James Cotter, Jr.'s Motion for Partial Summary Judgment	Filed Under Seal
IV	RDI-A06037-6047	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 1 Re Plaintiff's Termination and Reinstatement Claims	
IV	RDI-A06048-6069	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 2 on the Issue of Director Independence	
IV	RDI-A06070-6076	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Partial Summary Judgment No. 3 Re the Purported Unsolicited Offer	
IV	RDI-A06077-6129	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 4 Re Plaintiff's Claims Related to The Executive Committee	
IV	RDI-A06130-6135	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 5 Re Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO	

IV	RDI-A06136-6144	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Partial Summary Judgment No. 6, Re Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams	
IV	RDI-A06145-6165	10/10/2016	Cotter, Jr.'s Motion to Vacate and Reset Pending Dates and to Reopen Discovery on Shortened Time (Fourth Request)	
IV	RDI-A06166-6197	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 1) Re Plaintiff's Termination and Reinstatement Claims	
IV	RDI-A06197-6366	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 1)	
IV	RDI-A06367-6554	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims (Exs. 3, 5, 6, 9, 19, 24, 25 and 29 Filed Under Seal)	Filed Under Seal
IV	RDI-A06555-6582	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence	
IV	RDI-A06583-6728	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 2)	
IV	RDI-A06729-6907	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 2) Re: The Issue Of Director Independence (Exhibits 4 And 19 Filed Under Seal)	Filed Under Seal
IV	RDI-A06908-6939	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer (and Gould Joinder)	
IV	RDI-A06940-6988	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 3)	
IV	RDI-A06989-7236	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 3) On Plaintiff's Claims Related To The Purported Unsolicited Off (And Gould Joinder) (Exhibits 3, 4, 5, 8, 10, 12, 13, and 14 filed under seal)	Filed Under Seal
IV	RDI-A07237-7270	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 4) on Plaintiff's Claims Related to the Executive Committee	
IV & V	RDI-A07271-7502	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 4)	
V	RDI-A07503-7761	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 4) On Plaintiff's Claims Related To The Executive Committee (Exhibits 7, 17 and 18 filed under seal)	Filed Under Seal

V	RDI-A07762-7798	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO	
V	RDI-A07799-7928	10/13/2016	Appendix of Exhibits In Support of Plaintiff James J. Cotter, Jr.'s Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 5)	
V	RDI-A07929-8126	10/13/2016	Appendix of Exhibits In Support of Plaintiff James J. Cotter, Jr.'s Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 5) On Plaintiff's Claims Related To The Appointment Of Ellen Cotter As CEO (Exhibits 3, 4, 7, 8, 10, 12, 13, 14, 16 and 19 filed under seal)	Filed Under Seal
V	RDI-A08127-8163	10/13/2016	Cotter, Jr.'s Opposition to William Gould's Motion for Partial Summary Judgment	
V	RDI-A08164-8223	10/13/2016	Appendix of Exhibits In Support of Cotter, Jr.'s Opposition To Defendant Gould's Motion For Summary Judgment	
V	RDI-A08224-8308	10/13/2016	Appendix of Exhibits In Support of Cotter, Jr.'s Opposition To Defendant Gould's Motion For Summary Judgment (Exhibits 2, 7, 9 and 12 filed under seal)	Filed Under Seal
V	RDI-A08309-8323	10/21/2016	Order Granting Settlement with T2 Plaintiffs and Final Judgment with Exhibit 1 attached	
V	RDI-A08324-8332	10/24/2016	Transcript of Proceedings: Pretrial and Scheduling conference October 21, 2016 (filed 10/24/2016)	
V	RDI-A08333-8378	10/25/2016	Cotter, Jr.'s Reply in Support of Motion for Partial Summary Judgment	
V	RDI-A08379-8390	10/26/2016	Individual Defendant's Objections to the declaration of James J. Cotter, Jr. Submitted in Opposition to all individual defendant's motions for partial summary judgment	
V	RDI-A08391-8545	11/1/2016	Transcript of Proceedings: Hearing on Motions October 27, 2016	
V	RDI-A08546-8557	11/4/2016	Plaintiff James J. Cotter, Jr,'s Motion to Reconsider the Court's Order Approving the Settlement and Dismissal of the T2 Complaint	
V	RDI-A08558-8562	11/23/2016	Reading International, Inc.'s Status Report Re: Discovery	
V	RDI-A08563-8592	11/23/2016	Cotter RDI November 2016 Status Report	
VI	RDI-A08593-8603	12/7/2016	Transcript of Proceedings: Status Check Re Resetting of Trial Date December 1, 2016	
VI	RDI-A08604-8629	12/20/2016	Reading International, Inc.'s Answer to Second Amended Complaint	
VI	RDI-A08630-8633	12/21/2016	Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion in Limine to Exclude Expert Testimony	
VI	RDI-A08634-8652	1/6/2017	Transcript of Proceedings - Status Check on 12.22.16	
VI	RDI-A08653-8663	6/14/2017	Transcript of Proceedings: Status Check June 5 2017	
VI	RDI-A08664-8667	10/4/2017	First Amended Order Setting Civil Jury Trial, Pre-Trial Conference And Calendar Call	
VI	RDI-A08668-8729	10/27/2017	Opposition of Plaintiff James J. Cotter, Jr. to Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff	

VI	RDI-A08730-8773	11/9/2017	Defendants Margaret Cotter Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6	
VI	RDI-A08774-8796	11/9/2017	Cotter, Jr.'s Motion in Limine No. 2 Regarding the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.	
VI	RDI-A08797-8799	11/21/2017	Reading International, Inc.'s Joinder to Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Coddings & Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 & 6	
VI	RDI-A08800-8829	11/28/2017	Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Answer to Plaintiffs Second Amended Complaint	
VI	RDI-A08830-8843	12/1/2017	Supplemental Opposition to Motion for Summary Judgment Nos. 1 and 2 and Gould Motion for Summary Judgment	
VI	RDI-A08844-8854	12/1/2017	Declaration of Akke Levin in Support of Supplemental Opposition to Motions for Summary Judgment Nos. 1 and 2 and Gould Summary Judgment Motion	
VI	RDI-A08855-8875	12/1/2017	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion	
VI	RDI-A08876-8897	12//17	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion (Non-Public	Filed Under Seal
VI	RDI-A08898-9086	12/1/2017	Declaration of Akke Levin In Support of Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So-Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion	
VI	RDI-A09087-9221	12/1/2017	Exhibits 3 through 6, 8, 9, 11 and 12 to Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So-Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion	Filed Under Seal
VI	RDI-A09222-9237	12/1/2017	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 5 and Gould Summary Judgement Motion	
VI	RDI-A09238-9356	12/1/2017	Declaration of Akke Levin In Support of Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 5 and Gould Summary Judgement Motion	
VI	RDI-A09356-9421	12/1/2017	Exhibits 7-11, 15-17 to Appendix to Plaitniff's Supplemental Opposition to Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion	Filed Under Seal
VI	RDI-A09422-9433	12/1/2017	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 6 and Gould Summary Judgment Motion	
VI	RDI-A09433-9468	12/1/2017	Declaration of Akke Levin in Support of Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 6 and Gould Summary Judgment Motion	
VI	RDI-A09469-9500	12/1/2017	Exhibits 4-11 to Appendix to Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 6 and Gould Summary Judgment Motion	Filed Under Seal

VI	RDI-A09501-9528	12/4/2017	Reply in Support of the Individual Defendants' Renewed Motions for Partial Summary Judgment Nos. 1 and 2 - Public	
VII	RDI-A09529-9537	12/4/2017	Reply in Support of Supplemental Motions for Summary Judgment Nos. 2 and 3	
VII	RDI-A09538-9546	12/4/2017	Reply in Support of the Individual Defendants Renewed Motions for Partial Summary Judgment Nos. 2 and 5	
VII	RDI-A09545-9554	12/4/2017	Reply in Support of Supplemental Motions for Summary Judgment Nos. 2 and 6	
VII	RDI-A09555-9562	12/4/2017	Reply in Support of the Individual Defendants' Motion in Limine to Exclude Evidence that is more prejudicial than probative	
VII	RDI-A09563-9594	12/8/2017	Joint Pretrial Memorandum	
VII	RDI-A09595-9601	12/28/2017	Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions in Limine	
VII	RDI-A09602-9609	1/2/2018	The Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay	
VII	RDI-A09610-9612	1/4/2018	Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration	
VII	RDI-A09611-9615	1/4/2018	Order Granting Plaintiffs Motion for Rule 54(b) Certification and Stay	
VII	RDI-A09616-9632; RDI-A0932A-9632K	1/10/2018	Sealed Transcript of Proceedings: Jury Trial Day One - 1.8.18	Filed Under Seal
VII	RDI-A09633-9773	5/15/2018	Defendant's Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments	
VII	RDI-A09774-9795	5/18/2018	Plaintiff's Pre-Trial Memorandum	
VII	RDI-A09796-9843	5/18/2018	Defendant's Pre-Trial Memorandum	
VII	RDI-A09844-9858	5/24/2018	Transcript of Proceedings: Hearing on Defendants' Motion to Compel May 21, 2018	
VII	RDI-A09859-9907	6/1/2018	Ellen Cotter, Margaret Cotter, and Guy Adams Motion For Summary Judgment	
VII	RDI-A9908-9968	6/1/2018	Sealed Exhibits to Ellen Cotter, Margaret Cotter, and Guy Adams Motion For Summary Judgment (Exhibits B, C, D, E, H, I)	Filed Under Seal
VII	RDI-A09969-10158	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Ratification	
VII	RDI-A10159-10365	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Ratification (Non-Public)	Filed Under Seal
VII	RDI-A10366-10408	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Demand Futility	
VII	RDI-A10409-10464	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Demand Futility (Non-Public)	Filed Under Seal
VII	RDI-A10465-10507	6/13/2018	Sealed Exhibits 1 & 3 to Plaintiff's Opposition to Motion to Dismiss and Exhbits 15, 17-19 and 21 to Defendant's Motion for Summary Judgment (Demand Futility & Ratification Oppositions)	Filed Under Seal
VII	RDI-A10508-10541	6/15/2018	Ellen Cotter, Margaret Cotter, and Guy Adams' Reply in Support of Motion for Summary Judgment	
VII	RDI-A10542-10552	8/14/2018	Findings of Fact and Conclusions of Law	
VII	RDI-A10552A-10552N	8/16/2018	NOE Findings of Fact and Conclusions of Law	

VIII	RDI-A10553-10558	9/4/2018	Stipulation and Order Relating to Process for Filing Motion for Attorneys' Fees	
VIII	RDI-A10559-10641	9/7/2018	Reading International, Inc.'s Motion for Attorneys' Fees	
VIII	RDI-A10642-10647	9/12/2018	Reading s International, Inc.'s Motion for Judgment in its Favor	
VIII	RDI-A10647A-10647C	9/17/2018	Defendants' Joinder to Reading International, Inc.'s Motion for Attorneys Fees	
VIII	RDI-A10648-10707	9/27/2018	Plaintiff's Opposition to Motion for Attorneys Fees	
VIII	RDI-A10708-10720	10/1/2018	Cotter Jr.'s Opposition to Reading International, Inc's Motion for Judgment in Its Favor	
VIII	RDI-A10721-10751	10/16/2018	Reading International, Inc.'s Reply in Support of Motion for Attorneys' Fees	
VIII	RDI-A10752-10757	10/15/2018	Reading International, Inc.'s Reply in Support of Motion for Judgment in Its Favor	
VIII	RDI-A10758-10774	10/24/2018	Transcript of Proceedings: Hearing on Motions for Attorneys' Fees	
VIII	RDI-A10774A-10774E	11/6/2018	Order Granting in Part and Denying in Part Motion to Retax and Settle Costs, and Entering Judgment for Costs	
VIII	RDI-A10775-10778	11/16/2018	Order Denying Reading International, Inc.'s Motion for Attorneys' Fees	
VIII	RDI-A10779-10782	11/16/2018	Order Denying Reading International, Inc.'s Motion for Judgment in its Favor	
VIII	RDI-A10783-10790	11/20/2018	Notice of Entry of Order Denying Reading International, Inc.'s Motion for Attorneys' Fees	
VIII	RDI-A10791-10798	11/20/2018	Notice of entry of Order Denying Reading International, Inc.'s Motion for Judgment in its Favor	
VIII	RDI-A10799-10801	12/14/2018	Notice of Appeal	

CERTIFICATE OF SERVICE

This is to certify that on May 31, 2019, a true and correct copy of the foregoing document, **APPELLANT READING INTERNATIONAL, INC.'S APPENDIX VOLUME I of VIII FOR CASE 77733,** was served by via this Court's e-filing system, on counsel of record for all parties to the action below in this matter, as follows:

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

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EIGHTH JUDICIAL 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, and DOES 1 through 100, inclusive,

Defendants.

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

REPLY IN SUPPORT OF SUPPLEMENTAL MOTIONS FOR SUMMARY JUDGMENT NOS. 2 AND 3

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3 ignores the evidence gathered since the last summary judgment hearing—namely, Plaintiff's own admission that Patton Vision's overtures towards purchasing RDI stock were non-binding—and instead focuses on a red herring "business plan" issue. This is nothing but an attempt at distraction; summary judgment is appropriate on this claim because, as a matter of law, Plaintiff has not (and cannot) demonstrate any injury from the Board's decision not to pursue the **nonbinding** indication of interest. While Plaintiff has now had multiple opportunities to identify some type of harm resulting from the Board's decision, he has failed to do so.

Additionally, Plaintiff's conclusory statements that the business judgment rule does not apply because, in his view, the Board must have been acting with improper motives when it inquired about the views of RDI's controlling shareholders is unfounded. Plaintiff's accusations about the thought processes and motivations of RDI's directors are not evidence. Plaintiff has failed to identify any genuine disputed material fact regarding any purported breach of fiduciary duty. Defendants' Motion for Summary Judgment No. 3 should therefore be granted.

II. ARGUMENT

A. THERE ARE NO DAMAGES, AS A MATTER OF LAW, FROM A DECISION NOT TO PURSUE A NONBINDING EXPRESSION OF INTEREST

Summary judgment is appropriate on this claim because, as a matter of law, Plaintiff cannot demonstrate any injury from the Board's decision not to pursue Patton Vision's nonbinding indication of interest. Plaintiff has not produced any cognizable evidence showing damages, an essential element of a breach of fiduciary duty claim. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) (A claim for breach of fiduciary duty requires a plaintiff to demonstrate "the existence of a fiduciary duty, the breach of that duty, and that the breach proximately caused the damages.") (applying Nevada law).

Plaintiff incorrectly asserts that Defendants' citation of *Cooke v. Oolie*, No. CIV. A. 11134, 2000 WL 710199 (Del. Ch. May 24, 2000) stands for "more or less the opposite proposition than the one for which it is cited." (Opp. at 15.) Plaintiff's attempts at distinguishing this case are unavailing. In *Cooke*, the shareholder plaintiffs contended that two directors breached their fiduciary duties by voting to pursue one particular acquisition proposal, the "USA Proposal," over other proposals the board was considering. *Id*. at *1. After the board voted to pursue the USA Proposal, USA backed out of the deal and the remaining proposals had lapsed. *Id*. at *7. The court found that the shareholder plaintiffs failed to demonstrate an actual interest in the other proposals since they could not prove that they suffered an injury:

> To show that pursuit of the USA proposal injured the plaintiffs, they would have to demonstrate that pursuit of the USA deal prevented TNN shareholders from obtaining superior value by consummating a deal with one of the other three companies submitting acquisition proposals. The plaintiffs, however, could not demonstrate that TNN would have closed a superior deal with one of the other bidding companies because ***none of the proposals which the board considered in December 1989 constituted offers the acceptance of which would bind the offeror to acquire TNN. Rather, the proposals represented non-binding offers subject to a number of conditions***.
> *Id*. at *13, n. 38 (emphasis added).

Here, like in *Cooke*, Plaintiff has failed to demonstrate an actual interest in the Patton Vision indication of interest since the *proposal* was **nonbinding and subject to a number of conditions** (*e.g.*, (1) negotiation and execution of a definitive merger agreement and (2) due diligence). Indeed, Plaintiff has conceded that Patton Vision's indication of interest was nonbinding and that Patton Vision could walk away from the deal short of there being a definitive agreement. (*See* Mot. at 7.) Accordingly, Plaintiff cannot demonstrate injury—a deficiency fatal to all claims based on Patton Vision's unsolicited indication of interest.

RDI-A09531

B. THE BOARD PROPERLY CONSIDERED AND ULTIMATELY REJECTED THE INDICATION OF INTEREST

1. Directors Are Entitled to Rely on Management's Report, and RDI's Directors Were Well-Versed in RDI's Strategic Plan to Maximize Stockholder Value

Even putting aside that he cannot show any damages from failure to pursue a non-binding expression of interest, Plaintiff's entire claim boils down to the assertion that RDI's Board of directors was required to obtain the advice of an investment banker or other outside advisers when considering the Patton Vision indication of interest. But the Board acted well within its discretion when by considering the opinions of management. Nevada Revised Statute 78.138(2)(a) provides:

> In performing their respective duties, directors and officers are entitled to rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by:
>
> (a) One or more directors, officers or employees of the corporation reasonably believed to be reliable and competent in the matters prepared or presented[.]

No authority exists for Plaintiff's contention that the Board was required to retain outside financial advisors, investment bankers, or real estate professionals. Notably, Plaintiff himself—a member of RDI's board of directors—did not do so. Indeed, no case or statute requires corporate directors to hire such consultants (and incur the resulting costs) to evaluate an unsolicited indication of interest. *See Estate of Detwiler v. Offenbecher*, 728 F. Supp. 103, 152 (S.D.N.Y. 1989) ("[D]irectors knowledgeable about the corporation have no legal obligation to obtain fairness opinions by independent bankers."). Instead, Nevada law explicitly permits corporate directors to rely on information provided by company management. *See* Nev. Rev. Stat. § 78.138(2).

In addition, Plaintiff has failed to establish that the RDI Board, or any board, is obligated to have a "business plan" to make a decision such as those at issue here. Plaintiff makes much of the presence or absence of a physical document with the title "Reading International Business Plan." This is nothing but misdirection; whether or not there was a paper document stamped

"business plan" is irrelevant to whether RDI's Board and management had a plan and strategy to grow the Company and maximize stockholder value. There is of course no legal requirement that a company have a document called "business plan" for the Board to make decisions and, in any event, RDI *did have* a plan and strategy, which Ellen Cotter had presented to the Board in February 2016 and that had been the subject of numerous meetings and discussions by Board members and management. The unrebutted testimony of Defendants' expert Jonathan Foster is that the Mission, Vision & Strategy presentation Ellen Cotter gave at the February 18, 2016 was in fact a "strategic plan" which "was meant to be the plan for 2016." (Foster at 72:6 -73:6.)

2. Directors Are Allowed to Consult with Controlling Stockholders

Plaintiff also criticizes the Board's inquiry to controlling stockholders Ellen and Margaret Cotter regarding their views about the indication of interest. However, despite Plaintiffs' attempts to case this inquiry in a negative light, members of the Board are obligated to consider the interests of stockholders—large and small, majority and minority—when assessing the possibility of a sale. Where, like at RDI, the controlling stockholders are also directors and officers of the company, it defies logic to suggest that the Board should not consult with them about a possible sale of the Company. That the Board was interested in what Ellen and Margaret Cotter thought about the potential sale is not remotely evidence that those are the *only* stockholder interests that were being considered. Indeed, **Plaintiff concedes the Board inquired into his view as well.** (Opp. at 6.) Simply put, in Plaintiff's view, if an RDI Director aligns with Ellen or Margaret Cotter on an issue, the only possible explanation is a breach of the duty of loyalty (though Plaintiff does not identify any benefit received by any Director by choosing not to pursue the indication of interest, which is fatal to his claim of a breach of the duty of loyalty). Plaintiff fails to even consider the possibility that RDI's directors align with Ellen and Margaret on this (or any) issue because they actually agree on what is best for all of RDI's stockholders. But that is what Nevada law presumes, and it is the essence of the business judgment rule that Plaintiff contends (without support) should not apply here.

Nevada Revised Statute 78.139(4) allows a director to "resist a change or potential change in control of the corporation if the board of directors determines that the change or potential change

is opposed to or not in the best interest of the corporation upon consideration of any relevant facts, circumstances, contingencies or constituencies pursuant to subsection 4 of NRS 78.128," which considers the long-term or short-term interest of the corporation. As Plaintiff concedes, the decision explicitly contemplated by the Board at the June 23 board meeting was whether "to continue to pursue [RDI's] current [long-term] strategy as an independent company," and whether that decision was "in the best interest of the company and its stockholders." (*See* Opp. at 4-5.) In reaching its ultimate decision to pursue the Company's long-term strategy, the Defendants considered a detailed presentation by management, which contemplated all the Company's outstanding plans for growth and the redevelopment of its existing properties. (*Id*. at 4-8.) This is exactly what Nevada law requires and precisely what the Defendants did.

C. PLAINTIFF HAS NOT PROPERLY ALLEGED ANY INTENTIONAL MISCONDUCT, FRAUD OR KNOWING VIOLATION OF LAW

Finally, Plaintiff's conclusory allegations of "intentional misconduct"—with nothing more—have no support or basis in fact. (*See* Opp. at 14, 16, 18.) As Plaintiff admits, "a director of a Nevada corporation cannot be liable to the corporation for money damages 'unless...[t]he trier of fact determines that the presumption established by subsection 3 has been rebutted.'" (Opp. at 14 quoting NRS 78.138(7).) However, despite this clear legislative intent to protect Nevada directors, and the Supreme Court's recognition of the "legislat[ure's] rejection of a substantive evaluation of director conduct," *Wynn Resorts*, 399 P.3d at 343, Plaintiff still urges this Court to consider piecemeal facts he hopes will somehow create a triable issue.

Plaintiff's citation to the Delaware exculpatory provisions from *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006) is inapposite in light of Nevada's more protective provisions under NRS 78.138(7) and the legislature's clear intent that conflicting law not be considered. *See* Section 4, SB 203 ("[D]irectors . . . may be informed by the laws and judicial decisions of other jurisdictions . . ., but the failure or refusal of a director or officer to consider, or to conform the exercise of his or her powers to, the laws, judicial decisions or practices of another jurisdiction does not constitute or indicate a breach of a fiduciary duty."). But even under Delaware's stricter standard, Plaintiff still fails to establish that any Director acted with a purpose

other than that of advancing the best interest of the corporation. Indeed, Ellen and Margaret Cotter (as collective owners of over 1.6 million RDI shares) stood to make approximately $30 million from any sale, assuming that Patton Vision's non-binding indication of interest resulted in a sale of all RDI shares at $17 (or $18.50) per share. As a matter of law, by casting votes of confidence in RDI's long-term strategy, rather than seeking to cash in on a short-term windfall, Ellen and Margaret Cotter, along with the non-Cotter Defendants who voted with them, demonstrated a *lack* of self-interest and instead clearly acted in the best interest of the Company's stockholder. *See Kahn v. MSB Bancorp, Inc.*, 21 No. ClV. A. 14712-NC, 1998 WL 409355, at *3 (Del. Ch. July 16, 1998), *affd*, 734 A.2d 158 (Del. 1999) ("The choice to remain with a long-term strategy at the expense of short-term personal gain indicates, if anything, a lack of self-interest on the part of the directors.").

Accordingly, because Plaintiff has not even attempted to (and cannot) meet the showing required under NRS 78.138(7) to establish individual liability, no triable issue remains and summary judgment on the indication of interest claims is appropriate.

III. CONCLUSION

Plaintiff's conclusory allegations are not admissible evidence showing a genuine issue for trial. While Plaintiff haphazardly alleges that members of the Board breached their fiduciary duties for anything and everything, he cannot identify a single disputed material fact—beyond his own speculation—that would allow him to take these misguided claims to trial. For all the foregoing reasons, Defendants' Motion for Partial Summary Judgment No. 3 should be granted in its entirety.

DATED THIS 4TH DAY OF DECEMBER, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF SUPPLEMENTAL MOTIONS FOR SUMMARY JUDGMENT NOS. 2 AND 3** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

REPLY IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' RENEWED MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 2 AND 5

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After undertaking a CEO search process, engaging an outside search firm, and observing Ellen Cotter's performance as interim CEO for more than six months, RDI's CEO search committee recommended to the Board that Ellen Cotter be named RDI's permanent President and CEO, and the Board discussed and approved her selection. Because Plaintiff disagrees with the merits of the Board's decision—and believes that *he* should be RDI's CEO—he seeks to second-guess the Board's determination and take over the position that Ellen Cotter has now held for nearly two-and-a-half years.

To do so, Plaintiff relies on a fundamental misunderstanding of Nevada law. He misreads the recent amendments to Nevada statutes and ignores binding Supreme Court authority holding that a court, when determining whether directors acted in good faith, may inquire only into the process by which a board of directors made a decision and not the substance of that decision. Disregarding the application of Nevada's business judgment rule, Plaintiff hypothesizes about the directors' motives and turns a blind eye to the process that actually took place when Ellen Cotter was selected as CEO. None of this is proper, and Plaintiff's attempt to replace the Board's considered decision with the result he prefers should be rejected. Simply put, Plaintiff fails to overcome the presumption established by the Nevada business judgment rule.

II. ARGUMENT

A. Plaintiff Misapprehends Nevada Law Regarding the Business Judgment Rule and Determinations of Good Faith

Plaintiff's speculation about the Directors' motives in choosing Ellen Cotter as RDI's permanent President and CEO cannot change the fact that the business judgment rule protects their decision. Choosing a CEO for the company is a quintessential matter of business judgment for the Board. *See Carlson v. Hallinan*, 925 A.2d 506, 527 (Del. Ch. 2006) ("[I]n corporate law, the election of officers is generally left to the board of directors."). As discussed more fully in

the Individual Defendants Reply in Support of Motions for Partial Summary Judgment 1 and 2, Nevada law establishes a policy of judicial noninterference with business decisions and rejects a substantive evaluation of director conduct.

A recent clarification to Nevada law, which includes (i) the legislative declaration set forth in N.R.S. SB 203, § 2, and resulting amendments to NRS 78.138 and NRS 78.139, as well as (ii) the Nevada Supreme Court's recent decision in *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct. In & For Cnty. of Clark*, 399 P.3d 334 (Nev. 2017), are all relevant to the business judgment analysis in this case. Although Plaintiff argues that this intervening authority has no impact on his breach of fiduciary duty claims (*see* Plaintiff's Supplemental Opposition to Motions for Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion ("Opp.") at 10-11), Plaintiff fundamentally misapprehends Nevada law.

Nevada's business judgment rule, codified by statute, provides that "[d]irectors and officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3) (emphasis added). To the extent that other states (such as Delaware) have a different business judgment rule, the Nevada Legislature has now made clear that such foreign law must not be allowed to "supplant" or "modify" Nevada's home statute, and failure of a Nevada director to 'consider" or "conform the exercise of his or her powers" to such foreign law "does not constitute or indicate a breach of a fiduciary duty." N.R.S. SB 203, §§ 2(3)-(4). Irrespective of whatever foreign law may be, Nevada's corporate law identifies only two situations where the business judgment presumption may be disturbed: (1) where directors take certain actions to resist "a change or potential change in control of the corporation," NRS 78.139(1)(b), 2-4; and (2) in an "interested director transaction," involving "self-dealing" between a director and a corporation, NRS 78.140.

Neither of these situations is implicated by the Board's selection of Ellen Cotter as CEO. Like the termination of a CEO, the hiring of a CEO is a purely operational decision that is one of those "matters of business" always entitled to the Nevada statutory presumption of reasonable business judgment under NRS 78.138(3). In Nevada, there is a marked contrast between

"operational decisions," such as removing an officer or changing a marketing strategy, and "transactional decisions," such as where a director is on both sides of a particular transaction.

Even if Plaintiff could overcome the hurdle of the business judgment rule, in Nevada, a director cannot be held personally liable for damages based on a business decision "unless it can be shown that the director breached his fiduciary duties and that such breach involved intentional misconduct, fraud, or a knowing violation of law." *Wynn*, 399 P.3d at 342; NRS 78.138(7). Citing Delaware law, Plaintiff argues that the Directors engaged in "intentional misconduct" by failing to act in good faith in connection with the CEO search, since they chose Ellen Cotter despite her lack of real estate experience and supposedly "aborted" the search process. Opp. at 11-12. But nowhere does Plaintiff discuss Nevada's standard for determining whether directors have acted in good faith. Nevada has adopted factors for making this determination, which include

> inquiry into the identity and qualifications of any sources of information or advice sought which bear on the decision reached, the circumstances surrounding selection of these sources, the general topics (but not the substance) of the information sought or imparted, whether advice was actually given, whether it was followed, and if not, what sources of information and advice *were* consulted to reach the decision in issue.

Wynn, 399 P.3d at 343 (citation omitted).

Nevada has specifically rejected a "reasonableness review" or "substantive evaluation" of a director's actions to determine whether he or she was acting in good faith. *Id.* The Supreme Court has stated that "a court can address whether a director has acted in good faith without seeking substantive information." *Id.* Plaintiff's suggestion that Nevada courts should involve themselves in the minutiae of corporate decision-making with respect to the selection of corporate officers is directly contrary to the strict "policy of judicial noninterference" emphasized in *Wynn*; not only would it lead to an explosion of litigation in Nevada, in which plaintiffs would use hindsight and manufactured independence issues to second-guess any termination decision by a corporate board, it "would accomplish by the back door that which is forbidden by the front"—a substantive evaluation of directorial judgment on the most intimate of corporate concerns, officer performance. *Wynn*, 399 P.3d at 343.

B. The CEO Search Process Proceeded in Good Faith

As noted in Individual Defendants' Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5, and 6 ("Supp. Motion"), Plaintiff conceded at deposition that [redacted] Plaintiff now calls this a "gross mischaracterization" of his deposition testimony (Opp. at 13), but does not actually describe the testimony or explain how it has supposedly been mischaracterized. To be clear, Plaintiff was asked, [redacted] (Helpern Decl. to Supp. Motion, Ex. C at 877:22-878:1). Plaintiff responded, [redacted] (*Id.* at 878:4-9). The follow-up question asked, [redacted] (*Id.* at 878:11-13). Plaintiff's response [redacted] (*Id.* at 878:14). And when asked, [redacted] (*Id.* at 878:17-20).

Thus, although Plaintiff places much emphasis in his briefing on the criterion of real estate experience, his own testimony shows that [redacted]. These kinds of judgment calls are made every time any employee anywhere is hired. The point of the business judgment rule is that it "prevents a court from replac[ing] a well-meaning decision by a corporate board with its own decision." *Wynn*, 399 P.3d at 342 (Nev. 2017) (quotations and citation omitted; brackets in original). Moreover, it is ironic that Plaintiff would seek to pillory the Individual Defendants and to have himself reinstated as President and CEO for the failure of the Board to retain a candidate who satisfied criteria that Plaintiff himself did not and could not satisfy.

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Plaintiff postulates that the Directors, and particularly two of the members of the CEO search committee, Mr. Gould and Mr. McEachern, "act[ed] to further the wishes of the controlling shareholder." (Opp. at 12). But as noted in Individual Defendants' MSJ No. 5, "[t]he business judgment rule postulates that if directors' actions can arguably be taken to have been done for the benefit of the corporation, then the directors are presumed to have been exercising their sound business judgment rather than to have been responding to self-interest motivation." *Horwitz* v. *Sw. Forest Indus., Inc.*, 604 F. Supp. 1130, 1135 (D. Nev. 1985). It is Plaintiff's burden to rebut this presumption. *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1373 (Del. 1995).

Plaintiff has not offered evidence to overcome the presumption that the Directors acted in good faith during the CEO search. Plaintiff concedes that the search committee worked with Korn Ferry, a preeminent search firm, to find external candidates for the CEO position. Korn Ferry "researched over 200 prospective candidates, had contact with approximately 60, interviewed 11, and ultimately presented six external candidates to [RDI's Search] Committee." (Helpern Decl. to MSJ No. 5, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008292). When Ellen Cotter decided that she wanted to be considered for the position, she resigned from the search committee and took no part in the interviews of the other candidates or the search committee's deliberations. (*Id.*, Ex. 5 (June 29, 2016 William Gould Dep.) at 356:6-19). During the meeting of the Board of Directors where Ellen Cotter was chosen as CEO, at least two of the Directors noted that they had previously participated in CEO searches for other companies, and that the process used by RDI for its CEO search was consistent with or compared favorably with their prior experiences. (*Id.*, Ex. 11 (Jan. 8, 2016 Board Meeting Minutes) at EK00001372).

Plaintiff suggests that the Directors simply acquiesced to Ellen Cotter's wish to be CEO, but that is not the case. After Ellen Cotter announced her candidacy, the search committee interviewed five external candidates identified by Korn Ferry before it interviewed her. (*Id.*). When Korn Ferry identified an additional candidate, the search committee later interviewed him

as well. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008292 & JCOTTER008294). Following the interviews, the search committee discussed many considerations and ultimately determined that Ellen Cotter was the best candidate for the job. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008294-97).

Plaintiff makes much of the fact that the search committee chose not to proceed with Korn Ferry's "assessment" process, but this is irrelevant. The "assessment" process was an additional service offered by Korn Ferry outside of its regular search process. (Levin Decl. ISO Opp., Ex. 9 (Aug. 2, 2015 Memo to Board) at WG_0000114). The "assessment" process cost an additional [redacted] on top of Korn Ferry's regular search fee. (*Id.*). At the beginning of the search process, when the Board believed that RDI would be hiring an entirely new CEO, it had elected to include this "assessment" function in the search. (*Id.*). However, the search committee later came to believe that if Ellen Cotter was its preferred candidate after the interviews, this further "assessment" process would be a waste of money and time, both for the Company and for the candidates. (Helpern Decl. to MSJ No. 5, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008293-94). The search committee rationally felt that it could not justify this additional "assessment" process when the Board had already observed Ellen Cotter's actual performance of the CEO's duties for more than six months during her tenure as interim CEO. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008293). Bringing the search process to a conclusion, the search committee believed, would be favorable for the stability of the Company. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008296).

Plaintiff's attempt to second-guess these business decisions should be rejected. It is plain that Plaintiff's real problem with the selection of Ellen Cotter as CEO is not the process the Board followed in choosing her, but rather that he disagrees with the substance of the Board's decision. Plaintiff believes—as is evident from his request for reinstatement—that he should be CEO of RDI instead of his sister. No amount of process will satisfy him when he does not like

the result, but Plaintiff's vendetta is not an adequate reason to ignore Nevada's "sensible policy of judicial noninterference with business decisions." *Wynn*, 399 P.3d at 342.

III. CONCLUSION

For the foregoing reasons, the Individual Defendants respectfully request that the Court grant summary judgment as to the First, Second, Third, and Fourth Causes of Action set forth in Plaintiff's Second Amended Complaint, to the extent that they assert claims and damages related to the appointment of Ellen Cotter as CEO.

Dated: December 4, 2017

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CERTIFICATE OF SERVICE

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' RENEWED MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 2 AND 5** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ *Sarah Gondek*

An employee of Cohen|Johnson|Parker|Edwards

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

REPLY IN SUPPORT OF SUPPLEMENTAL MOTIONS FOR SUMMARY JUDGMENT NOS. 2 AND 6

Case Number: A-15-719860-B

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 6 is notable for what it concedes. *First*, Plaintiff finally admits that none of the following constitutes a breach of fiduciary duty he can prove at trial: the Board's decision regarding Ellen Cotter's CEO compensation; the Board's decision regarding Margaret Cotter's compensation as EVP for New York real estate; and the Board's decision to compensate Guy Adams $50,000 for services provided beyond those normally expected of a Board member. (Opp. at 8:16-24). *Second*, Plaintiff concedes—as he must—that the Board exercised due care with respect to the Estate's exercise of the 100,000 share option, the hiring of Margaret Cotter as an EVP and her compensation, and the $50,000 payment to Guy Adams. (Opp. at 7:1-20). Plaintiff's *only* remaining allegation with respect to the subject matter of Motion for Summary Judgment No. 6 is that certain directors supposedly breached their duty of loyalty when they approved the 100,000 share option exercise and when they approved the hiring of Margaret Cotter. The "evidence" Plaintiff proffers to support these allegations is his own personal view that the Board must have been acting with improper motives because Plaintiff does not agree with the result. But Plaintiff's baseless conclusions about the thought processes and motivations of RDI's directors are not evidence. Plaintiff has failed to identify any genuine disputed material fact regarding any purported breach of the duty of loyalty; Defendants' Motion for Summary Judgment No. 6 should therefore be granted.

II. ARGUMENT

A. PLAINTIFF FAILS TO DISPUTE—WITH ANYTHING BUT HIS OWN SPECULATION—THE UNDISPUTED FACTS THAT KANE AND ADAMS ACTED PROPERLY IN APPROVING THE ESTATE'S EXERCISE OF A 100,000 SHARE OPTION

Nevada's business judgment rule, codified by statute, provides that "[d]irectors and officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3) (emphasis added). Plaintiff does not and cannot identify any evidence showing or even suggesting that Kane and

Adams acted in bad faith in considering and approving the Estate's use of Class A stock to acquire 100,000 shares of Class B stock. This is amply demonstrated by the fact that Plaintiff's entire discussion of this issue lacks a *single* factual citation or reference. (Opp. at 3:18-4:17). Plaintiff admits that Kane and Adams exercised their duty of care in making this evaluation. (Opp. at 7:1-7). Undeterred by a complete lack of supporting evidence, Plaintiff explains in his opposition that he still "contends" that "Adams and Kane authorized the exercise of the 100,00 share option for the purpose of assisting EC and MC in perpetuating their control of RDI." Plaintiff's "contentions" may have been relevant at the pleading stage, but they are of no moment in opposing summary judgment after years of discovery. At the summary judgment stage, the nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture," *Wood v. Safeway, Inc.*, 121 Nev. 724 731 (2005), but instead must identify "admissible evidence" showing "a genuine issue for trial." *Posadas* v. *City of Reno,* 109 Nev. 448, 452 (1993); *Shuck v. Signature Flight Support of Nev., Inc., 126* Nev. 434, 436 (2010) ("bald allegations without supporting facts" are insufficient); *LaMantia v. Redisi,* 118 Nev. 27, 29 (2002) (nonmovant must "show specific facts, rather than general allegations and conclusions").

Indeed, Plaintiff's "contentions" are rebutted by uncontroverted evidence showing that:

- Well before the Estate sought to exercise the option at issue, RDI had implemented a Stock Option Plan allowing exercise of options using Class A shares and a Company policy of repurchasing Class A shares when they were available. *See* 9/23/16 Declaration of Noah Helpern In Support of Individual Defendants' Motion for Partial Summary Judgment No. 6 ("Helpern Decl."), Exhs. 3 (1999 Stock Option Plan) and 14 (Minutes of 5/15/14 Board Meeting).
- The Board's Compensation Committee, through Kane and Adams, was acting in conformance with and with knowledge of the terms of the Stock Option Plan when evaluating the Estate's option exercise. *See* Helpern Decl. Exhs. 2 (Minutes of 9/21/15 Minutes of Compensation Committee Meeting), 3 (1999 Stock Option Plan), and 14 (Minutes of 5/15/14 Board Meeting).

- Every director elected to the Board at the 2015 Annual Stockholders' Meeting received approximately 1.3 million votes, *i.e.*, the votes of more than 75% of the Class B stockholders. *See* Helpern Decl. Exh. 16 (RDI 11/13/15 Form 8-K). The 100,000 shares obtained by the Estate through exercising the option did not make, and could not have made, any difference to the outcome of the vote, rendering nonsensical Plaintiff's unsupported "contention" about the Compensation Committee helping Ellen and Margaret Cotter supposedly perpetuate control.

Here, as elsewhere, Plaintiff's claim for supposed breach of the duty of loyalty is based on his own dissatisfaction with a Board decision and resulting assumption that Defendants' motivations must have been impure because they did not do what Plaintiff wanted. Simply put, that is not how a claim for breach of fiduciary duty works, and Plaintiff does not cite any authority that would allow this claim to survive Defendants' Motion for Partial Summary Judgment No. 6. He does not explain or identify any way in which Kane or Adams placed their own interests above those of RDI or its stockholders in connection with the option exercise, let along any resulting damage or injury to RDI, which is fatal to his claim. *See generally Schoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006) ("[T]he duty of loyalty requires the board and its directors to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests."). In point of fact, the Class A stock used to pay the exercise price of the options was valued at approximately $1,257,000. The closing price on Friday, December 1, 2017, of those 100,000 shares was $1,611,000, reflecting a significant *increase* in value to RDI.

B. PLAINTIFF HAS NOT IDENTIFIED ANY DISPUTED MATERIAL FACT REGARDING A SUPPOSED BREACH OF THE DUTY OF LOYALTY IN CONNECTION WITH MARGARET COTTER'S HIRING

Plaintiff alleges that some or all members of the Board breached their duty of loyalty by approving the hiring Margaret Cotter as EVP for New York real estate. Yet the only evidence Plaintiff cites for the factual contention that Margaret Cotter "had no prior experience and is unqualified" for her position is *Plaintiff's own declaration*. (Opp. at 5:20-23). Plaintiff concedes that the Board exercised due care in hiring Margaret Cotter for this position. That after

years of litigation Plaintiff has not been able to develop any evidence whatsoever regarding his allegations about Margaret Cotter's hiring is dispositive; summary judgment should be granted. Moreover, despite his concession that the only purported breach of fiduciary at issue here is the duty of loyalty, Plaintiff does not explain how *any* non-Cotter director supposedly benefitted from Margaret Cotter's shift from being a consultant to being a full-time employee, let alone identify any conflicts that would render these directors improperly interested such that they could not properly evaluate the employment decision. If Plaintiff's theory of the case is accepted, every single hiring and firing decision made by the Board would constitute a breach of fiduciary duty simply because Plaintiff thinks that the Board is supposedly disloyal to the Company and its stockholders.

C. TO THE EXTENT PLAINTIFF CONTENDS THESE ISSUES EVEN REMAIN AN ISSUE IN THIS CASE, PLAINTIFF HAS NOT IDENTIFIED ANY DISPUTED MATERIAL FACTS REGARDING A SUPPOSED BREACH OF THE DUTY OF LOYALTY WITH RESPECT TO MARGARET COTTER OR GUY ADAMS' COMPENSATION

Plaintiff states in his opposition that he "does not contend that the compensation packages of Ellen and Margaret Cotter as such give rise to or constitute breaches of fiduciary duty, nor does Plaintiff contend that additional compensation to MC and Guy Adams give rise to or constitute independent breaches of fiduciary duty." (Opp. at 8:19-24) (internal quotation marks and formatting omitted). However, Plaintiff elsewhere states in the opposition that "the payment of $200,000 to [MC] . . . and the $5000 [sic] payment to Adams are issues arising from the duty of loyalty." (Opp. at 7:1-7). To the extent Plaintiff intends to raise these supposed "issues arising from the duty of loyalty" at trial, he should not be allowed to do so.

The only evidence Plaintiff cites for the factual contention that Margaret Cotter or Guy Adams' compensation is or was improper is *his own Declaration*. (Opp. at 5:23-26, 6:1-18). Plaintiff should not be permitted to avoid summary judgment on this issue where he concedes that the Board's decisions did not constitute breaches of fiduciary duty but then calls the Board's decisions "issues arising from the duty of loyalty" (whatever that means) and manufactures supposed "evidence" based entirely on his own speculation. Indeed, Plaintiff cannot even decide

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what he thinks was wrongful about the payment to Guy Adams, claiming (without any support in the record) that it was "*either* a payment for loyalty or a payment for services Adams did not provide as a director, and thereby another category of waste and/or damages." (Opp. at 9:25-28). That Plaintiff cannot identify a single shred of evidence beyond his own imagination to suggest that any payment to Margaret Cotter or Guy Adams was improper compels summary adjudication of this issue (to the extent Plaintiff has not rendered discussion of these issues at trial moot, since he concedes he cannot prove a breach of fiduciary duty regarding these compensation decisions). Although Plaintiff would apparently like to separate the duty of care from the duty of loyalty in this circumstance, it is impossible to comprehend how, if the directors (as admitted by Plaintiff) acted with due care in determining to pay such compensation, they violated their duty of loyalty or that RDI suffered damage as a result of such determination.

III. CONCLUSION

Defendants' Motion for Partial Summary Judgment No. 6 should be granted in its entirety. After years of discovery, Plaintiff now concedes that much of the subject matter of the Motion cannot actually constitute a claim for breach of fiduciary duty and that Defendants satisfied their duty of care. Plaintiff still alleges that members of the Board breached their duty of loyalty, because Plaintiff believes that virtually every decision made by the Board in the two-and-a-half years since his termination constitutes a breach of the duty of loyalty. Yet Plaintiff cannot identify a single disputed material fact—beyond his own speculation—that would allow him to take these misguided claims to trial.

DATED THIS 4TH DAY OF DECEMBER, 2017.

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By: /s/ H. Stan Johnson

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CERTIFICATE OF SERVICE

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF SUPPLEMENTAL MOTIONS FOR SUMMARY JUDGMENT NOS. 2 AND 6** 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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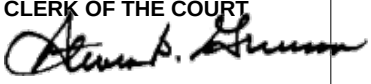

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al*.,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

REPLY IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE THAT IS MORE PREJUDICIAL THAN PROBATIVE

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: December 11, 2017
Time of Hearing: 8:30 a.m.

INTRODUCTION

Plaintiff's Opposition brief confirms his plan to turn the jury against the Individual Defendants by introducing two categories of evidence that are unfairly prejudicial and of little, if any relevance. Pursuant to NRS 48.035, the Court should exclude such evidence to preserve the fundamental fairness of the upcoming trial.

First, Plaintiff seeks to introduce documents and elicit testimony regarding a criminal investigation into the bidding process for the Los Angeles Unified School District's ("LAUSD") contract with Apple for the provision of iPads with content provided by a subcontractor for whom Defendant Judy Codding worked. Such evidence should be excluded on multiple grounds. Given that Plaintiff has confirmed that he is not actually pursuing a breach of fiduciary duty claim relating to Director Codding's nomination and confirmation *and* has admitted that her independence "is of little or no import" to this case, the evidence is entirely irrelevant. Even if he was pursuing such a claim, recent Nevada law provides that the fact-finder can consider only what *sources* the RDI Board utilized when evaluating Dr. Codding's candidacy for a Board position, not the Board's *substantive analysis* of the information (or lack thereof) provided by those sources. And, of course, Plaintiff does not dispute that the evidence he seeks to introduce is hearsay, often multiple times over. Not only is hearsay unreliable *per se*, here the news articles and email Plaintiff seeks to admit get the story wrong. To correct the record and rehabilitate Dr. Codding before a jury, a time-wasting mini-trial would be required. Given the minimal probative value of this unduly prejudicial evidence, it should be excluded.

Second, Plaintiff seeks to introduce a four-year-old divorce pleadings involving Director Guy Adams, which show his financial condition, under the mistaken view that Adams' independence or finances are relevant to the legal merits of Plaintiff's breach of fiduciary duty claims. While they are not, the Individual Defendants only seek to preclude the affirmative use of Adams' divorce declarations at trial. The facts that Plaintiff purportedly seeks to prove with these papers (Adams' income, assets, and expenses) are undisputed, and can easily established through other evidence that has far less prejudicial impact. Indeed, Director Adams will appear at trial and will testify in a manner consistent with this divorce declarations; if he does not,

Plaintiff can use those declarations as impeachment. However, given the duplicative and inflammatory nature of documents from Director Adams contentious divorce proceedings, the Court should exercise its considerable discretion and preclude Plaintiff's ability to affirmatively use those materials.

ARGUMENT

I. EVIDENCE OF THE LAUSD IPAD INVESTIGATION RELATING TO DIRECTOR CODDING SHOULD BE EXCLUDED FROM TRIAL

Three factors strongly support the exclusion of evidence at trial relating to the LAUSD iPad investigation—a matter that tangentially involved Dr. Codding's work at another company before she joined the RDI Board.

First, as established in the Individual Defendants' opening brief, the (inaccurate) news articles and email from an outside investor in RDI (Andrew Shapiro) relating to the LAUSD iPad investigation are "completely irrelevant to this breach of fiduciary case." (Ind. Defs.' Prejudice MIL at 7.) Plaintiff's opposition papers confirm this critical defect. For instance, when—as directed by the Court—Plaintiff listed the purportedly actionable breaches of fiduciary duty that he seeks to proceed to trial on, he did not include the nomination and confirmation of Dr. Codding as an RDI Director. (*See* Pl.'s Supp. Opp'n to MSJ Nos. 1 & 2 at 5-6.) As Plaintiff further conceded, because Directors Codding and Wrotniak "do not constitute a majority of directors or committee members voting with respect to a single matter . . . their independence and/or disinterest is of little or no import" to this case. (*Id.* at 10.) Given the admitted irrelevance of the LAUSD investigation to the actual claims at issue,[1] the minimal probative value of this evidence is clearly outweighed by the prejudicial effect it would have in poisoning the jury against Dr. Codding.

Second, even assuming *arguendo* that Plaintiff had asserted a cause of action relating to Dr. Codding's nomination and confirmation as an RDI Director, the actual evidence of the

[1] While Plaintiff, in his Opposition to the Individual Defendants' Motion *in Limine*, asserts that Dr. Codding underwent a "reckless," "pro forma approval" in which no "meaningful due diligence" occurred (Pl.'s Prejudicial MIL Opp'n at 10-13), if the ultimate decision by the RDI Board—the confirmation of Dr. Codding—is not at issue, the Board's process is irrelevant.

LAUSD investigation—and the RDI Board's consideration of it—would still not be admissible. As the Nevada Supreme Court recently emphasized in *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct. In and For Cnty. of Clark*, 399 P.3d 334 (Nev. 2017), the Nevada Legislature, through the state's business judgment rule, has "signal[ed] a rejection of a substantive evaluation of director conduct." *Id.* at 343 (citation omitted). While Nevada courts are prevented from "substitut[ing] [their] own notions of what is or is not sound business judgment," *id.* at 344 (citation omitted), in determining good faith, they may still make a limited

> inquiry into the identity and qualifications of any sources of information or advice sought which bear on the decision reached, the circumstances surrounding selection of these sources, the general topics (but not the substance) of the information sought or imparted, whether advice was actually given, whether it was followed, and if not, what sources of information and advice *were* consulted to reach the decision in issue.

Id. at 343 (citation omitted).

In short, the Court (and fact-finder) would be able to consider *what sources* the RDI Board employed in making the decision to nominate and confirm Dr. Codding as a Director, but could not question *the substance of the information imparted* from those sources. With respect to Dr. Codding's nomination, the undisputed evidence is that corporate counsel, at the behest of the RDI Board, engaged an outside firm to undertake a background check on her. (*See* Helpern Decl., Ex. D (7/7/16 McEachern Dep.) at 357:14-22, 359:22-360:6.)[2] This is a "source" that would be properly considered. While that background-check firm performed in a substandard manner, missing a clear potential issue relating to Dr. Codding (that was ultimately caught and considered), the content of the information the outside firm provided—and the Board's substantive evaluation of it—would not be a proper consider under *Wynn*. Accordingly, given that Plaintiff could not have the substance of the LAUSD iPad investigation admitted if he was

[2] The evidence claimed by Plaintiff to show that "the supposed nominating committee apparently chose not to perform any search or any other basic diligence prior to voting to approve Codding as a director" does nothing of the sort. (*See* Pl.'s Prejudicial MIL Opp'n at 12 (citing 4/29/16 Adams Dep. at 289:10-293:12, 6/8/16 Gould Dep. at 177:13-178:9).) Rather, the cited testimony from Directors Adams and Gould simply indicates that the LAUSD iPad issue was not uncovered before the committee's first recommendation that Dr. Codding be approved.

actually bringing a claim relating to the consideration of Dr. Codding, the fact that he is not pursuing such a claim further supports its exclusion from evidence at the upcoming trial.

Third, Plaintiff, in his Opposition brief, fails to address the fact that "Mr. Shapiro's email regarding the allegations against Ms. Codding, and any news articles on that topic, constitute hearsay and are inadmissible under N.R.S. 51.035 (definition of hearsay), 51.065 (hearsay generally inadmissible), and 51.067 (hearsay within hearsay not excluded from hearsay rule)." (Ind. Defs.' Prejudicial MIL at 7-8.) This is a separate and independently-fatal reason to reject Plaintiff's attempted admission of the LAUSD iPad evidence. In Nevada, hearsay is "presumptively unreliable." *Ramirez v. State*, 114 Nev. 550, 558, 958 P.2d 724, 729 (1998). There is good reason for this rule; as established by the Individual Defendants in their opening brief and not contested by Plaintiff, the issues reported in the press surrounding the LAUSD iPad bidding process were "reported inaccurately" and the Los Angeles District Attorney's office concluded that "there was no criminal wrongdoing" by Dr. Codding or anyone else. (Ind. Defs.' Prejudicial MIL at 4-5.) If Plaintiff were able to admit the "unreliable" evidence he seeks, the Individual Defendants would have to waste valuable time to correct the record and rehabilitate Dr. Codding—creating a time-wasting "trial within a trial" that would unduly prejudice the Individual Defendants. *See* NRS 48.035(2). To prevent this baseless hearsay from infecting the trial, the Court should exclude the evidence in its entirety.

II. EVIDENCE FROM DIRECTOR ADAMS' CONTENTIOUS DIVORCE PROCEEDINGS SHOULD BE EXCLUDED FROM TRIAL

For the reasons set forth in the Individual Defendants' summary judgment briefing, neither the "independence" of Director Guy Adams nor his financial circumstances should be relevant to the claims and defenses at issue in this litigation. (*See, e.g.*, Ind. Defs.' Renewed MSJ Nos. 1 & 2 Reply at 2-8.) Notwithstanding the legal irrelevance of Adams' finances, the Individual Defendants have not made a blanket objection to this evidence at trial. Instead, the Individual Defendants have made a carefully circumscribed objection, which would allow admission of all relevant evidence regarding Director Adams' finances except the pleadings from his contentious divorce. (Ind. Defs.' Prejudicial MIL at 5-6.)

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Under NRS 48.035(1), relevant evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice." The Nevada Supreme Court has defined "unfair prejudice" under NRS 48.035 as an appeal to "the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence." *Krause Inc. v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001); *Schlotfeldt v. Charter Hosp. of Las Vegas*, 112 Nev. 42, 46, 910 P.2d 271, 273 (1996). Here, there is no need for the jury to learn of Director Adams' difficult divorce, which has no bearing on the claims at issue; as the Individual Defendants' established in their opening brief, courts have recognized that divorce proceedings are inflammatory and should be excluded from later proceedings where possible. (Ind. Defs.' Prejudicial MIL at 5-6 (collecting cases).)

There is simply no need for Plaintiff to affirmatively introduce Director Adams' divorce declarations. Adams will be appearing at trial and will testify in person; he is aware of his prior declarations and deposition testimony, and will be prepared to testify fully, accurately, and consistently as to his financial status. Plaintiff will be obtain the information he believes he needs from Director Adams directly, obviating the need to rely on documents prepared in a litigation over four years ago. Of course, should Director Adams materially deviate from the information provided on his divorce declarations while on the stand (which he will not), the Individual Defendants do not contest that Plaintiff would then be able to impeach him using the divorce declarations. *See McEachern v. McEachern*, 260 Ga. 320, 322, 394 S.E.2d 92, 94 (1990) (providing that "[e]vidence of post-separation payments is not admissible unless the court determined that the evidence should be admitted to prevent a party's perpetuating a fraud upon the court"). However, given the duplicative and highly prejudicial nature of the divorce declarations, the Court should exclude then *unless* Director Adams' trial testimony triggers a basis for impeachment.

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CONCLUSION

For the reasons set forth above, the Individual Defendants respectfully request that the Court grant this motion *in limine* in its entirety and exclude any argument or evidence relating to the aforementioned issues.

Dated: December 4, 2017

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CERTIFICATE OF SERVICE

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE EVIDENCE THAT IS MORE PREJUDICIAL THAN PROBATIVE** 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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(See signature page for additional counsel.)

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 **JOINT PRETRIAL MEMORANDUM** **DATE: 12/11/2017** **TIME: 10:30 a.m.**

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The parties, through their respective counsel of record, hereby submit the following joint pre-trial memorandum in accordance with this Court's 1st Amended Order Setting Civil Jury Trial, Pre-trial Conference and Calendar Call dated September 29, 2017and Local Rule 2.67 after counsel for all parties[1] conferred regarding the same on November 15, 2017 and November 20, 2017.

I. MATTER REFERENCED IN OCTOBER 4, 2017 ORDER, PARAGRAPH D

A. Motions in Limine (December 11, 2017)

1. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1 Regarding Advice of Counsel

2. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.

3. Plaintiff James Cotter Jr.'s Motion In Limine No. 3 Regarding After Acquired Evidence

4. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative

5. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority

6. Defendant William Gould's Motion In Limine Exclude Irrelevant Speculative Evidence

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[1] Counsel participating in the pretrial conference included: Mark Krum and Steve Morris on behalf of Plaintiff; Marshall Searcy and Noah Helpern on behalf of Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Shoshana Bannett on behalf of William Gould; and Kara Hendricks on behalf of Reading International, Inc.

B. Motions for Summary Judgment (December 11, 2017)

1. Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6

2. See also Section II. J.

II. OTHER PRETRIAL MATTER

A. Statement of Facts

Plaintiff's Statement:

In view of the significant prior proceedings in this case, including motions to dismiss and summary judgment motions, as well as the detail in the pending Second Amended Complaint (the particular allegations of which have been or will be admitted or denied in the individual defendants' respective answers), and the Court's resulting familiarity with this case, the parties respectfully provide the following abbreviated, summary statement of facts of the case:

Plaintiff James J. Cotter, Jr. ("Mr. Cotter" or "Plaintiff") was and is a substantial shareholder and a director of nominal defendant Reading International, Inc. ("RDI" or the "Company"), as well as a former President and Chief Executive Officer ("CEO"). Defendants Ellen Cotter and Margaret Cotter were and are members of the RDI board of directors (the "Board") and at all times relevant hereto have purported to be and/or been the controlling shareholder(s) of RDI. Each of the remaining individual defendants was at relevant times and is a member of the RDI Board, as well of certain Board committees.

The facts of this case include and concern acts and omissions of individual director defendants which the Plaintiff claims give rise to entail breaches of fiduciary duties individually and/or together with other acts

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and omissions, including with respect to the following matters: the threat to terminate Mr. Cotter as President and CEO of RDI, the termination of Mr. Cotter as President and CEO of RDI, the demand that he resign from the Board, RDI Board governance matters, RDI SEC filings and press releases, the search for a permanent CEO that resulted in Ellen Cotter becoming permanent CEO, the hiring and compensation of Margaret Cotter as EVP RED NY, the payment of certain monies to certain of the individual defendants and the actions and or lack of actions by each of the individual defendants in response to offers or expressions of interest by Patton Vision and others to purchase all of the outstanding stock of RDI.

Director Defendants' Statement:

On June 12, 2015, the Board of Directors of Reading International, Inc. ("RDI") voted to terminate Plaintiff James J. Cotter, Jr. as President and CEO of RDI. Plaintiff claims that this decision was a breach of fiduciary duty. Plaintiff also claims various other breaches of fiduciary duty, including with respect to the search for a new President and CEO of RDI, the hiring of Margaret Cotter as an Executive Vice President for Real Estate -- NYC, the exercise of an option held by the Estate of James J. Cotter, Sr. to purchase 100,000 shares of RDI Class B voting stock, and the response to a third party's indication of interest in purchasing all outstanding shares of RDI. The Director Defendants contend that they acted in the best interests of RDI stockholders at all times and fulfilled their fiduciary duties to the Company.

One of the Director Defendants, William Gould is separately represented. On the central claim that initiated this case—Plaintiff's termination—Mr. Gould voted *against* terminating Plaintiff. Although Mr. Gould is separately represented, there is substantial overlap in his witness list and his responses to other portions of this pre-trial

memorandum with that of the other director defendants and individual defendants have therefore chosen to present a combined defense position in the pre-trial memorandum.

RDI's Statement:

RDI joins in the Director Defendants' Statement above.

B. List of Claims

Plaintiffs' list of claims for relief is as follows:

A. Breaches of the Duty of Care (SAC 1–179) (First Cause)

1. Process in connection with termination, including aborting ombudsman and lack of process/process failures (SAC 3, 35, 36, 43, 50 – 57, 61 – 94) (EC, MC, GA, EK, DM, WG) (equitable relief)[2]

2. Breach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC (SAC - all), including paragraph A. 1. above and the following:

- Use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams/WG, JC, MW)
- Process/process failures from aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: All)
- Erroneous and/or materially misleading statements in board materials such as agendas and minutes, and in public disclosures including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

[2] Arabic numbered bold typeface paragraphs indicate matters which Plaintiff contends give rise to and/or constitute breaches of fiduciary duty independently, as well as together with other matter.

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- Process/process failures in connection with nomination and retention of directors, including adding Codding and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the $200,000 pre-employment bonus (committees - members) (Board - all)
- $50,000 to Adams (SAC 153, 166*)* (Committees – members) (Board – all but GA)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)

3. Damages/injury (SAC 163 – 168)

a. injury to RDI's reputation and goodwill (164)

b. impairment of shareholder rights due to SEC filings (165)

B. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EK, DM, EC, MC)

2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EK, DM, EC, MC) (equitable relief also sought)

3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)

4. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: all)

5. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (Committee members) (Board: all)

6. Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)

7. Breach of the duty of loyalty (all) and misuse of their

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position as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- $50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

8. Damages/injury (SAC 163 – 168)

a. diminution in value of RDI (163)

b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. Breaches of the Duty of Candor (SAC 1 – 172, 187 – 192) (Third Cause)

1. SEC filings and press releases (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (EC - all) (WG - Form 8-Ks and press releases about termination and CEO) (each as to disclosures regarding themselves (e.g., proxies))
2. Damages/injury (SAC 163 – 168)
   a. diminution in value of RDI (163)
   b. impairment of shareholder rights due to SEC filings (165)
   c. injury to reputation and goodwill (168)

D. Aiding and Abetting Breaches of Fiduciary Duty (SAC 193 – 200) (Fourth Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)
2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
4. Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
5. Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (EC, MC)
6. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
7. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (EC, MC)
8. Patton Vision offer(s) (SAC 16, 154-162) (EC, MC)

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9. Damages/injury (SAC 163 – 168)

a. diminution in value of RDI (163)

b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. List of Affirmative Defenses

Plaintiff has not abandoned any purported claims identified in the Second Amended Complaint. Director Defendants therefore cannot abandon any affirmative defenses asserted in its Answer to the Second Amended Complaint. Depending on which particular claims for relief Plaintiff actually pursues at trial, Director Defendants may raise the following affirmative defenses:

- Failure to State a Cause of Action;
- Statute of Limitations and Repose;
- Laches;
- Unclean Hands;
- Spoliation;
- Illegal Conduct and Fraud;
- Waiver, Estoppel, and Acquiescence;
- Ratification and Consent;

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- No Unlawful Activity;
- No Reliance;
- Failure to Plead Fraud with Particularity;
- Uncertain and Ambiguous Claims;
- Privilege and Justification;
- Good Faith and Lack of Fault;
- No Entitlement to Injunctive Relief;
- Damages too Speculative;
- No Entitlement to Punitive Damages;
- Failure to Mitigate;
- Comparative Fault;
- Business Judgment Rule;
- Equitable Estoppel;
- Election of Remedies;
- N.R.S. 78.138;
- Failure to Make Appropriate Demand;
- Conflict of Interest and Unsuitability to Serve as a Derivative Representative.

RDI

- Failure To State A Claim
- Failure To Make Demand
- Corporate Governance
- Irreparable Harm To Company
- Unclean Hands
- Spoliation
- Waiver, Estoppel, And Acquiescence
- Ratification And Consent
- No Unlawful Activity

- Privilege And Justification
- Good Faith And Lack Of Fault
- No Entitlement To Injunctive Relief
- Damages Too Speculative
- Mitigation Of Damages
- Comparative Fault
- Equitable Estoppel
- Nevada Revised Statute 78.138
- Conflict Of Interest And Unsuitability To Serve As Representative

D. Claims or Defenses to be Abandoned

None. However, Plaintiff will not seek equitable relief with respect to historical or past actions relating to the executive committee, to corporate governance of RDI such as misleading or inaccurate meeting agendas and/or minutes, to the addition or removal of persons to and/or from the RDI board of directors and to SEC filings and press releases. Plaintiff will seek equitable relief with respect to the vote to terminate James J. Cotter Jr. as President and CEO and reserves the right to do so with respect to authorization of the exercise of the so-called 100,000 share option.

E. List of Exhibits

The Court has given the parties to and including December 13, 2017 to provide exhibit list(s).

F. Agreements to Limit or Exclude Evidence

None presently.

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G. Witness List

1. Nonexpert Witnesses

For Plaintiff:

1. James Cotter, Jr. (*plaintiff expects to present this witness*)
c/o Mark Krum
Yurko, Salvesen & Remz. P.C.
One Washington Mall, 11th Floor
Boston, MA 02108
617.723.6900

2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

3. Margaret Cotter (*plaintiff expects to present this witness*)
c/o Stan Johnson
COHEN | JOHNSON | PARKER | EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, NV 89119
702-823-3500

4. Ellen Cotter (*plaintiff expects to present this witness*)
c/o Stan Johnson
COHEN | JOHNSON | PARKER | EDWARDS
375 E. Warm Springs Road, Ste. 104
Las Vegas, Nevada 89119
702-823-3500

5. Douglas McEachern (*plaintiff expects to present this witness*)
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6. Guy Adams (*plaintiff expects to present this witness*)
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Cohen-Johnson, LLC
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Las Vegas, Nevada 89119
702-823-3500

7. Edward Kane (*plaintiff expects to present this witness*)
c/o Stan Johnson
Cohen-Johnson, LLC
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8. William Gould (*plaintiff expects to present this witness*)
Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
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Reno, Nevada 89519
775-827-2000

9. Timothy Storey (*plaintiff expects to present this witness*)
Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
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775-827-2000

10. John Hunter (*plaintiff may call this witness if the need arises*)
Milken Institute, Chief Financial Officer
1250 4th Street
Santa Monica, CA 90401

11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)
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Los Angeles, California 90024
310-293-7384

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12. Eric Barr (*plaintiff may call this witness if the need arises*)
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Southern Melbourne, Australia
011-61-488-096-616
ebarr@optushome.com.au

13. Al Villasenor (*plaintiff may call this witness if the need arises*)
116 – 19th Street
Manhattan Beach, California 90266
Home- 310-546-5193
Mobile- 310-897-0407

14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*)
20100 Wells Drive
Woodland Hills, California 91364
(805) 447-6265

15. Harry P. Susman (*plaintiff may call this witness if the need arises*)
Susman Godfrey, LLP
1000 Louisiana, Suite 5100
Houston, Texas 77002
713-653-7875 (w)
hsusman@susmangodfrey.com

16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)
The Karahan Companies
7200 Bishop Road, Suite 250
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214-473-9700 (w)
fehmi@karahaninc.com

17. Judy Codding (*plaintiff expects to present this witness*)
2266 Canyon Back Road
Los Angeles, California 90049

18. Michael J. Wrotniak (plaintiff expects to present this witness)
Aminco Resources USA
World Headquarters
81 Main Street Suite 110

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M.Wrotniak@Aminco.biz

19. Gil Borok (*plaintiff may call this witness if the need arises*)
3835 Hayvenhurst Avenue
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Mobile- 818-0528-3689
Email- gborok@me.com

20. Robert Wagner (*plaintiff may call this witness if the need arises*)
Korn Ferry
1900 Avenue of the Stars Suite 2600
Los Angeles, CA 90067
310-226-2672 (w)
Robert.wagner@kornferry.com

21. John M. Genovese (*plaintiff may call this witness if the need arises*)
7584 Coastal View Drive
Los Angeles, CA 90045
Mobile: 310-245-1760
Email- jmgenovese@yahoo.com

22. William D. Ellis (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

23. Craig Tompkins (*plaintiff may call this witness if the need arises*)
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24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
310-728-3358

25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
Los Angeles, CA 90067
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26. Robert Mayes (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
Korn Ferry
c/o Samantha Goodman
1900 Avenue of the Stars, Suite 2600
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310.556.8557

27. Andrew Shapiro (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Jahan Raissi
Shartsis Freise LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
415.421.6500

28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
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29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
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30. Andrez Matycynski (*plaintiff may call this witness if the need arises*)
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3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169

31. Dev Ghose (*plaintiff may call this witness if the need arises*)
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<u>For the Director Defendants</u>:

1. Ellen Cotter (*the director defendants expect to present this witness*)
c/o COHEN | JOHNSON | PARKER | EDWARDS
375 E. Warm Springs Road, Ste. 104
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And
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2. Margaret Cotter (*the director defendants expect to present this witness*)
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3. James Cotter, Jr. (*the director defendants expect to present this witness*)
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617-723-6900

4. Guy Adams (*the director defendants expect to present this witness*)
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5. Edward Kane (*the director defendants expect to present this witness*)
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7. Michael Wrotniak (*the director defendants expect to present this witness*)
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8. Judy Codding (*the director defendants expect to present this witness*)
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9. Bill Gould (*the director defendants expect to present this witness*)
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10. Timothy Storey (*the director defendants expect to present this witness*)
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11. Craig Tompkins (*the director defendants expect to present this witness*)
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12. Bob Smerling (*the director defendants expect to present this witness*)
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13. Terri Moore (*the director defendants expect to present this witness*)
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15. Linda Pham (*the director defendants expect to present this witness*)
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16. Debbie Watson (*the director defendants expect to present this witness*)
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17. Laura Batista (*the director defendants expect to present this witness*)
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18. David Roth (*the director defendants expect to present this witness*)
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19. Michael Buckley (*the director defendants may call this witness if the need arises*)
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20. Derek Alderton (*the director defendants expect to present this witness*)
Highpoint Associates
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El Segundo, CA 90245
310-616-0100

21. Mary Cotter (*the director defendants expect to present this witness*)
2818 Dumfries Road
Los Angeles, CA 90064
310-559-0581

22. Jill Van (*the director defendants expect to present this witness*)
Grant Thornton
515 S. Flower St., 7th Floor
Los Angeles, CA 90071
213-627-1717

23. Whitney Tilson (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
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Westlake Village, CA 91361
818-851-3850

24. Jon Glaser (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818-851-3850

<u>For Reading International, Ind.:</u>

RDI does not intend to call witnesses, but reserves all rights to question witnesses identified by Plaintiff and/or the other defendants in this matter.

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2. Expert Witnesses and Summaries of Opinions

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding proper exercise of directors' fiduciary duties. Among other things, he will offer opinion testimony regarding appropriate corporate governance practices and activities where a board of directors is faced with circumstances in which directors lack or may lack independence and/or disinterestedness, including the appropriate practices and activities to address such circumstances, and to evaluate the success of such practices and activities, including with respect to the following matters (i) the process used to terminate James J. Cotter, Jr. as President and Chief Executive Officer of Reading International, Inc. ("RDI")., (ii) the use of the Executive Committee of RDI's Board of Directors, (iii) the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given and (iv) the rejection of the Offer.[3] Former Chief Justice Steele also will offer opinion

[3] As stated in the Steele Report, it is Justice Steele's understanding that Nevada courts look to Delaware case law when there is no Nevada statutory or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the Nevada Supreme Court frequently looks to the Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on questions of corporation law, this Court often looks to those sources to predict how the Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no Nevada statutory or case law on point or an issue of corporate law, this Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the Model Act relies heavily on New York

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testimony to rebut opinions offered by defendants' experts Michael Klausner and Alfred Osborne.

2. Richard Spitz will offer opinion testimony relating to executive and CEO searches and RDI's supposed CEO search. It is anticipated that he will offer opinion testimony that the execution of the (supposed) executive search process undertaken at RDI in 2015 to find a CEO was not conducted properly and that the search failed, including because the selection of Ellen Cotter as CEO was not the product of completing the search process undertaken and was not a result of the search activities conducted. Mr. Spitz also will offer opinion testimony to rebut opinions offered by defendants' expert Alfred Osborne.
3. Albert Nagy will offer opinion testimony in rebuttal to defendants' expert Alfred Osbourne. Among other things, it is anticipated that he will offer opinion testimony that Margaret Cotter's compensation from RDI is not within a reasonable range for a person with her experience and qualifications.
4. Tiago Duarte-Silva will offer opinion testimony about money damages Plaintiff seeks by this action. It is anticipated that his opinion testimony will include opinions that (i) Reading's earnings have declined and underperformed since Ellen Cotter became Reading's CEO, (ii) Reading's value has declined and

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and Delaware case law, we look to the Model Act and the law of those states in interpreting the Nevada statutes.").

Justice Steele is aware that the defendants in this action have filed a motion in limine because the Steele Report stated that the opinions therein were based on what a court that applied Delaware law would find. That phraseology was intended simply to refer to Justice Steele's years of experience in Delaware's well-versed body of law. The Delaware law on which Justice Steele relies neither supplants nor modifies the plain meaning of Nevada law, but only is used to inform Nevada law.

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underperformed since Ellen Cotter became Reading's CEO, and (iii) failing to respond favorably to an acquisition offer impeded an increase in Reading's market value. Mr. Duarte-Silva also will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll.

5. Dr. John Finnerty will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll. It is anticipated that his opinion testimony will include opinions that Dr. Roll's conclusions that (1) "the news regarding James Cotter, Jr.'s termination did not have an adverse effect on the price of RDI stock;" (2) "the risk adjusted performance of RDI Stock since the termination of James Cotter, Jr. through June 30,2016 does not support Plaintiff's contention that RDI Stock has underperformed and/or suffered irreparable harm;" and (3) "the risk adjusted performance of RDI Stock since the termination of James Cotter, Jr. through June 30, 2016, is not distinguishable from the performance of RDI Stock while he was CEO" are incorrect.

For the Director Defendants:

1. Michael Klausner – Mr. Klausner will offer opinion testimony regarding the Board of Directors' proper exercise of their duties and obligations in connection with their decision to terminate James Cotter, Jr. as President and CEO and their decision not to pursue the third-party indication of interest, including as a rebuttal to Plaintiffs' expert Justice Myron Steele.
2. Jon Foster – Mr. Foster will offer opinion testimony regarding the Board of Directors' decision-making and analysis in connection with their consideration of the third-party indication

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of interest, as a rebuttal to the expected testimony of Plaintiffs' expert Tiago Duarte-Silva.

3. Richard Roll – Dr. Roll will offer opinion testimony about the claimed money damages being sought by Plaintiff in this action based on fluctuations or changes in RDI's stock price, including as a rebuttal to Plaintiffs' purported damages experts.
4. Bruce Strombom – Mr. Strombom will offer opinion testimony to rebut the purported damages analysis set forth by Plaintiffs' exert Tiago Duarte-Silva.
5. Alfred Osborne – Dr. Osborne will offer opinion testimony on matters relating to corporate governance and assess Williams Gould's role, responsibilities and conduct in certain corporate governance processes at RDI. He will also offer opinion testimony to rebut opinions offered by Plaintiffs' experts Justice Myron Steele and Mr. Richard Spitz regrading purported breaches of fiduciary duty by members of the Board of Directors.

For Reading international, Inc.:

RDI joins in the expert designations of the Director Defendants.

H. Issues of Law

Plaintiff's Position:

Plaintiff's position is that any such issues will be raised with the Court in the context of jury instructions.

Director Defendants' Position:

As described in detail in the Director Defendants' pending Motions for Partial Summary Adjudication, the Director Defendants believe that for each purported breach of fiduciary described in the Second Amended Complaint, each of them (1) were subject to the protections and

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presumptions afforded by Nevada's business judgment rule, (2) properly exercised their fiduciary obligations, (3) did not engage in any "intentional misconduct, fraud or a knowing violation of law" required by N.R.S. 78.138 to impose individual liability on corporate directors, and, although not relevant under Nevada law, (4) were independent for each relevant decision made by the Board in which they participated. Moreover, as previously argued in the context of the Director Defendants' Motion for Partial Summary Judgment No. 1 and Opposition to Plaintiff's Motion for Partial Summary Judgment, Plaintiff lacks standing to bring this derivative action or to derivatively assert certain claims that are wholly-personal to him, such as his termination claim. Similarly, the equitable relief that Plaintiff seeks—*i.e.*, reinstatement as President and CEO of RDI—is not available as a matter of law.

RDI's Position:

RDI's business decisions challenged by Plaintiff were the result of valid business judgment. Additionally, RDI joins in the position of the Director Defendants.

I. Previous Orders on Motions in Limine

a. Defendants' Motion In Limine to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty

i. Granted in Part. With respect to Chief Justice Steele, he may testify only for the limited purpose of identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. Withdrawn as to Dr. Finnerty. Denied as to all

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other experts. See December 21, 2016 Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion In Limine to Exclude Expert Testimony ("December 21, 2016 Order"), attached as Ex. __.

J. Previous Orders on Motions for Partial Summary Judgement

a. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims

i. Denied. See December 21, 2016 Order.

b. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence

i. Continued. See December 21, 2016 Order.

c. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer

i. Continued. See December 21, 2016 Order.

d. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee

i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.

e. Individual Defendant's Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO

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i. Continued. See December 21, 2016 Order.

f. Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams

i. Continued. See December 21, 2016 Order.

g. Plaintiff James J. Cotter, Jr.'s Motion for Partial Summary Judgment.

i. Denied. See October 3, 2016 Order Denying James J. Cotter Jr.'s Motion for Partial Summary Judgment and Granting RDI's Countermotion for Summary Judgment.

h. Defendant William Gould's Motion for Summary Judgment

i. Continued.

K. Estimated Length of Trial

The parties estimate 15 to 19 days; 80-100 trial hours.

L. Other Issues

Plaintiff's Statement:

Plaintiff is unable to locate an answer from defendant Gould to the Second Amended Complaint, which the individual defendants should have answered long ago.

Director Defendants' Statement:

Plaintiff's list of claims above neither complies with the rules for pre-trial disclosures nor provides *any* clarity about what claims Plaintiff

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actually intends to prove at trial or what damages (money or equitable) he seeks. Eighth District Rule of Practice 2.67(b)(2) requires Plaintiff to provide "[a] list of all claims for relief designated by reference to each claim or paragraph of a pleading and a description of the claimant's theory of recovery with each category of damage requested." The Director Defendants intend to address at trial any purported breaches of fiduciary duty—and will show that Plaintiff's claims are baseless—but must be told which specific actions are at issue in order to properly prepare their defense.

Plaintiff states that he will pursue claims for breaches of fiduciary duty potentially based on each and every allegation in the Second Amended Complaint by, for example, stating his intent to pursue "[b]reach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC." This provides no more information than if Plaintiff had never made his pre-trial disclosures—he may or may not pursue a claim based on any act or omission mentioned or alluded to anywhere in the Second Amended Complaint. Plaintiff's witness list similarly fails to shed any light on the claims Plaintiff intends to pursue—his list strays so far afield that Plaintiff has stated his intent to call Defendant Guy Adams' ex-wife (Lois Marie Kwasigroch) at trial.

Plaintiff also fails to disclose the actual monetary damages or equitable relief he intends to seek at trial. For example, Plaintiff states that his damages resulting from Defendants' alleged breaches of the duty of care are "injury to RDI's reputation and goodwill" and "impairment of shareholder rights due to SEC filings." If these are supposed money damages, Plaintiff does not state his claim for damages, or even explain what shareholder rights are purportedly impacted. With the exception of the equitable relief he seeks in connection with his termination from RDI (*i.e.*, being reinstated as President and CEO), Plaintiff does not link any

particular claim to any particular category or amount of damages. For example, Defendants have no idea what relief Plaintiff is seeking in connection with the "involuntary retirement of Storey" or "process/process failures in connection with nomination and retention of directors, including Codding and/or Wrotniak." Plaintiff's list of claims/damages is indecipherable and nonsensical; Plaintiff has attempted to reserve the right at trial to pursue any claim he wants and seek whatever damages he wants. Defendants cannot prepare for trial based on these inadequate disclosures, which amount to nothing but gamesmanship and are highly prejudicial.

RDI's Position:

RDI contends the equitable relief sought would result in significant disruption of RDI management and the pursuit of its long term business strategy. Additionally, RDI joins in the statement of the Director Defendants regarding Plaintiff's purported damages.

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

ORDER REGARDING 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.

RDI-A09595

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

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

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

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

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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 Codding, and Michael Wrotniak because there are no genuine issues of material fact related to the disinterestedness and/or independence of those directors, and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness and/or independence of those directors.

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

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

RDI-A09598

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

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

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

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

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

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

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

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

RDI-A09599

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

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

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

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

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

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

DATED this 28th day of December, 2017.

DISTRICT COURT JUDGE

PREPARED AND SUBMITTED BY:

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RDI-A09601

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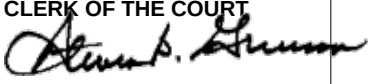

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EIGHTH JUDICIAL DISTRICT COURT

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 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.

INTRODUCTION

At the hearing held on December 11, 2017, the Court determined that Plaintiff James J. Cotter, Jr. failed to raise a genuine issue of triable fact as to the disinterestedness and/or independence of five of his fellow Reading International, Inc. ("RDI") directors: Michael Wrotniak, Judy Codding, Douglas McEachern, Edward Kane, and William Gould. Shortly thereafter, Plaintiff moved for reconsideration of the Court's ruling, which the Individual Defendants opposed. At a hearing held on December 29, 2017, the Court denied Plaintiff's motion for reconsideration and indicated that it would enter a written order later that day granting summary judgment in favor of Directors Wrotniak, Codding, McEachern, Kane, and Gould on all claims—which it subsequently did.

Immediately following the Court's denial of his motion for reconsideration, Plaintiff made an oral request for a stay pending his planned appeal of the Court's summary judgment order. Plaintiff argued that if a trial was held in the interim, the parties could face the prospect of multiple, conflicting appeals and "a do over" trial; Plaintiff also claimed that he would be prejudiced by certain legal and factual arguments that RDI and the Individual Defendants would make at trial in light of the Court's ruling. (*See* 12/29/17 Tr. at 18:23-20:17.) The Court denied Plaintiff's oral motion, noting that such risks occur any time a court grants partial summary judgment. (*Id.* at 19:18-19.) Instead, the Court emphasized its willingness to proceed with the scheduled trial starting on Monday, January 8, 2018, and to leave it to the Nevada Supreme Court to decide whether to stay the case pending Plaintiff's planned appeal. (*Id.* at 24:11-18.)

Following the conclusion of the December 29, 2017 hearing, Plaintiff filed a Motion for Rule 54(b) Certification and Stay. The Individual Defendants take no position as to the merits of Plaintiff's motion to the extent that he seeks certification pursuant to Nevada Rule of Civil Procedure 54(b) that the Court's judgment is final as to Directors Wrotniak, Codding, McEachern, Kane, and Gould. To the extent that Plaintiff again seeks a stay, he does nothing more than repeat the same arguments he already has raised and the Court has rejected. Plaintiff's motion provides no valid reason to reconsider the Court's decision. Indeed, due to his myopic focus on the Rule 54(b) certification issue, Plaintiff does not address, let alone satisfy, the four-

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

ARGUMENT

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

I. THE OBJECT OF PLAINTIFF'S APPEAL WILL NOT BE DEFEATED IF A STAY IS DENIED

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

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

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

Neither argument has merit. As the Court recognized at the December 29, 2017 hearing, Plaintiff's substantive objections to proceeding to trial are no different from any plaintiff who has lost on a partial summary judgment motion. Nevada does not provide disgruntled plaintiffs with an automatic stay and right of immediate appeal simply because some of the original claims or defendants are no longer in the case. That the Individual Defendants may take advantage of a favorable summary judgment ruling to make arguments at trial plainly available based on the record and under governing law is a fact of litigation, not irreparable or serious injury to Plaintiff. *See Hansen*, 116 Nev. at 658, 6 P.3d at 987 (noting that "irreparable harm is harm for which compensatory damages would be inadequate, such as the sale of a home at trustee's sale, because real property is unique"). For instance, while Plaintiff complains about the RDI Board's votes on December 29, 2017 to ratify both Plaintiff's termination and the exercise of a share purchase option held by the Estate of James J. Cotter, Sr. (*see* Mot. at 7), this is simply evidence that the RDI Board and its directors continue to take action; indeed, the Board has held scores of meetings and voted on numerous matters since the filing of Plaintiff's lawsuit. That the Board continues to move forward is not grounds for delay, rather it is a reason for moving on to trial. 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). Of course, there are other grounds for a defense verdict

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated: January 2, 2018

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RDI-A09608

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

RDI-A09609

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **ORDER DENYING PLAINTIFF'S MOTION TO STAY AND MOTION FOR RECONSIDERATION**)) **Date of Hearing: December 28, 2017**) **Time of Hearing: 9:00 a.m.**

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Case Number: A-15-719860-B

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

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

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

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

DATED this 4 day of Jan, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

By: */s/ Akke Levin*
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **ORDER GRANTING PLAINTIFF'S MOTION FOR RULE 54(b) CERTIFICATION AND STAY** **Date of Hearing: January 4, 2017** **Time of Hearing: 8:30 a.m.**

Case Number: A-15-719860-B

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

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

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

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IT IS FURTHER ORDERED THAT the case is

[ ] stayed;

[X] not stayed pending Plaintiff's appeal.

DATED this ___ day of January, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

By: */s/ Akke Levin*
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