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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 JUDGMENT IN ITS FAVOR** **Hearing Date: October 22, 2018** **Hearing Time: 9:00 a.m.**

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I. INTRODUCTION

Nominal defendant RDI filed a Motion for Judgment in its Favor because RDI just realized, in an "oops" moment, that is not a "prevailing party" and may not be entitled to a single dollar of the **$1.2 million** it recklessly spent to help the Cotter sisters prevail on claims that were not made against RDI but made on its behalf.

RDI's Motion is a legal nonstarter. The reason why nominal defendant RDI has "not yet received" and could not receive "judgment in its favor" is because Plaintiff did not make any claims against RDI. He made claims against directors, including his sisters for whom Greenberg Traurig (GT) piled up enormous costs and fees to defend. The Court cannot "fix" and rewrite history by ruling RDI can recoup its outrageous costs. Even assuming the Court could transform RDI from a nominal to an adverse party, the Court has already entered a final judgment in this case, which is now on appeal, and the Court no longer has jurisdiction to grant the "relief" RDI seeks. For these reasons and those set out below, the Court should deny RDI's opportunistic, procedurally-barred Motion in its entirety.

II. ARGUMENT

A. RDI is not entitled to judgment in its favor because Plaintiff's claims were made on its behalf and not against it.

1. RDI was a nominal defendant.

In a derivative case, the corporation must be named as a nominal defendant, but it is actually the "real party in interest" *on whose behalf* the derivative case is brought. *Ross v. Bernhard*, 396 U.S. 531, 538–39 (1970); *Patrick v. Alacer Corp.*, 167 Cal. App. 4th 995, 1005-09, 84 Cal.Rptr.3d 642, 652 (2008). Unless the lawsuit poses a threat to the corporation, a nominal defendant must " 'take and maintain a wholly neutral position taking sides neither with the complainant nor with the defending director.' " *Swenson v. Thibaut*, 250 S.E. 2d 279, 293-94 (N.C. App. 1978) (quoting *Solimine v.*

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Hollander, 129 N.J.Eq. 264, 19 A.2d 344 (1941)). The director defendants, especially those in "control" of the corporation, have no right to use the corporation for the purpose of "step[ing] in and, by answer, attempt to defeat what is practically its own suit and causes of action," nor do they have the right to "impose on the corporation the burden of fighting their battle." *Patrick,* 167 Cal. App. 4th at 1008 (internal quotation marks and citation omitted).

Here, Plaintiff filed a derivative lawsuit naming RDI only as a nominal defendant. All of Plaintiff's three complaints specifically distinguish between the individual director defendants—named "Defendants"—and RDI—named "Nominal Defendant" in the caption. *See,* June 12, 2015 Complaint, on file at 1 (Caption); Oct. 22, 2015 Am. Compl. ("FAC"), on file, at 1 (Caption); Sept. 2, 2016 Second Am. Compl ("SAC") on file, at 1 (Caption). Nowhere in *any* of the three complaints are "Defendants" defined to include RDI.

2. Plaintiff did not make claims against RDI.

None of Plaintiff's four causes of action was made against RDI. Rather, the claims were made against two or more of the individual "Defendants." *See, e.g.*, Compl. at 25 ("For Breach of Fiduciary - against All Defendants"); FAC at 43 ("Breach of Fiduciary Duty - Against MC, EC, Adams, Kane and McEachern"); SAC at 47 ("For Breach of Fiduciary - against All Defendants"); *id.* at 51 ("Aiding and Abetting Breach of Fiduciary Duty - Against MC and EC").

If there were any doubt about what "Defendants" meant, one only needs to look at the allegations following each of the causes of action made against "All Defendants." They all allege a variant of the same thing:

> Each of the **individual defendants**. . . . **was a director** of RDI. As such, each owed fiduciary duties **to** RDI . . . including fiduciary duties of care . . . good faith and loyalty **to** RDI.

SAC ¶ 174 at 48; *id*. ¶181 (to same effect); *id*. ¶188 (to same effect). RDI is not a "director of RDI" and RDI could not possibly breach fiduciary duties to itself. The paragraphs that follow only further confirm that Plaintiff's claims were not made against RDI. *See* ¶¶ 177-178 (alleging that "each of the **individual** defendants . . . breached their respective duties of care and good faith" and that Plaintiff **and the Company** and its other shareholders have suffered injury . . . .") (emphasis added).

Plaintiff did not seek damages or injunctive relief *against* RDI. He sought relief on *behalf* of RDI:

> As a result of the ongoing acts of Defendants, **the Company** [defined as RDI], Plaintiff and other RDI shareholders have suffered and will continue to suffer immediate and ongoing irreparable injury for which no adequate remedy at law exists, including as alleged herein. . . . .
>
> . . . unless such injunctive relief is granted, Plaintiff, **the Company** and other shareholders will suffer irreparable harm for which no adequate remedy at law exists.

E.g., Compl. ¶¶ 133-134; FAC ¶¶ 192-193 (emphasis added)

Plaintiff's SAC could not be clearer, saying in bold, capital letters: "**RDI AND RDI SHAREHOLDERS ARE INJURED.**" SAC at 45; *see also id*. at 53, ¶202 ("unless such injunctive relief is granted, Plaintiff, the Company and other shareholders will suffer irreparable harm"). Plaintiff's Prayer for Relief specifically asked for "**damages** incurred **by** RDI. . . ." *Id*. at 54, ¶ 5 (emphasis added).

RDI is also wrong in contending Plaintiff sought reinstatement from RDI. This is what the *T2 Plaintiffs* sought. *See* August 28, 2015 Verified Shareholder Derivative Compl. at 16 (B.(ii)) (seeking "an order reinstating James J. Cotter, Jr. as the President and CEO of RDI"). The relief Plaintiff Cotter Jr. asked for was an order confirming that the individual directors lacked independence or disinterestedness to vote on his

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termination so that their vote was invalid. SAC at 54, Prayer for Relief ¶3(a)-(e).

3. Plaintiff's request for proper disclosures did not pose a "threat" to the company.

Some courts outside Nevada have recognized a limited exception to the rule that a nominal defendant may generally not defend itself in a derivative suit. These courts have held that nominal defendants may defend themselves against derivative actions that threaten rather than advance the corporate interests, such as actions to: (1) interfere with a corporate reorganization; (2) interfere with internal management in the absence of an allegation of bad faith or fraud; (3) enjoin performance of contracts; or (4) appoint a receiver. *See National Bankers Life Ins. Co. v. Adler*, 324 S.W.2d 35, 37 (Tex. Civ. App. 1959) (citing cases); *see also Patrick*, 167 Cal. App. 4th. at 1010 (citing cases without deciding if such exception exists "under California law. . . or . . . not").

RDI cites all five subsections of ¶3 of Plaintiff's Prayer for Relief to argue that Plaintiff sought relief against RDI, but only ¶3(c) of the SAC even addressed RDI. That subsection asked both "RDI *and* the individual defendants to make . . . corrective disclosures . . . in advance of RDI's 2017 ASM . . . ." SAC ¶ 3(c) (emphasis added).[1] As RDI recognizes, this relief was based on conduct by the *individual* defendants, *id.* ¶101, which formed the basis for Plaintiff's third cause of action against the *individual* defendants for breach of fiduciary duty. *See id.* ¶¶ 188-190 (alleging that the directors breached their duties of candor and disclosure by failing to cause RDI to make "timely, accurate and complete disclosures" and by causing RDI to

[1] Plaintiff's Reply to RDI's Opposition to Plaintiff's Motion to Retax Costs mistakenly indicates that this ancillary relief was not sought until September 2016. Reply at 6:23-25. The October 22, 2015 FAC also included a similar ¶ 3(c) in the Prayer for Relief, although the initial complaint did not.

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"disseminate untimely and materially misleading if not inaccurate information . . . .").

Plaintiff's third cause of action did not come close to threatening RDI's existence so as to justify abandoning the "wholly neutral position" RDI was required to take. Other than citing cases, RDI's Motion never explains *how* the relief Plaintiff asked would be a threatening "incursion into its affairs." Motion at 4. Corrective disclosures, if they were warranted, would only further RDI's interests and those of its shareholders. Similarly, RDI does not explain how requiring the directors to have "*bona fide* qualifications" before becoming board members infringes on the corporation's "rights." Motion at 3:11. All that Plaintiff was asking for is compliance with proper principles of corporate governance.

4. RDI through GT voluntarily assumed an adversarial role.

Plaintiff did not treat RDI as anything other than a nominal defendant. Rather, RDI *unilaterally* undertook an adversarial role throughout this case, including by answering the FAC and SAC that were filed on its behalf, and by filing a series of adversarial joinders to the various motions for summary judgment filed by the individual defendants. *See, e.g.*, Oct. 3, 2016 Joinders, on file; March 29, 2016 Answer to FAC and December 20, 2016 Answer to SAC, on file.

The mere fact that RDI was a nominal defendant did not shield it from discovery, nor did requesting documents from it turn the company into an adversary of Plaintiff Cotter. Moreover, Plaintiff's counsel specifically objected to RDI's counsel making arguments in support of RDI's Joinder to the Cotter defendants' Partial MSJ on Independence. *See* Oct. 27 Hearing Tr. at 70:18-24 ("Your honor. . . They're a nominal defendant"). Thus, RDI's attempt to blame Plaintiff for the improper role RDI and its

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hopelessly conflicted counsel played throughout this litigation should be rejected.

B. The Court's August 8, 2018 judgment left nothing to decide.

"[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 996 P. 2d 416, 417 (Nev. 2000). Thus, an order granting summary judgment, which adjudicates the rights and liabilities of all parties and disposes of all issues presented in the case, is *final*. *Id*.

Here, the Court entered its Findings of Fact and Conclusions of Law granting summary judgment in favor of the only three remaining defendants, Ellen Cotter, Margaret Cotter, and Guy Adams ("FFCL"), on August 8, 2018. The Court had earlier granted summary judgment against the five other individual defendants, and had certified that order as final under NRCP 54(b). *See* January 4, 2018 Certification Order, on file. Because RDI was a nominal defendant on whose behalf Plaintiff's claims were brought and Plaintiff's rights and liabilities were decided in the FFCL, there was nothing left for the Court to decide.

1. RDI's counsel agreed that there was "nothing left" to decide.

During the June 19, 2018 hearing—right after the Court granted the director defendants' Motion for Summary Judgment on ratification ("Ratification MSJ")—the Court specifically asked counsel for the parties to go over their pleadings and tell the Court if there were any derivative claims left for her to decide. June 19, 2018 Hearing Tr. at 47:19-48:17. RDI's counsel, Mr. Ferrario, told the Court he did not "think anything else is left." *Id*. at 48:24. When the attorneys for the defendants and RDI came back into the courtroom, Mr. Ferrario told the Court that from his client's perspective

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and the perspective of the attorneys for the directors, there was "nothing left." June 19, 2018 Hearing Tr. at 49:13-15 ("There's nothing left from Mr. Tayback's perspective, my perspective, or the directors of the company. There's nothing left.")

Although RDI proposed to "submit" its Motion to Dismiss Pursuant to NRCP 12(b)(2)—which argued Plaintiff lacked derivative standing to bring his claims for failure to show that demand would have been futile—the Court held that the motion was moot. *Id.* at 49:8 ("It's moot. Unless there's something left, it's moot"). This had nothing to do with the Court "recognizing that resolution of the claims against the Individual Defendants also resolved claims against Reading." Motion at 3:24-26. As explained above, Plaintiff's SAC made **no claims** against RDI. What the Court recognized is that if there were no derivative claims left against the Cotter defendants, there was no basis to determine whether Plaintiff had standing to assert them. Put another way, Plaintiff's standing to bring his derivative claims became a moot issue after the Court granted the Cotter defendants' Ratification MSJ.

C. The Court lacks jurisdiction to grant RDI relief.

The "timely filing of a notice of appeal divests the district court of jurisdiction to act . . . ." *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 454–55 (2010) (internal quotation marks and citations omitted). Although the district court retains limited jurisdiction to review motions seeking to alter, vacate, or otherwise change or modify an order or judgment under NRCP 60(b) and to *deny* them, it does not have the jurisdiction to *grant* such a motion. *Foster*, 126 Nev. at 53, 228 P.3d at 455 (citation omitted).

Here, the Court entered its FFCL on August 8, 2018. They were filed on August 14, 2018. *See* FFCL, on file. Written notice of entry of the FFCL was given on August 17, 2018. *See* Notice of Entry of FFCL, on file.

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Plaintiff timely appealed from the FFCL to the Nevada Supreme Court on September 13, 2018. *See* Notice of Appeal, on file. Plaintiff earlier appealed from the Court's January 4 Order certifying as final the December 28, 2017 Order dismissing the five other individual defendants. Therefore, the Court lacks jurisdiction to grant RDI's motion.

It is too late for RDI to now argue, as it does, that the Court's order dismissing the five defendants is *not* final. Motion at 4:4-7. RDI argued the exact opposite four months ago, when it said:

> The Court's written order was issued December 28, 2017, and at the request of Plaintiff, was subsequently certified as a final judgment pursuant to NRCP 54(b). Plaintiff subsequently filed a Notice of Appeal as to that judgment. Accordingly, *this Court no longer has jurisdiction to alter or amend that judgment*.

Motion to Dismiss Pursuant to NRCP 12(b)(2) at 8:24-27 (emphasis added).

D. The Court should deny the Motion, because there are no grounds under Rule 60 to grant it.

If the Court were inclined to grant RDI relief, then the Court could "certify its intent to grant the requested relief . . . ." *Foster*, 228 P.3d at 455. But here, there is no basis to do so.

1. There was no clerical mistake.

Under Rule 60(a), a court may correct clerical mistakes in judgments, order, or other parts of the record. Nev. R. Civ. P. 60(a). As the Nevada Supreme Court has held:

> [A] clerical error is a mistake in writing or copying. As more specifically applied to judgments and decrees a clerical error is a mistake or omission by a clerk, counsel, or judge, or printer *which is not the result of the exercise of a judicial function*. In other words, a clerical error is one which *cannot reasonably be attributed to the exercise of judicial consideration or discretion*.

Channel 13 of Las Vegas, Inc. v. Ettlinger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978) (quoting *Marble v. Wright*, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961)); *see also Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 426-27, 836

P.2d 42, 45 (1992) (holding same and holding that the amended judgment was void because it involved a substantive change from the prior judgment).

RDI does not point to any fact showing that the clerk, its counsel, this Court, or a printer made a clerical mistake in writing or in copying the FFCL. Therefore, there is no basis for relief under Rule 60(a).

2. Omitting RDI from the FFCL was not an oversight.

Under NRCP 60(b)(1), a party seeking for relief from a final judgment on grounds of "mistake, inadvertence, surprise, or excusable neglect" has the burden of proving his position "by a preponderance of the evidence." *Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 446, 488 P.2d 911, 915 (1971) (internal quotation marks and citation omitted). The Court must also consider several factors before granting relief, including whether the moving party: (1) promptly sought relief; (2) lacked knowledge of the procedural requirements; and (3) acted in good faith. *Yochum v. Davis*, 98 Nev. 484, 486–87, 653 P.2d 1215, 1216-17 (1982) (citations omitted).

RDI cites Rule 60(b)(1) without discussion of the Rule's requirements or the application of them to the facts of this case. Motion at 5:4. Thus, RDI has utterly failed meet its burden of proof to obtain relief under Rule 60(b)(1). *Britz*, 87 Nev. at 446, 488 P.2d at 915 (holding that the appellants had "failed to carry their burden of showing mistake, inadvertence, surprise, or excusable neglect, either singly or in combination").

None of the applicable *Yochum* factors weigh in its favor in any event. Omitting RDI from the FFCL was not an oversight or mistake. RDI's counsel was intimately involved in drafting the FFCL. RDI is well aware that no claims were brought against it and that there was no basis to grant judgment in its favor. RDI's counsel is also well aware of the procedural rules of the Court; it only sought relief *after* realizing the impact of not being

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a prevailing party that would support recovery of costs. Thus, RDI's Motion cannot be considered as having been filed in good faith.

3. The Motion seeks a judgment that the Court does not have the authority to award.

Rule 60(b) does not permit a court to grant affirmative relief in *addition* to the relief contained in the prior order or judgment. *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007). In *Delay*, the appellants asked the district court to give them "a new judgment on a takings theory against a separate defendant"—the United States—"that was not bound by the prior judgment" *Id.* at 1047. The appellants sought to: (1) "revisit the circumstances that enabled the United States to be dismissed from the action under the controlling law of the time, [2] reinsert the United States as the real party-in-interest under a retrospective application of Lebron-Brentwood Academy, and [3] gain a judgment against the United States on a new takings claim to effect that Delay had a property interest in his cause of action against the United States that was destroyed upon termination of the Commission." *Id.* at 1046. The district court denied the Rule 60(b) motion, and the Ninth Circuit affirmed its ruling, because the federal rule, like Nevada's counterpart, only allows a party to set aside a judgment—not to substitute it for a new one granting additional relief. *Id.*

Here, RDI is asking the Court for similar affirmative relief after the fact that the Court cannot grant for reasons that go beyond Rule 60(b). RDI's request for judgment requires the Court to disregard its nominal defendant status and transform RDI into a "Defendant" by presuming Plaintiff made claims against RDI when in fact he did not. RDI also asks the Court to presume that RDI could breach fiduciary duties against itself *and* to presume that RDI prevailed on phantom claims not made against it. RDI did not even join in the Ratification MSJ. Even assuming it had joined, the

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ratification resolved the fiduciary duty claims against the *individual* defendants, not the corporation. RDI's Motion Pursuant to NRCP 12(b)(2) also did not ask for judgment in its favor, nor could it: the Rule 12(b)(2) motion was based on Plaintiff's standing to make *derivative* claims—*i.e.*, claims filed on RDI's behalf—against the directors.[2] Thus, RDI's Motion is legally out of bounds. There is no basis under Rule 60 or any other rule to grant RDI relief.

III. CONCLUSION

Based on the foregoing reasons, Plaintiff respectfully requests the Court deny RDI's Motion in its entirety.

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[2] Notably, RDI again failed to ask for an evidentiary hearing, as Plaintiff pointed out in his opposition brief. Thus, the 12(b)(2) Motion should have been denied even if not rendered moot by the dismissal of Plaintiff's claims against the remaining three Cotter defendants.

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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 caused the following document(s) **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR** 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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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.

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

BUSINESS COURT

READING INTERNATIONAL, INC.'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

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Reading International, Inc., ("Reading" or the "Company") by and through its counsel of record, the law office of Greenberg Traurig, LLP, submits its Reply in Support of its Motion for Attorneys' Fees. This Reply is made and is based on the pleadings and papers on file with this Court, the following Memorandum of Points and Authorities, and any oral argument entertained by this Court at the time of hearing. As previously noted, the Motion for Attorneys' Fees was directed solely to the issue of whether attorneys' fees should be awarded. If this Court determines that an award of fees is appropriate, then the parties will brief the issue as to the amount that should be awarded, with Reading providing the appropriate documentary support for its request.

MEMORANDUM OF POINTS AND AUTHORITIES

> ***The classic definition of chutzpah is, of course, this: Chutzpah is that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan.***
>
> ***Embury v. King*, 361 F.3d 562, 566 n.22 (9th Cir. 2004)**

Cotter, Jr. provides an example that rivals that of the proverbial parricidal orphan, when he not only cites the litigation fees and costs that RDI was forced to incur to defend against *his* meritless claims as evidence of purported misuse of RDI's funds, but also shares a litany of what he perceives as mistakes in the Defendants' ***successful*** defense. Indeed, Defendants could not have offered a more revealing example of how Cotter, Jr.'s consistently distorted vision of reality has plagued and prolonged this litigation than he has done with his Opposition.

In opposing the Motion, Cotter, Jr. relies on an inapplicable deadline to assert that fees incurred on behalf of Mr. Gould re barred. He insists that RDI is not a proper party, and therefore, not a prevailing party, even though the very cases he relies on are contrary to his position. He clings to this Court's denial of the various motions to dismiss (which were decided on the pleadings with the benefit of the requirement that the Court accepts as true all matters pled) as showing that his claims had merit, ignoring the fact that survival of motions to dismiss are irrelevant to the determination of the merits of a claim. And, of course, he wholly ignores the fact that he persisted in making claims against certain individual defendants, even after *his own testimony* revealed that he could not support them. Ultimately, in a rare flash of lucidity, he essentially resorts to begging for mercy, asking the court to deny any fees, on the basis that a large of amount of fees were incurred. However, complete denial of fees on such a basis is obviously not appropriate.

In another moment of candor, Mr. Cotter, Jr., concedes that he had much better knowledge of what was going on at Reading than did the T2 Plaintiffs, due to his position as an insider. But, that very insider position, including his having voted for the nomination or election of defendant directors Adam, Gould, Kane, McEachern within mere months prior to filing this litigation, makes his true intentions even more clear. He knew or should have known from the beginning that he would not be able to prove his claims of lack of independence. He knew these directors. He had

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supported them on the Board right up until they began to have questions about his competency. Two of them (Directors Gould and Storey) even voted against his termination, in the context of putting into place a structure that could give him more time to grow into the job that had thus far proven beyond his capability. He carefully chose his strategy to take advantage of Nevada pleading rules to prevent RDI from being able to rely on the demand requirement typically applicable to derivative cases, and to make it impossible as a practical matter for RDI to make use of a "Special Litigation Committee" process or "ratification." He used this litigation to attempt to bankrupt the directors by making claims for over $150 million lodged against nine while knowing full well that the D&O policy only provided $10 million in coverage; to seek personal revenge against his sisters, and to support his unsuccessful attempt to undercut in the California Trust Litigation his father's intentions and to usurp the authority his father had granted to his sisters in connection with the Living Trust there at issue.

RDI's Motion was never intended to address the issue of the *amount* of fees this Court should award, and accordingly, RDI will not argue that issue here. Instead, the Motion asked the Court to determine that an award of fees is appropriate due to Cotter, Jr. having brought and/or maintained his claims, despite knowing there was no merit to them, and/or, brought or maintained his claims for the purpose of harassing the Defendants. Cotter, Jr. has failed to show that an award of fees is not appropriate.

LEGAL ARGUMENT

Reading is entitled to an award of attorneys' fees pursuant to NRS 18.010. The record shows that Plaintiff brought claims that were unquestionably without merit as to at *least* five, if not all, of the named defendants, and continued to maintain those claims over the course of three years, despite repeated, objective indications that his claims were fruitless and despite his own insider knowledge of the independence of these individuals based on his own time with them on the Board. In addition, fees are appropriate here to sanction Cotter, Jr. for his breach of his fiduciary obligations as a derivative plaintiff.

This Court has the authority to sanction Cotter, Jr. given the Court's inherent powers as the dispenser of equity. Such a sanction is appropriate here, as Cotter, Jr. claims admits that he was an

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insider, and that he had better knowledge than outside derivative plaintiffs such as the T2 Plaintiffs. Having accepted the fiduciary duties of a derivative plaintiff, he had a duty to act reasonably to protect the interests of the beneficiary of his trust: RDI and its stockholders. Yet despite his own admitted knowledge that two of the Defendants were independent, and his reasons to know that others were as well, he brought and maintained his claims.

It is only equitable under these circumstances that Cotter, Jr. be held responsible for the harm caused to RDI by his failure to live up to his obligations to pursue a derivative claim in the manner that best served the interests of RDI and its stockholders, rather than his own personal interests. He ignored his fiduciary obligations as the derivative plaintiff, causing the Company to incur significant sums, always with his primary goal being the reinstatement of his own position. An award of fees is appropriate, both to remediate the damage done to Reading, and to appropriately sanction Plaintiff for his conduct.

I. FEES INCURRED ON BEHALF OF MR. GOULD ARE NOT TIME BARRED.

Cotter, Jr. contends that no fees may be awarded to Mr. Gould, because RDI's motion was untimely as to him. However, this contention is without merit. Cotter, Jr. relies on NRCP 54(d)(2)(B), which does, indeed, set a deadline for seeking an award of fees in *some* circumstances. However, Cotter, Jr. wholly ignores the very next subsection of the rule, which states:

> (C) Exceptions. Subparagraphs (A)-(B) do not apply to claims for fees and expenses as sanctions pursuant to a rule or statute. . . .

NRCP 54(d)(2)(C). RDI seeks fees pursuant to NRS 18.010(2)(b), which provides for an award of fees as a sanction, where claims are brought or maintained without reasonable grounds or to harass the other party. Accordingly, the deadline set forth in NRCP 54(d)(2)(B) has no application to RDI's Motion.

II. RDI IS A PREVAILING PARTY.

Cotter, Jr. also contends that RDI cannot be a prevailing party. This Court has rejected this argument from Cotter, Jr. repeatedly throughout this litigation, including during the October 27, 2016 hearing of the summary judgment motions, *see* October 27, 2016 Transcript, 70:19-20, and most recently by awarding RDI approximately $1.5 million in costs. And indeed, it is apparent that

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Reading is a prevailing party in this litigation, as Cotter, Jr.'s claims have been dismissed, and therefore, he cannot receive the relief he requested, which relief would have infringed Reading's rights and interests.

Cotter, Jr.'s contention that RDI was not truly a party to this action is incorrect. The relief Plaintiff requested against RDI would have included injunctive orders, including orders directing RDI to take certain actions. See SAC, Prayer for relief, 3(a)-(e). Most significantly, the relief that he requested included burdens to be imposed on RDI, or would otherwise have required action by RDI. For example, he prayed for relief "restraining and enjoining Defendants from taking further action to effectuate or implement" his termination. SAC Prayer for Relief (POR), ¶ 1. Such an injunction would necessarily have to be imposed on the Company and its employees. Cotter, Jr. asked this Court to grant an order that, *inter alia*

> Finds that actions to remove Plaintiff as President and CEO were void or voidable and declares such action void and legally ineffectual, such that Plaintiff is restored to and EC is removed from the positions of President and CEO or RDI . . .

SAC, POR 3 (a). Thus, he sought declaratory relief that would result in RDI's loss of its chosen President and CEO, and the forced re-installation of Cotter, Jr. in those positions, a result that obviously impacts RDI's right to governance through its Board of Directors. Prayer for Relief 2, 3(a).

Additionally, he sought an injunction against RDI's existing board, circumscribing the way that board could act, even though the prohibited actions would have been in keeping with RDI's Bylaws. POR 3(b). This too would have interfered with RDI's right to be governed by its Board of Directors, in accordance with its Bylaws. Thus, even though Cotter, Jr. contends that this requested relief was directed only at limiting the conduct of the Individual Defendants, RDI's rights would have been be adversely affected. Cotter, Jr., also attacked the veracity of certain filings with the SEC, which claims, if true, would have required RDI to take corrective action.

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All the above requests, if granted, would have interfered with RDI's corporate governance and its interests. Significantly, one of the cases on which Cotter, Jr. relies acknowledges that the corporation's own integrity is impacted by suits that would result in removal of directors or officers. In *Solimine v. Hollander*, 129 N.J. Eq. 264 (N.J. 1941), the Court noted:

> In the case at bar the charges against the directors and officers were of such nature that had they been substantiated the defendants might have been removed from office. ***The directors and officers here not only had a right but were under a duty to stand their ground against all unjust attack and to resist the attempt to wrest the corporate trust estate from those hands to which the stockholders had previously committed it***. In defending themselves they demonstrated to the investing public the honesty of the corporate management and thus they not alone served their own interests but also performed a duty which they owed to the beneficiaries of the trust — the stockholders.

129 N.J. Eq. at 271 (emphasis added). The issue in *Solimine* was whether the corporation could indemnify the directors and officers for their successful defense. Some 77 years after *Solimine*, such indemnification is statutorily mandated in Nevada, like most other states. This is so not only to encourage service as directors, but also because in defending the directors against unjust claims, the corporation defends itself. Accordingly, where, as here, the relief requested in the derivative action expressly infringes on the corporation's own rights, the corporation is permitted to take a position in the litigation. *See Blish V. Thompson Auto. Arms Corp*, 30 Del. Ch. 538, 542 (Del. 1948) ("A corporation may defend a stockholder's derivative action, although theoretically any recovery rebounds to benefit of corporation, if corporate interests are threatened by the suit. . . ."); *National Bankers v. Adler*, 324 S.W.2d 35, 37 (Tex. Civ. App. 1959) ("If the derivative action threatens rather than advances the corporate interests, the corporation may actually defend the action. "); *Swenson v. Thibaut*, 39 N.C. App. 77, 100 (N.C. Ct. App. 1978) (noting that corporation may be required to defend against claims that seek to enjoin corporation action or interfere with internal corporate governance).

RDI's interests were threatened by Cotter, Jr.'s derivative suit, and accordingly, defended against it. All of Cotter, Jr.'s claims were decided against him or abandoned. Accordingly, RDI is a prevailing party.

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III. Significant Evidence in the Record of this Matter Shows that Cotter, Jr. Brought and/or Maintained Claims Without Merit.

Cotter, Jr. contends that the "record" does not show that his claims were without merit. This is simply untrue. The record in this case, which includes every document filed with the court, including the Trust Decision that was attached as Exhibit F to the Motion, and every transcript of every hearing, shows that Cotter, Jr. filed and/or maintained claims against at least five of the Individual Defendants---Codding, Gould, Kane, McEachern, and Wrotniak--- without evidence to support the claims that they breached their fiduciary duties against them. Cotter, Jr.'s vindictiveness is well documented. He threatened to sue all the directors if he were terminated, expressing the desire to bankrupt them; the very fact that he included as defendants the two directors who had voted against his termination illustrates his spitefulness. He even cited the attorneys' fees required to defend against his claims as damages suffered by the Company as the result of his termination, wholly oblivious to the circularity of such logic. And, of course, he abandoned any pretense that he was seeking monetary damages on behalf of the company when he was forced to disclose that the damages experts he had designated would not be testifying at the trial. However, to the extent that the Court believes that the record has not been established, then Defendants request that an evidentiary hearing be held to supplement the record in this regard.

A. This Court's Rulings on Prior Dispositive Motions Do Not Demonstrate That the Claims were not Groundless.

Cotter, Jr. contends that this Court's denial of the various Motions to Dismiss demonstrated that his claims have merit. However, the fact that a complaint survives a motion to dismiss is irrelevant to a determination of whether the claims of the complaint were groundless. *Bergmann v. Boyce,* 109 Nev. 670, 675 (Nev. 1993) (noting that whether or not claims survives NRCP 12(b)(5) motions has no bearing on the merits of the claim). Nor is relevant that Court *initially* declined to grant summary judgment on the issue of independence as to these Directors, because Cotter, Jr. clearly does not have evidence to support his claims as to these five Defendants. Since he did not have the evidence in December of 2017, then he obviously did not have it in 2016, when the summary judgment motions were initially considered. It is apparent that his assertion of a need for

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additional discovery pursuant to NRCP 56(f) was the reason the summary judgment motion on independence was denied.

Cotter, Jr. denied that the decision to assert claims against all defendants was a deliberate strategy, claiming that the mere fact that a director was named as a defendant was insufficient to show the necessary lack of independence. But Cotter, Jr. ignores the fact that the *only* basis on which he contended a lack of independence as to Directors McEachern and Gould was based upon their purported fiduciary breaches. Second Amended Complaint, ¶¶ 171. Thus, Cotter, Jr. based demand futility as to these two Directors *entirely* upon their purported risk of liability, belying his claim that such a basis is insufficient.

In this matter, it was clear that, until the issue of director independence was resolved, any effort to employ the protections intended to avoid abuse if the derivative action process by a rogue plaintiff would be unsuccessful. Cotter, Jr. prolonged the process by opposing the summary judgment motions filed in 2016 as to five directors who were dismissed in December, despite his lack of sufficient evidence to sustain his allegations, and despite his lack of any viable reason to believe that further discovery would reveal sufficient evidence. Such a failure of proof is particularly damning, given Mr. Cotter, Jr's admitted insider status and admitted special knowledge of RDI and its Board of Directors that flowed from those historic and ongoing relationships.

B. Cotter, Jr. Made Claims That He Knew Were False, Indicating his Purpose was Harassment.

Cotter, Jr.'s claims were premised on theories he knew to be untrue. For example, he contended that all directors, other than himself, lacked independence, but acknowledged in his deposition that neither Gould nor McEachern lacked independence. **Motion Ex. G, Plaintiff's Depo, 79:12-80:8; 84:21-86:4**. Despite that acknowledgement, Cotter, Jr. not only did not dismiss these Defendants from the litigation, but actually filed another version of his complaint, reiterating the claims he had acknowledged were false.

And that is merely one example of Cotter, Jr.'s mendacity. He also contended that the date of the 2015 Annual Stockholders' Meeting had been moved to allow the Estate of Cotter, Sr. to exercise the 100,000 share stock option. SAC, ¶¶. Yet, *in January 2015* (five months *before*

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Cotter, Jr.'s termination), when Director Kane asked Cotter, Jr. why the date of the annual meeting was being moved, Cotter, Jr. explained the business purpose of the change. **Ex. A, Email chain between Cotter, Jr. and Kane.** And, Cotter, Jr. contended that the Company had been damaged by his replacement with Ellen Cotter, yet when asked about her performance as CEO, he replied. "I'm really not in a position to make an opinion." **Depo, at 557:9-13.** Additionally, Plaintiff hid the fact that he had no intent to present evidence of monetary damages until the Defendants learned, by chance, that he had not paid his damages experts' fees. He provided no notice that claims had been dropped, thereby requiring RDI and the other Defendants to continue to prepare to oppose claims of damages.

Cotter, Jr. made clear that this litigation was intended to be harassing by announcing his intention of bankrupting the board members. **Motion Ex. H, McEachern Depo. at 78:14-79:2. He** also refused to acknowledge the significance of the T2 Plaintiffs' withdrawal of their suit, wherein they had acknowledged that the claims of fiduciary breaches could not be sustained. Instead, he made unsupported allegations of collusion on the part of independent investors who, unlike Cotter, Jr., had *purchased* their stock in RDI.

And, through all of this, Cotter, Jr. was aware that RDI was being damaged by the defense costs, as he, unconscious of the irony, cited those defense costs as an item of damage purportedly caused by his termination. **Motion Ex. G, Cotter Depo, 67:10- 68:8; 69:21-24.**

Because Plaintiff brought his claims to harass the Defendants, this Court should award attorneys' fees pursuant to NRS 18.010.

C. This Case Did Not Present Novel Legal Theories Based on Evolving Jurisprudence.

Cotter, Jr. contends that attorneys' fees are inappropriate here, claiming that the litigation involved complex legal issues. Cotter, Jr.'s reliance on *Key Bank v. Daniels*, 106 Nev. 49, 53 787 P.2d 382, 385 (1990) is misplaced. In *Key Bank*, the Plaintiff had brought claims that were specifically based on a legal theory that had been recognized elsewhere, but not in Nevada. While that legal theory was rejected, the Supreme Court held that NRS 18.010(2)(b) should not be used to stifle evolving legal theory.

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But Cotter, Jr. did not seek the adoption of new legal theories accepted in other states but not tested in Nevada. Here, the governing legal principles, i.e., directors' duties to the corporation, were not novel at all. The only "novelty" in this case is that a derivative plaintiff was so obviously pursuing a claim solely for his own benefit. .[1] Nor were the complexities of the issues related to any issues of unresolved statutory interpretation or legislative intent. Instead, the defense of this action presented issues of "complexity" because of the scattergun nature of the various iterations of the complaint, whereby virtually every action taken over the course of several years by every Director save Cotter, Jr. was claimed to reflect breaches of fiduciary duty. While Cotter, Jr. speaks derisively of the Defendants having sought partial summary judgment, such efforts to narrow the actual issues, as permitted under NRCP 56, were made necessary by the rambling, and ever increasing, nature of the allegations.

And, indeed, the nature of that complaint is illustrative of Cotter, Jr.'s knowledge that his contentions lacked merit. He knew that none the challenged decisions could ever, individually, constitute a breached of fiduciary duty. So, he obviously tried to hide the groundless nature of the claims by presenting them as some sort of overarching scheme, despite the utter lack of evidence to support the premise of any such a scheme. His theory seemed to be that while the business judgment rule was to prevent judicial second-guessing, this only applied where a single business judgment was at issue, and not where multiple business judgments were at issue. This may indeed be "novel," but not in the sense intended by the court in *Key Bank*.

Furthermore, while Cotter, Jr. contends that this effort was an attempt to introduce a novel legal theory, he ignores the fact that his allegations could not reasonably support this theory. Unlike the cases on which he had relied to present this collective action conspiracy theory, Cotter, Jr. could not here list a half-dozen circumstances as adding up to suggest a lack of disinterest. *See e.g., California Pub. Employees' Ret. Sys. v. Coulter*, CIV.A. 19191, 2002 WL 31888343, at *9 (Del. Ch. Dec. 18, 2002) (director's life-long friendship with CEO, *plus* employment of director's son by

[1] Cotter, Jr. has cited statements by Mr. Ferrario to the effect that the case was unique, but has ignored the reasons given by Mr. Ferrario for said uniqueness, including the fact that what has been challenged is a board decision that one candidate for a position is better than the other. **See Transcript, October 27, 2016, 71:3-75:11.**

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CEO, *plus* director's approval of CEO's claimed wrongdoing, *plus* director's tenure on board while CEO purportedly shirked duties to focus on another company, *plus* director's own investment in the other company, *plus* the director's personal benefit from challenged options repricing added up to state a claim for lack of independence).[2] Instead, as to McEachern and Gould, Cotter, Jr. cited *only* voting in favor of the multitude of board decisions Cotter, Jr. challenged. As to Kane, Cotter, Jr. cited such voting, plus the longtime friendship with Cotter, Sr. As to Codding, Cotter, Jr. citing such voting, plus a friendship with Mary Cotter. As to Wrotniak, Cotter, Jr. cited only such voting, and his wife's friendship with Margaret Cotter. None of these amount to a set of collective facts that would be sufficient to show disinterest.

Nor could Cotter, Jr. support his purported entrenchment theory with examples of multiple changes (or for that matter, any change) in the bylaws that would, collectively, have made it more difficult for interested to vote existing directors out, as had occurred in *In re Ebix, Inc. Stockholder Litig.*, 2016 WL 208402 (Del. Jan. 15, 2016).[3] In fact, *none* of the purported "entrenchment" actions involved anything that could reasonably be said to have had any negative impact on stockholder voting rights. And indeed, since between them, as either co-executors of Cotter, Sr.'s estate, the co-trustees of the Cotter Living Trust, or in Margaret Cotter's case, as the sole-trustee of the voting trust, Ellen Cotter and Margaret Cotter had control of a majority of the voting shares, no "entrenchment" actions would have even have been necessary for them to maintain their positions on the RDI Board.

Cotter, Jr. cannot escape responsibility for his groundless claims by pointing to the Supreme Court's opinion in *Wynn Resorts, Ltd. v. Dist. Ct.*, 133 Nev. __, __ 388 P. 3d 335 (2017). If, as Cotter, Jr. contends, the *Wynn* decision was necessary to clarify the business judgment rule, then Cotter, Jr. should have dismissed his claims once that decision was released. He did not do so.

Cotter, Jr. cannot even be truthful with respect to the issue as to when an legal questionissue was raised. He claims that the question of whether a decision to terminate the CEO can be a

[2] Plaintiff relied on this case in his Reply in Support of Motion for Summary Judgment, filed Oct. 25, 2016, p. 24.

[3] Plaintiff also relied on this case in his Reply in Support of Motion for Summary Judgment, filed Oct. 25, 2016, p. 24.

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"transaction" that can be ratified as permitted by NRS 78.140 arose only late in the proceedings. In reality, Cotter, Jr. himself maintained that a CEO's termination was such a "transaction" from the outset of this case, as it was only if it so qualified that it could be an "interested transaction" to which the business judgment rule would *not* apply. See Cotter, Jr.'s Reply in Support of Motion for Summary Judgment, filed October 25, 2016, p. 15. Cotter, Jr. might have seized on the theory that the termination was not a "transaction" theory to salvage his claim in June 2017, but he did so while while ignoring that such theory would, eviscerate his underlying claims regarding his termination. Such a flipflop exemplifies the continuing circularity of his logic.

D. Cotter, Jr.'s Reliance on Federal Rule 11 Cases is Misplaced.

Cotter, Jr. cites to federal case law interpreting FRCP 11 as persuasive for purposes of determining the meaning of harassment under NRS 18.010, which Cotter, Jr. appears to contend must be based on repeated filings raising previously rejected arguments.[4] While such repeated filings are an example of how harassing might occur, nothing in the authority cited by Cotter, Jr. suggests that this is the *only* way that harassment might occur.

Nevertheless, accepting Cotter, Jr.'s assertion that harassment requires the filing of the action to have been unreasonable, Cotter, Jr.'s conduct satisfies the requirement. Cotter, Jr. himself acknowledged that neither McEachern nor Gould lacked independence. Accordingly, it was not reasonable to bring claims against them, or to or to challenge the independence of Codding, Kane and Wrotniak on the thin bases asserted. Nor was it reasonable to contend that RDI's Board of Directors could not terminate a CEO, when the RDI's bylaws *and* Nevada make clear that such termination is within the discretion of the Board of Directors. It was not reasonable for Cotter, Jr. to bring a claim of breach of fiduciary duty based on a failure to follow up on an unsolicited expression of interest – as this Court found – no damages could have resulted because the offer was nonbinding. Nor was it reasonable for Cotter, Jr., for years, to hold over the heads of the individual defendant directors exposure to damages which, if they had come home, would have wiped them out financially, when having no intention to in fact even present evidence on such

[4] Even this test would be satisfied, given the many times Cotter, Jr. has contended that RDI is not a party to these proceedings.

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claims. And, even if Cotter, Jr. could somehow show that his filings of claims was reasonable, he cannot show that it was reasonable to *maintain* such claims once the T2 Plaintiffs had dismissed their claims. Indeed, this Court acknowledged that the dismissal by the T2 Plaintiffs had resolved claims that the investing public was at risk. **Transcript, Oct. 27, 2016, 74:21-75:1**. If the investing public was not at risk, then neither was RDI. Cotter, Jr. should have dismissed the derivative complaint at that time, but refused to do so. The only basis for his continuation would be to continue to cause harm to the Company, particularly in light of his claimed special or insider knowledge of the workings of RDI.

D. The Amount of the Fees Incurred Does Not Warrant Denial of the Request.

Ignoring the fact that RDI has not yet asked the Court to determine what amount of the fees incurred should be awarded, Cotter, Jr. contends that because the defense of nine defendants (eight directors, plus RDI), by three separate defense teams, resulted in fees that approximated $15.9 million,[5] he should not be sanctioned under NRS 18.010. None of the cases on which he relies supports such a theory, and indeed, there is an obvious logical disconnect in this contention.

Furthermore, the cases cited by Cotter, Jr. all involve situations in which the Court had examined the evidence in support of the specific fees claimed, and based on such evidence (or lack thereof), determined fees should not be awarded. For example, in *Clemens v. New York Cent. Mut. Fire Ins. Co.*, 903 F.3d 396, 401 (3d Cir. 2018), the Court noted that Plaintiff's counsel had admitted that the time records had not been kept contemporaneously, but instead were based on the estimates of an attorneys as to amount of time spent on the case by all attorneys, including those who had left the firm. The Court also noted that many of the time entries were vague, and included entries from which the nature of the work performed could not be determined. There was also a claim for 562 hours of trial preparation, which, meant, as the Court pointed out, "if counsel did nothing else for eight hours a day, every day, [562 hours] would mean that counsel spent approximately 70 days doing nothing but preparing for trial in this matter." *Id.* at 402. Similarly, in *Fair Hous. Council of Greater Wash. v. Landow*, 999 F.2d 92 (4th Cir. 1993), the Court's noted that

[5] RDI included the total of the fees incurred only because Cotter, Jr. has insisted on this when the parties were agreeing to the two-part procedure for this Motion.

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"plaintiffs submitted professional time estimates are so grossly in excess of any realistic amount as to be unworthy of consideration, even as a starting point." These cases have no bearing on the present motion, because the time has not yet come for the Court to consider evidence of the fees incurred.

Other cases cited by Plaintiff compared the results and the fee award. In *Environmental Defense Fund, Inc. v. Reilly*, 1 F.3d 1254, 1258 (D.C. Cir. 1993), the Court noted that of the more than $32,000 in fees claimed, less than $8,000 was for work performed on the merits of the case; the remainder of the amount claimed was for work performed to file the motion for fees. Furthermore, the fees in this case were not denied altogether; instead, the Court struck the fees claimed by one of the attorneys, having determined that the claimed times to complete the specified tasks were excessive. And, in *Lewis v. Kendrick,* 944 F.2d 949 (1st Cir. 1991), the court reversed an award of fees that had been 160 times the amount the recovered.

Here, there is no reasonable argument that the fees incurred exceeded the risk faced by the parties. The fees were incurred on behalf of all the Defendants, rather than a single party. Three defense teams were necessary due to the potential for conflicts of interests among the Defendants. The attorneys' fees incurred here amounted to between 9 and 13% of the $110 and $155 million in damages amounts to which Cotter, Jr.'s expert had opined, masking the incurrence reasonable in context. *See* **Ex. B, Excerpts of Report of Duarte-Silva, p. 14 and 16.**

It is likely that Cotter, Jr., incurred fess of at least $3 million, and likely more. It is known that by February 2017 – eighteen months into the case--- he had incurred more than $1.2 million in *unpaid* fees from his former law firm, Lewis, Roca, Rothgerber Christie, LLP. ***See* Ex. C. Lewis & Roca Complaint, ¶ 7.** But that amount does not take into account any fees that Cotter, Jr. had incurred and paid; it is unlikely that the law firm continued representation for those first eighteen months without *any* payment. Nor does it include the fees incurred for his representation by Mr. Krum from February 2017 forward, or for fees incurred for work performed by the Morris Law Group. Given the greater number of defendants to be represented, the much greater discovery obligations imposed on the Defendants than on Plaintiff in this matter, and the obvious but

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necessary increase in expense for the involvement of several defense teams, it is likely that the average fees per party for the Defendants will be well below that incurred by Plaintiff.

Cotter, Jr. has failed to show that there is any basis to relieve him of any obligation to pay a sanction under NRS 18.010, based on the amount of fees incurred.

CONCLUSION

Cotter Jr. unreasonably brought and maintained claims against the Defendants. This Court should exercise its discretion to find that RDI is entitled to recover fees from Cotter, Jr., as a sanction for bringing and/or maintaining a groundless claim, for purposes of harassment.

Dated this 16th day of October 2018.

GREENBERG TRAURIG LLP

By */s/ Mark E. Ferrario*
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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 on this day, I caused a true and correct copy of the foregoing **READING INTERNATIONAL, INC.'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES** to be e-filed and served via the Court's E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

Dated this 16th day of October 2018.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

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EXHIBIT A

From: Kane
To: James Cotter JR
Sent: 1/31/2015 12:21:01 AM
Subject: Re:

If you are OK with it I have no problem. Since, as far as I know, we have not decided what to construct on the property, I wonder what the brokerage community can add. I get nervous when your sisters are in the state of incorporation. I wonder if Tompkins will be accompanying her and/or if he will be with her or counseling her on the upcoming hearing.

From: James Cotter JR
Sent: Friday, January 30, 2015 12:07 PM
To: Kane
Subject: RE:

Ellen suggested to make it after ICSC real estate conference in Las Vegas where we hope to present Union Square to brokerage community so we have better story to present.

From: Kane [mailto:elkane@san.rr.com]
Sent: Friday, January 30, 2015 10:38 AM
To: James Cotter JR
Subject:

Why are we moving the date of annual meeting?

EXHIBIT B

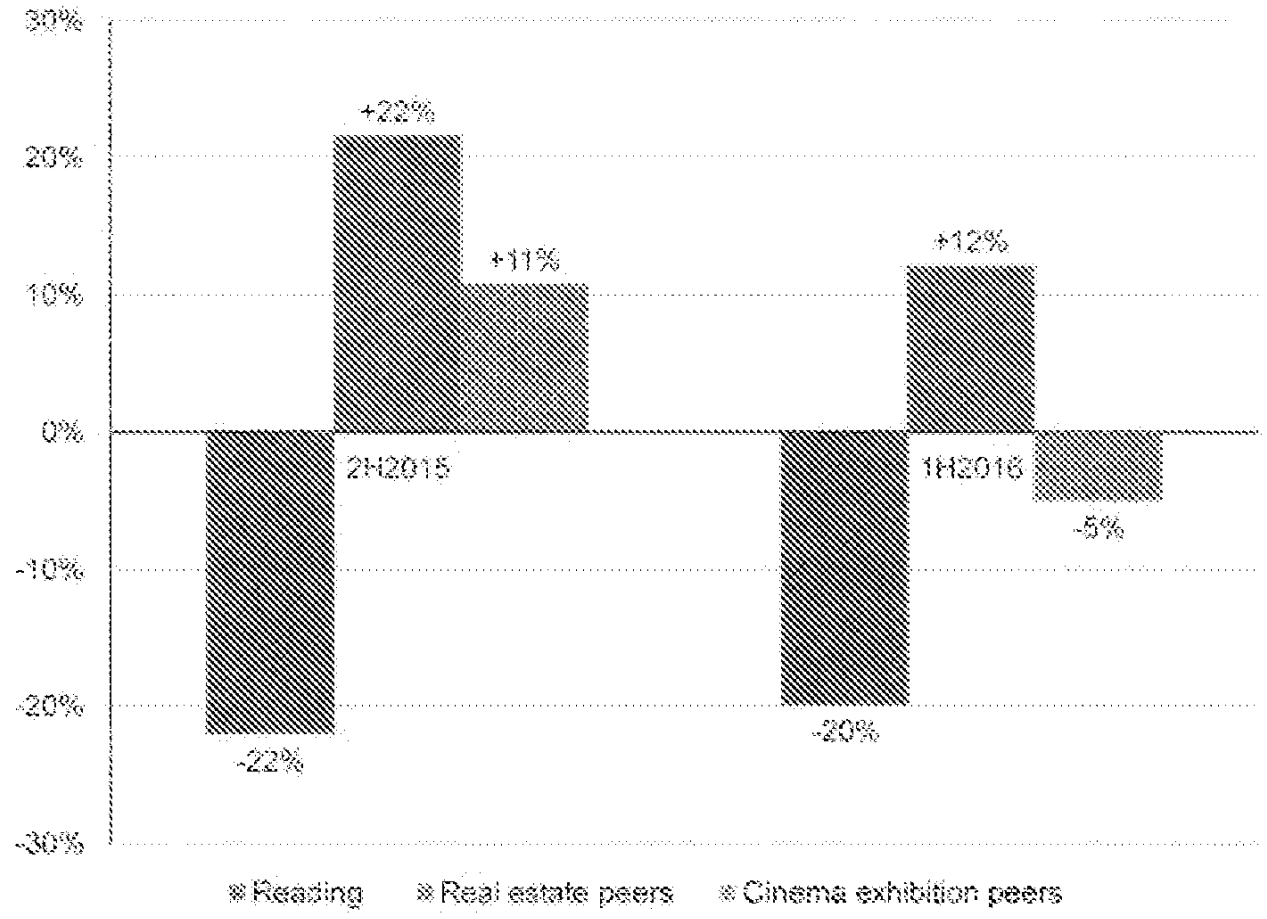
DISTRICT COURT
CLARK COUNTY, NEVADA

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 Coordinated with: CASE NO. P-14-082942-E DEPT. NO. XI CASE NO. A-16-735305-B DEPT. NO. XI

EXPERT REPORT OF TIAGO DUARTE-SILVA

August 25, 2016

Change in EBITDA: Reading and peer companies' averages



Source: Exhibit 6.

VI. Reading's value has declined and underperformed since Ellen Cotter became Reading's CEO

29. The historical earnings performance described above does not capture entirely the change in Reading's value during Ellen Cotter's tenure as CEO. Changes in stock prices incorporate changes in expected future earnings performance and their risk profile. In this section, I examine how Reading's value has changed since the Replacement Date.

30. Changes in stock prices are routinely used as measures of the effect of news on company values. For example, in the context of securities litigation, the impact of disclosures on stock prices and company value is commonly measured through stock returns upon such disclosures. Also, a company's stock price performance is commonly used as a measure of managerial performance.

31. Reading's stock price closed at $13.88 per share on June 12, 2015, right before the Replacement Date. As recently as the Measurement Date (August 19), Reading's stock price was $13.09, a decline of 6% relative to the price on June 12, 2015.[20]

32. Because stock price returns correlate with those of the overall stock market and each company's industry, an analysis of Reading's stock returns performance requires controlling for the performance of the overall stock market and its peer companies. For example, the overall stock market has gained 7% since the Replacement Date.[21]

33. To measure the performance of the market, I use the S&P 500 Total Return index. To measure the performance of Reading's peer companies, I create two stock return indices: one composed of real estate peer companies ("real estate index") and one composed of cinema exhibition companies ("cinema exhibition index"), based on the list of peer companies identified by Reading in its SEC filings for the purposes of executive compensation.

34. In the period since the Replacement Date, the market gained 7%, the real estate index gained 22%, and the cinema exhibition index declined 1%.[22] So, by losing 6% of its value, Reading has underperformed each of its benchmarks: the market, its real estate peer group, and its cinema exhibition peer group.

35. To quantify the extent of this underperformance, I measure the relationship between Reading's stock returns and the returns of the market and Reading's peer companies by regressing the former's returns against those of the market and peer indices. This method is a commonly accepted statistical approach to calculating a stock's expected returns. The result is

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[20] Bloomberg. Reading's equity is composed of Class A shares and Class B shares. I approximate changes in the value of Reading by changes in the stock price of Class A shares and henceforth refer to the stock price of Class A shares as Reading's stock price.
[21] The S&P 500 Total Return index was 3,870.56 on June 12, 2015 and 4,142.23 on the Measurement Date, implying a 7% positive return (= 4,142.23/3,870.56 - 1). Bloomberg.
[22] Exhibit 8.

the return that could be expected of Reading's stock price based on the market and the peer companies' returns, i.e., Reading's expected stock return.

36. As should be expected from having underperformed each benchmark above, Reading's actual stock returns have been worse than expected since Ellen Cotter became CEO. Reading's expected return between the Replacement Date and the Measurement Date was +28%.[23] So, Reading's actual return of -6% was below its expected return by 34%.

37. This underperformance happened despite the announcement of Reading's second quarter 2015 earnings after the Replacement date and which – as explained above – are more reasonably tied to James J. Cotter, Jr. than to Ellen Cotter and that marked "the best results in the history of the Company" with respect to "[r]evenue, operating income, and ... EBITDA."[24] Reading's stock price increased 2% on the trading day following the announcement of these earnings.[25]

38. I also note that Reading's stock price underperformance includes investors' reaction to the news of Ellen Cotter becoming permanent CEO in January 2016. This news was followed by a 3% decline in Reading's stock price.[26]

39. Reading's expected return of +28% implies that, if Reading had performed in line with the market and its peer companies, then Reading's market value of equity should be $417 million

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[23] Based on a one-year (252 trading days) regression of Reading's returns against those of market, real estate index, and cinema exhibition index, preceding the calculation of each date's expected return. Exhibit 8.
[24] Reading International Inc., Form 8-K, filed on August 7, 2015. Exhibit 99.1, Reading International Inc. Announces Record Second Quarter 2015 Results, August 6, 2015.
[25] Exhibit 8. Reading International Announces Record Second Quarter 2015 Results, Business Wire, August 6, 2015 5:30pm.
[26] Because this news was announced in the morning of January 11, 2016, the stock price decline described here pertains to the same trading day. Reading International Inc. Appoints Ellen Cotter President and Chief Executive Officer, Business Wire, January 11, 2016 9:00 am. Exhibit 8.

by the Measurement Date. In contrast, by the Measurement Date, Reading's market value of equity was $307 million, implying a loss of $110 million.[27]

VII. Failing to respond favorably to an acquisition offer impeded an increase in Reading's market value

40. In a May 31, 2016 letter to Ellen Cotter, a bidder offered to acquire all shares of Reading for $17 per share, in an all-cash transaction.[28] $17 per share implied an equity value of $397 million.[29] Because the market value of Reading's equity on the previous trading day was $297 million, this offer represented a premium of $100 million or 34% over the market value of Reading's equity.[30]

41. First, this offer premium was not low relative to similar recent transactions. I examined all acquisitions between $50 and $500 million in the last five years, of US-based companies operating in any of the three SIC codes of the peer companies identified by Reading.[31] The results show a median premium of 35% and a third of the acquisitions with premiums between 19% and 40%.[32]

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[27] Exhibit 9.
[28] Letter from Paul B. Heth to Ellen M. Cotter, May 31, 2016, JCOTTER017181-5.
[29] $17.00*21,654,305 + $17.00*1,680,590. As of May 9, 2016 and August 5, 2016, there were 21,654,305 Class A shares outstanding and 1,680,590 Class B shares outstanding. Reading International Inc., Form 10-Q for the quarterly period ended March 31, 2016, filed on May 10, 2016, p. 1 and Reading International Inc., Form 10-Q for the quarterly period ended June 30, 2016, filed on August 8, 2016, p. 1.
[30] $12.71*21,654,305 + $12.74*1,680,590. Class A shares closed trading at $12.71 on the eve of the date of this letter (May 27, 2016); Class B shares had last traded at $12.74 on May 4, 2016. As of May 9, 2016 and August 5, 2016, there were 21,654,305 Class A shares outstanding and 1,680,590 Class B shares outstanding. Reading International Inc., Form 10-Q for the quarterly period ended March 31, 2016, filed on May 10, 2016, p. 1 and Reading International, Inc., Form 10-Q for the quarterly period ended June 30, 2016, filed on August 8, 2016, p. 1. Bloomberg.
[31] Based on closed acquisitions of US-based targets with SIC codes 38, 67, or 78, announced since August 2011, with a total transaction value between $50 million and $500 million, and where more than 50% ownership was sought. Capital IQ.
[32] Exhibit 10.

42. A 34% offer premium is also not low relative to acquisitions of the companies that Reading designated as peers: Associated Estates Realty was acquired at a 17% premium,[33] Inland Real Estate was acquired at a 7% premium,[34] and Glimcher Realty Trust was acquired at a 33% premium.[35] Carmike Cinemas was the target of an offer to be acquired at a 19% premium and that offer premium was subsequently increased to 32%.[36]

43. Second, I understand that Reading's Board did not respond favorably to the acquisition offer. In doing so, at least $100 million were foregone relative to Reading's market capitalization as of the offer date, or $90 million as of the Measurement Date.[37]

44. Third, I understand that, as part of its unfavorable response to this offer, Reading's Board also did not engage in a negotiation with the bidder. This precluded the possibility of an increased offer price. The example above, Carmike Cinemas, is just one of many illustrations that negotiation can increase the offer price. The academic literature shows, for example, that the offer price was revised in 18% of the acquisition offers in cash of US companies between 1985 and 2012, and the average revision was an increase of 14%.[38] A 14% increase to $17 per share would imply an equity value of $452 million or an offer premium of 52% over Reading's

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[33] Associated Estates to Sell itself to Brookfield Affiliate for $1.66 Billion, The Wall Street Journal, April 22, 2015.
[34] Inland Real Estate Corporation Enters into Definitive Agreement to be Acquired by Funds Managed by DRA Advisors LLC, Business Wire, December 15, 2015.
[35] Washington Prime to Buy Glimcher Realty for $2 Billion, Bloomberg, September 16, 2014; Washington Prime Group Completes Acquisition of Glimcher Realty Trust; Company to be known as WP Glimcher, Business Wire, January 15, 2015.
[36] 34% based on closing price on March 2, 2016, Bloomberg. AMC Theatres to Acquire Carmike Cinemas, Creating Largest Chain of Movie Theatres in the U.S. and the World, Company release, March 3, 2016. AMC Theaters Makes Best and Final Offer to Acquire Carmike Cinemas for $33.06 Per Share in Cash and Stock, Business Wire, July 25, 2016.
[37] ($17.00-$13.09)*21,654,305 + ($17.00-$13.99)*1,680,590. Class A and Class B shares were last priced at $13.09 and $13.99 on the Measurement Date, respectively. As of August 5, 2016, there were 21,654,305 Class A shares outstanding and 1,680,590 Class B shares outstanding. Exhibit 9.
[38] Hukkanen, Petri and Matti Keloharju, 2015, Initial offer precision and M&A outcomes. Harvard Business School working paper.

stock price on the previous trading day.[39] This premium would correspond to $155 million over the market value of Reading's equity on the previous trading day.[40]

45. Finally, in corporate acquisition settings, after a "first bid announcement …, the target is 'in play' and it is possible that other bidders will compete to acquire the target firm" and "[s]uch a multiple bid auction usually leads to higher control premiums than when the initial bid is successful."[41] Also, "other parties may be induced to compete for the corporation through a rival tender offer or merger proposal."[42] Because the aforementioned offer was not made public before Reading's board declined it, Reading could not benefit from this process to obtain a potentially higher bid.

VIII. Signature and right to modify

46. This statement represents my opinions at this time. However, as I have noted earlier in this report, I may supplement or modify this statement if new information is made available to me. I declare that the facts stated above are true to the best of my knowledge.

Executed on this 25th day of August in 2016.

Tiago Duarte Silva

Tiago Duarte-Silva

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[39] (1+14%)*($17.00*21,654,305 + $17.00*1,680,590) and (1+14%)*($17.00*21,654,305 + $17.00*1,680,590)/($12.71*21,654,305 + $12.74*1,680,590). As of May 9, 2016 and August 5, 2016, there were 21,654,305 Class A shares outstanding and 1,680,590 Class B shares outstanding. Reading International Inc., Form 10-Q for the quarterly period ended March 31, 2016, filed on May 10, 2016, p. 1 and Reading International Inc., Form 10-Q for the quarterly period ended June 30, 2016, filed on August 8, 2016, p. 1.

[40] $452 million - $297 million (¶ 40).

[41] Schwert, G. William, 1996, Markup pricing in mergers and acquisitions, *Journal of Financial Economics* 41, 153-192.

[42] Fleischer, Arthur and Robert Mundheim, 1967, Corporate acquisition by tender offer, *University of Pennsylvania Law Review* 115, 317-370.

EXHIBIT C

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DISTRICT COURT
CLARK COUNTY, NEVADA

LEWIS ROCA ROTHGERBER CHRISTIE LLP, Plaintiff, vs. JAMES J. COTTER, JR., an individual, and DOES 1-10, inclusive, Defendants.	Case No.: A-18-774987-C Dept. No.: Department 22 **COMPLAINT** **Exemption from Arbitration: Damages Exceed $50,000**

COMES NOW, Plaintiff Lewis Roca Rothgerber Christie LLP ("Plaintiff"), and for its action against James J. Cotter, Jr. ("Defendant"), complains and alleges as follows.

The Parties, Jurisdiction and Venue

1. Plaintiff is a limited liability partnership with offices in Clark County. It provides legal services.

2. Defendant is an individual. Upon information and belief, Defendant is a citizen of California.

3. In 2015, Defendant retained Plaintiff to perform legal services in Nevada, which concerned litigation in this County.

4. Jurisdiction and Venue are proper in this Court.

GENERAL ALLEGATIONS

5. Plaintiff performed legal services and advanced costs for Defendant pursuant to written engagement documents ("Engagement Agreement").

6. Defendant failed to make timely payments to Plaintiff under the terms of the Engagement Agreement.

7. Through and including January 31, 2017, Defendant's unpaid indebtedness to Plaintiff was $1,243,975.22 ("Receivable").

8. On February 2, 2017, Defendant, who was represented by counsel other than Plaintiff, and Plaintiff entered into a contract ("February 2 Contract").

9. In the February 2 Contract, Plaintiff agreed, among other things, to a substantial reduction of the Receivable ("Reduced Receivable").

10. In the February 2 Contract, Defendant agreed, among other things, to make payments toward the Reduced Receivable pursuant to a schedule, including a final balloon payment on March, 20, 2018.

11. Defendant made initial payments required by the February 2 Contract, but failed to make part of a payment due on February 28, 2018 and failed to make the balloon payment due on March 20, 2018.

12. The February 2 Contract provides that, in the event of Defendant's failure to make required payments, Plaintiff is entitled to be paid the entire Receivable, minus any payments that had been made by Defendant under the February 2 Contract, plus interest as set forth in the Engagement Agreement. Plaintiff has made demand for these amounts, which currently exceeds $1,054,000.00, but Defendant has not satisfied the obligation.

13. In February 2017, Defendant transitioned his matters to out-of-state counsel. Plaintiff continued to provide legal services as local counsel. Plaintiff's representation of Defendant terminated on or about November 8, 2017.

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14. Defendant has not paid Plaintiff for Post February 1 Legal Fees and Costs, through November 8, 2017, in the amount of $25,428.21.

CLAIM FOR RELIEF

15. Plaintiff repeats and realleges paragraphs 1 through 14, inclusive, of this Complaint and incorporates them herein by reference as though set forth in full.

16. The Engagement Agreement and the February 2 Contract are valid and binding contracts under which Defendant agreed to abide by various provisions and promises, including, without limitation, to make payments for services provided and costs advanced by Plaintiff.

17. Defendant has failed to render performance when it was due and has breached the contracts, causing damages to Plaintiff in excess of $15,000. Causation and damages were a foreseeable consequence of Defendant's breaches and failure of performance.

18. Any conditions precedent to Defendant's performance have been satisfied or excused.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff expressly reserves the right to amend this Complaint prior to or at the time of trial of this action to insert those items of damage not yet fully ascertainable, and prays that judgment be entered against the Defendant as follows:

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Lewis Roca ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

1. Damages in excess of $15,000, the amount to be proven at trial;
2. For pre- and post-judgment interest;
3. For attorneys' fees and costs; and
4. For such other relief as the Court deems just and proper.

DATED this 23rd day of May, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: _____

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RPLY

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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.

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

READING INTERNATIONAL, INC.'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT IN ITS FAVOR

Date: October 22, 2018
Time: 9:00 am

Nominal Defendant Reading International, Inc. ("RDI" or the "Reading"), a Nevada corporation, by and through its undersigned counsel of record, hereby submits its Reply in Support of its Motion for Judgment in its Favor.

MEMORANDUM OF POINTS AND AUTHORITIES

This Court should either enter a judgment in favor of RDI, or amend the existing judgment to included RDI. Cotter, Jr. has failed to show any reason why Reading, against whom relief was sought in this purported derivative action, should not be granted judgment. Accordingly, this Court should grant the Motion for Judgment, and issue judgment in favor of Reading. In the alternative, this Court should add the following

> As the resolution of the claims remaining against the Individual Defendants establishes that Plaintiff is not entitled to the relief requested against Reading, judgment in favor of Reading is granted.

to the Judgment noticed on August 16, 2018.

As illustrated by the fact that the Court has orally granted judgment for costs in RDI's favor, this Motion is not, as Cotter, Jr. contends, made necessary to protect that judgment. However, it is necessary to allow Cotter, Jr.'s appeal to continue, because without judgment addressing RDI's rights and obligations, there is no final order as to Cotter, Jr.'s remaining claims.

LEGAL ARGUMENT

Reading is entitled to entry of judgment in its favor. The December 28, 2017 and August 16, 2018 Judgments do not constitute a final judgment in this matter, as neither results in the formal resolution of all the "rights and liabilities" of Reading. NRCP 54(b). Without such a formal resolution of the claims against Reading, this matter cannot be finally concluded.

A. Because Plaintiff Requested Relief That Would have Negatively Impacted Reading's Rights, Reading is a Party to the Proceeding, and Entitled to Judgment.

The very arguments made by Cotter, Jr. show that Reading is entitled to the requested judgment. Cotter, Jr. states:

> ***Unless the lawsuit poses a threat to the corporation*,** a nominal defendant must take and maintain a wholly neutral position. . . ."

Cotter, Jr.'s Opposition, 2:26-28 (emphasis added). Thus, Cotter, Jr. implicitly acknowledges that when a purported derivative suit "poses a threat to the corporation," the Corporation may defend itself. That is precisely what occurred here.

Cotter, Jr. contends that because his complaint *asserted* that the corporation was being harmed, and that his actions were taken on its behalf, RDI was not a true defendant. However, throughout his Complaint, Cotter, Jr. used the term "Defendants," which term was never defined to include only the Individual Director Defendants and exclude RDI. In contrast, Cotter, Jr. did define a term intended to refer to only some of the defendants. See Second Amended Complaint (SAC), ¶ 1 (defining "Interested Director Defendants" to include the Cotter sisters, Adams, Kane, and McEachern). Additionally, on 13 occasions in the SAC, Cotter, Jr. referred to the

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"Individual Director Defendants," and at additional times, referred to just the "Director Defendants" both of which terms obviously excluded RDI. But Cotter, Jr. *also* used the terms "Defendants" and "All Defendants," neither of which term logically excludes RDI. He used the term "all Defendants" when stating in his First, Second, and Third Causes of Action, that the claims were against "All Defendants." SAC pp. 47, 49, 50. Additionally, he prayed for "judgment against Defendants and each of them, jointly and severally." SAC, p. 54.

Most significantly, the relief that he requested included burdens to be imposed on RDI, or would otherwise have required action by RDI. For example, he prayed for relief "restraining and enjoining Defendants from taking further action to effectuate or implement" his termination. SAC Prayer for Relief ("**PFR**"), ¶ 1. Such an injunction would necessarily have to be imposed on the Company and its employees. He sought declaratory relief that would result in RDI's loss of its chosen President and CEO, and the forced re-installation of Cotter, Jr. in those positions, a result that obviously impacts RDI's right to governance through its Board of Directors. PFR 2, 3(a). Additionally, he sought an injunction against RDI's existing board, circumscribing the way that board could act, even though the prohibited actions would have been in keeping with RDI's Bylaws. PFR 3(b). This too would have interfered with RDI's right to be governed by its Board of Directors, in accordance with its Bylaws. Thus, even though Cotter, Jr. contends that this requested relief was directed at limiting the conduct of the Individual Defendants, because the requested relief would have prevented the primacy of RDI's Bylaws, RDI's rights would be adversely affected.

Furthermore, Cotter, Jr. expressly requested a mandatory injunction against RDI, requiring it to make corrective disclosures. PFR 3(c). And, his request that minimum qualifications for nominees for RDI's Board of Directors be imposed was not limited to nominees put forward by any of the Individual Defendants, and thus, was also directed at RDI itself.

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Shockingly, in his Opposition, Cotter, Jr. denies that he sought reinstatement, claiming that only the T2 Plaintiffs sought this relief. Opposition, pp. 4-5. But Cotter, Jr. asked this Court to grant an order that, *inter alia*

> Finds that actions to remove Plaintiff as President and CEO were void or voidable and declares such action void and legally ineffectual, such that Plaintiff is restored to and EC is removed from the positions of President and CEO of RDI . . .

PFR 3 (a). Plaintiff's denial cannot be categorized as anything other than a blatant lie.

All the above requests, if granted, would have interfered with RDI's corporate governance and its interest. Accordingly, under the authority acknowledged by Plaintiff, RDI properly participated in this matter as a defendant. And, clearly, this Court has long recognized RDI's status as party to this litigation, as it has consistently overruled Cotter, Jr.'s objections to RDI's participation.

B. This Court has Jurisdiction to Either Issue a Judgment on Behalf of RDI or to Modify the Order under Rule 60.

Cotter, Jr.'s contention that this Court has no jurisdiction to enter an order is simply wrong. Because the written Judgment entered on August 8, 2018 did not resolve the rights of RDI, it was not a final order. A "timely notice of appeal" can only be filed once a final judgment has been issued. Accordingly, the Notice of Appeal filed by Cotter, Jr. was premature, and does not divest this Court of jurisdiction. *See* NRAP 4(a)(6). ("A premature notice of appeal does not divest the district court of jurisdiction.").

Cotter, Jr. cites to the discussion on the record at the hearing held on June 19, 2018 to show that the there was nothing else for the Court to decide. However, what is relevant here is whether the *written order* resolves all the rights and obligations of the parties. There is no written order that expressly addresses RDI's rights, and accordingly, either a separate judgment should be issued, or the existing judgment amended to correct this issue. Because the August 8, 2018 order is not final, this Court continues to have jurisdiction, and thus, may take either of the two requested actions.

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Cotter, Jr. contends that relief under Rule 60 is not applicable, because there is no evidence of a clerical error. However, a party to the action, RDI, was omitted from the judgment. Since RDI must be included for the judgment to be final, this was not an intentional act by the drafter, but merely an oversight.

CONCLUSION

As set forth above, Reading is entitled to entry of judgment in its favor, either in a separate order, or, pursuant to NRCP 60(a) or 60(b)(1), through an amendment of the Judgment noticed on August 16, 2018.

DATED this 15th day of October 2018.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden

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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 on this day, I caused a true and correct copy of the ***Reading's International, Inc.'s Reply in Support of Motion for Judgment in its Favor*** to be filed and served via the Court's Odyssey E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 15th day of October 2018.

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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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 MOTIONS FOR ATTORNEYS' FEES

MONDAY, OCTOBER 22, 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:	STEVE L. MORRIS, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	MARSHALL M. SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. MARK E. FERRARIO, ESQ.

LAS VEGAS, NEVADA, MONDAY, OCTOBER 22, 2018, 9:03 A.M.

(Court was called to order)

THE COURT: Cotter. This is the motion for attorneys' fees in Cotter. Mr. Ferrario, it's your motion.

MR. FERRARIO: You heard a lot of what we said on --

THE COURT: The other day, yeah.

MR. FERRARIO: -- when we argued the costs motion. So I'm not going to rehash that. Plus you've lived the case.

THE COURT: You want me to find that the claims were baseless from the inception and therefore Reading should get their attorneys' fees and any attorneys' fees they had to indemnify officers and directors for.

MR. FERRARIO: That's correct, Your Honor.

THE COURT: Okay.

MR. FERRARIO: But also to the extent that you want to give the plaintiff a break and not go back to the point in time the lawsuit was filed certainly there came a point in time -- we think it was frivolous from the beginning, but there came a point in time when the plaintiff knew that all he was doing was harassing the director defendants and running up the costs to the company. And there's any number of points in time that I can direct the Court to, but really the easiest one is probably at the point in time when the independent plaintiffs, the T2 plaintiffs, jumped into the case, spent a half a million dollars, and then said, you know what, there's

nothing here. You know, they peeked behind the curtain. There was nothing here. What did plaintiff do at that point? He came in and objected to the T2 settlement, and he amped up and ramped up his efforts in this case.

But the thing that's most disturbing when I read all of the pleadings that we put in front of you -- and, you know, we've made this argument that he was an insider, he knew about these directors, he knew what their relationships were. He voted them on the board months, just a few months before his termination. When they terminated him, as they were entitled to do under the bylaws, he then turns on the directors and accuses them of all sorts of improper activities.

But the craziest part of this case for me when you go back to the depositions is when questioned under oath about at least two people, Mr. Gould and Mr. McEachern, and whether they were in fact independent he says, yes, they were. What did he say in his complaint? No, they weren't. You can't reconcile that. And occasionally Ms. Cowden will pull out one of my favorite quotes, and it's the chutzpa quote from the Embry versus King case, 361 F.3rd. And we save that for special occasions, and this is one of those special occasions. Mr. Cotter, Jr., turned what should have been a routine employment matter into a bizarre, crazy derivative case where he literally challenged every decision that the board made

even though there was no real grounds to challenge it, even though it caused no damage to the company. He sued two directors that were put on months after his departure. He came to the Court initially with a fire drill asking for all sorts of expedited proceedings, and then backed off. And after this Court found -- and this is a curious argument that the plaintiff makes -- says, well, the Court -- it wasn't that we had no evidence, it's just we didn't have enough evidence. What in the heck is that, when it says the Court ruled not that there was no evidence, you just didn't have enough evidence to make your claim? And even after this Court said the directors were in fact independent, because plaintiff, who knew this all along, couldn't muster anything more than he had at the beginning of the case, you said, they're all independent and those directors were not -- and ratified that decision, and that set off another circus.

And I'm not going to go back over the fact that he sued these individuals for $100 million to $150 million, that he threatened to bankrupt them, as evidenced by testimony from Mr. McEachern, okay, all because the board exercised its fiduciary obligation and its prerogative under the bylaws and said, you know what, we're going in another direction.

Now, I feel somewhat bad arguing against Ms. Levin and Mr. Morris, because they weren't the ones that started this fiasco, okay. So I'm not in any way kind of chastising

them, although they were here, I might remind the Court when the January continuance occurred for the unknown health reason and then they were here as we were running up to the June trial date when Mr. Cotter, Jr., then abandoned his experts that were supposed to support the hundred to $150 million verdict.

So, Judge, in a word, this case does justify sanctions under 18.010. This case was filed for no reason other than to harass and to oppress the directors in the hopes that they would reconsider their decision. And it cost the company dearly. It was never a suit that a derivative plaintiff should have brought if the derivative plaintiff was fulfilling his fiduciary duty or her fiduciary duty and doing this in the best interests of the company. That was never the motivating factor.

And so we would request that the Court, as we said in our pleading, agree and say that we are entitled to fees. And we can have another hearing on the amount of the fees, because I know you will have questions about that. And it's a much more detailed and onerous thing than I want to lay on you now if we're not going to get there.

THE COURT: Okay. Thank you.

Ms. Levin.

MS. LEVIN: Your Honor, the fee motion was required to show based on the record evidence, not personal attacks,

but record evidence that there was no reasonable grounds to bring the complaint and that it was filed to harass or for harassment purposes. The defendants did not meet that burden. And almost recognizing in their reply, they pile up the personal attacks, which are truly vicious and really don't deserve a response, and for the first time argue that the Court has inherent authority to sanction the plaintiff without even citing the criteria.

It is undisputed that this case presented novel and complex issues of law. And under the -- even the most recent case, the Rosenberg Trust case that we cited in our opposition, it would be an abuse of discretion to award attorneys' fees if, as here, complex and novel issues are raised, because the court said, we don't want to -- as much as we appreciate the legislature's desire to punish frivolous lawsuits, an attorney needs to be able to raise novel issues, including to argue for a modification of the law.

Now, this is not just my words that this case raised novel issues. They agreed with us. They said so in the declaration of Mr. Searcy. He said, our fees, our hourly rates may be a lot higher than in Las Vegas, but this was warranted because of the complexity of issues. The cost memo argued our legal research fees may have been high but this was because of the complex issues. And RDI in their writ petitions and the defendants, as well, said, this case

presents issues of first impression. They argue that these are novel issues.

So with respect to the reasonable basis of the claims, again, if you look at the Court's record -- and they're saying, well, the motions to dismiss based on demand futility are irrelevant because this is -- you know, have to look at the motions for summary judgment. But recall, Your Honor, the demand futility motions, the allegations to plead demand futility are under a heightened pleading requirement of Rule 23(1), and the Court, not just once, but three times agreed with the plaintiff that he had met that standard. Recall that the defendants never asked for an evidentiary hearing under Shoen as the Court told them to do. So to the extent they say, well --

THE COURT: I didn't tell them to. I offered it. Okay.

MS. LEVIN: Right. But, again, if it was that simple and so, you know, evident that there was no basis for his claim of independence, then why did they never ask for a hearing, Your Honor?

And the plaintiff was successful on key motions for summary judgment. The termination -- most importantly, the termination issue which formed the basis of the initial complaint, if it hadn't have been for the ratification that came only -- that they admit they did not do until the end of

2017, this issue would have gone to trial against three defendants. So -- and, of course, there's other motions. But --

And they're saying, like, well, you know, if he didn't prove his case at the end, it means you have no evidence to start with and it was baseless from the start. That's not right, Your Honor. The fact that the Court ultimately ruled against a plaintiff is not proof there was no reasonable basis. That would mean that every time a plaintiff loses a summary judgment the American rule means nothing.

And it's the same with the novel issues of law. The policy of awarding fees against a party who makes a novel argument that is ultimately rejected would discourage the derivative lawsuits and would replace the American rule with a British rule, which is the loser pays. So that would be contrary to the Nevada Supreme Court precedent and the jurisprudence under NRS 18.010.

And again, I prepared a handout, if the Court will accept it, for --

THE COURT: I'll take anything you'd like to give me.

MS. LEVIN: Okay.

THE COURT: Please give a copy to Mr. Ferrario and Mr. Searcy.

MS. LEVIN: And these are just, you know, examples

of unsupported claims made in the reply and the facts ignored there.

THE COURT: Thank you.

MS. LEVIN: Thank you, Your Honor.

THE COURT: Dulce, we'll mark this as Court's 1.

THE CLERK: Yes, Your Honor.

MS. LEVIN: But just to cite some them, because they're saying, well, you know, he knew that these directors were not independent, this is what Kane said to Gould.

MR. FERRARIO: Is this in the -- Akke, excuse me. Is this in the -- is this a summary of what's in the opposition, or what?

MS. LEVIN: No. This is in response to the reply.

Your Honor, this is in response --

THE COURT: It's a demonstrative exhibit, and I marked it as Court's Exhibit 1 for purposes of the record.

MR. FERRARIO: So it's a surreply?

THE COURT: No. It's a demonstrative exhibit.

MR. FERRARIO: No. That's why I'm asking you. I didn't recognize this as being in their opposition.

THE COURT: I have no idea, Mr. Ferrario.

MR. FERRARIO: Neither do I.

THE COURT: Okay. Keep going.

MS. LEVIN: Your Honor, just to explain, they make a lot of --

THE COURT: I don't need you to explain. Just keep going.

MS. LEVIN: Okay. So they're saying -- they're saying in their reply, "Plaintiff knew or should have known from the beginning he would not be able to prove his claims of lack of independence." This is -- and the Court's ruling on this motion is in the record, but this is what defendant Kane told his codefendant on May 19, 2015, a month before the lawsuit was filed, "In my opinion you are certainly not independent." That's what his codefendant said about Mr. Gould. And Gould recognized in that same email, which is in the record, that, "If we don't use a process here, we all face liability."

The Court agreed that the Cotter sisters and Adams, there were genuine issues of material fact as to their lack of independence. So those issues would have gone to trial. Adams, again, in an email he admitted that he chose -- he said, I guess we have to choose a side. Kane, Adams, and McEachern were prepared to keep Cotter on as CEO if he settled the trust and estate litigation.

Codding and Wrotniak, the defendants, they admitted they were family friends, they never sat on a board of a publicly traded corporation, and they were recommended by the Cotter sisters. Two months ago, by the way, in her deposition in the arbitration, which, by the way, RDI initiated against

Cotter, she admitted that if Cotter had just agreed to the take-it-or-leave-it settlement he would not have been terminated.

Ellen Cotter admitted recently that, yes, the 8-K form that Mr. Cotter alleged was erroneous and should have been corrected was inaccurate, and she said, yeah, we just didn't get around to correct it.

But, again, most importantly, Your Honor, the termination issue that formed basis of the initial complaint would have gone to trial.

Now, with respect to the harassment, the courts look at litigation conduct, did plaintiff needlessly prolong the proceedings, did he refute arguments already rejected. He didn't. The subjective motives are irrelevant. But even if they are relevant, everything they're saying about Mr. Cotter could be said about the sisters. They sued him first in California. They can be deemed to have taken revenge on him after he did not give them what they wanted.

THE COURT: Okay. Can we just skip ahead. I understand, because I've still got the probate case open and they come every week, it seems like.

MS. LEVIN: Okay. Well, Your Honor, there's no other litigation conduct they can point to. Mr. Cotter complied with the discovery deadlines. We sought expedited discovery. He did not renew rejected positions. Any delay

that they complain of was in part also because of the defendants. They -- recall, the Court sanctioned defendants, not Cotter, for not timely producing the documents. RDI admits that it delayed ratification, it never created a special litigation committee. Twice the parties agreed to extend discovery. And even assuming that Mr. Cotter didn't call his expert, he was not required to call each witness he disclosed for trial. He didn't drop his damages claim. So there is no basis, Your Honor, under the standards of 18.010 to grant attorneys' fees.

And, of course, we made a specific argument with respect to Mr. Gould and RDI as the nonprevailing party. And if the Court has questions about those arguments, I can summarize them.

THE COURT: I don't. I read the briefs. They were very well done.

MS. LEVIN: Thank you, Your Honor.

THE COURT: Mr. Ferrario, anything else?

MR. FERRARIO: Probably the most interesting thing I heard this morning, if I heard Ms. Levin correctly, is that she is saying they were seeking reinstatement. And as Your Honor will track the pleadings here on the costs and the attorneys' fees motions we filed, they actually said they abandoned that claim. And then we had to point out that, no, it actually did persist. And when they say they abandoned it

because then they were saying, well, this wasn't really about the company, and now she stands up today and says, yes, they were seeking it.

Judge, all you have to do is look at Mr. Cotter's testimony where he says McEachern and Gould are independent. That tells you all you need to know. What was novel about this case was just the frivolity of the issues that they put out and the fact that they ignored reality and the fact that a fellow who votes for these folks and says they're independent one day, because they make a decision he doesn't like the next, he then sues them. He sues Codding and Wrotniak for no reason. And at the end of this case he's not seeking damages for the company. He's says, we weren't abandoning the damage claim? How can she say that when their entire damage claim was dependent upon the experts that they abandoned? Mr. Cotter himself said that.

You can't keep standing up here in the face of every argument and then just change your position. Facts are facts. You make arguments, you kind of stick with them. You don't just keep shifting. This isn't a chameleon act. That's what they've done here. This was the height of frivolity, it was the pinnacle of harassment, and Mr. Cotter made good on his promise that if the board exercised -- the independent board members that were on that board exercised their prerogative and dismissed him, that he was going to sue them, he was going

to attempt to bankrupt them, and he was going to make their life miserable. He did just that for three years. He didn't succeed in bankrupting them, okay. He did sue them, and he made their life miserable, and he made the company's life miserable for nothing other than his own personal gain. That is not a derivative claim. Thank you.

THE COURT: Thank you.

The motion is denied. This case did not meet the standards of NRS 18.010 for the award of attorneys' fees. While I did grant summary judgment at the end based upon the ratification by the directors that I found to be independent, that does not make itself a vexatious claim.

You also want judgment in your favor, Mr. Ferrario?

MR. FERRARIO: Yes.

THE COURT: Anything else you'd like to add?

MR. FERRARIO: Just what's in the pleadings, Your Honor.

THE COURT: I've got it.

Ms. Levin, anything on the motion for judgment by Reading?

MS. LEVIN: Unless the Court is inclined to grant the relief, I would like --

THE COURT: I am not.

MS. LEVIN: Okay.

THE COURT: Reading's a nominal party, and therefore

motion for judgment in its favor is denied.

I also had a joinder by the sisters. Anything else you want to add?

MR. SEARCY: And the other directors, Your Honor, as well. We did join. And certainly I would echo the arguments that Mr. Ferrario made. I'm not sure if I have anything further to add to what he had to say.

THE COURT: Thank you. Your joinder is denied, as well, because this is not a case that rises to the standards of that statute.

Have a nice day.

MR. FERRARIO: Thank you.

THE COURT: 'bye.

THE PROCEEDINGS CONCLUDED AT 9:23 A.M.

* * * * *

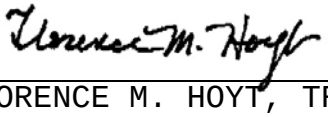
CERTIFICATION

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

10/23/18

DATE

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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, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Case No. A-15-719860-B Dept. No. XI **ORDER 1) GRANTING IN PART AND DENYING IN PART MOTION TO RETAX AND SETTLE COSTS, AND 2) ENTERING JUDGMENT FOR COSTS** **Date of Hearing: October 1, 2018** **Time of Hearing: 8:30 a.m.**

This Matter came before the Court on October 1, 2018 on Plaintiff's Motion to Retax Costs. Plaintiff James J. Cotter, Jr. appeared by and through his counsel, Akke Levin, Esq. Reading International, Inc. ("Reading") appeared by and through its counsel Mark E. Ferrario, Esq. The Individual Defendants appeared by and through their counsel, Marshall M. Searcy, Esq. and Kevin M. Johnson, Esq.

The Court, having considered the Memorandum of Costs and support therefore submitted by the Defendants, and the Motion and attendant briefing; and having heard the arguments of counsel, for good cause, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 24, 2018, Reading submitted a Verified Memorandum of Costs on behalf of itself and the Individual Defendants, stating its total recoverable costs as $2,917,257.00. Later, in its Opposition to Plaintiff's Motion to Retax, Reading adjusted the amount claimed to $2,883,044.37. This amount was broken down into 17 numbered cost categories. In support of its request for costs, both in the Verified Memorandum and in its Opposition to the Motion to Retax, Reading produced spread sheets listing disbursements, which amounts were verified by respective counsel; as well as invoices, receipts, and similar data showing the expenditures. Additionally, Reading produced declarations by counsel stating the reasons the various expenses were incurred.

2. In his Motion to Retax, Plaintiff challenged all costs incurred by Reading, on the grounds that it was a nominal defendant and not the prevailing party; and all costs incurred by William Gould, on the grounds that Gould failed to timely file his cost bill after he obtained a final judgment that was certified as final in January 2018. Plaintiff separately challenged most categories of costs incurred by Reading and the Individual Defendants on numerous grounds, including that the costs were unnecessary or unreasonable, unsupported, or not properly recoverable.

3. The Court finds that expenses incurred on behalf of Mr. Gould may not be recovered, as the deadline for Mr. Gould to claim such costs had long passed when he filed to recover his costs.

4. The Court finds that cost categories 1, 2, and 4-11 were actually, necessarily, and reasonably incurred for the defense of this case.

5. As to category 3, which stated costs incurred for expert expenses, the Court determines that an amount greater than $1,500 per expert is appropriate, because the circumstances surrounding each expert's testimony was of sufficient necessity to require the larger fee. Reviewing the factors set forth in *Frazier v. Drake*, 357 P.3d 365, 377 (Nev. Ct. App. 2015), as discussed in

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both the Memorandum of Costs and Opposition to the Motion to Retax, the Court finds that the expert testimony was very important to the Defendants' preparation of their defense, particularly in light of the Plaintiff's damages expert's opinion that damages were as high as $150 million, as well as Plaintiff's retention of a former Chief Judge of the Delaware Chancery Court as a corporate governance expert. While the matter here ultimately resolved without a trial, Defendants had to prepare their experts for a trial that had been scheduled to commence in January, and also were engaged in preparation in anticipation of the rescheduled trial. Had the matter gone to trial, and Plaintiff presented the testimony of his designated experts, the experts' testimony would most likely have been highly significant to the outcome of the case.

Defendants experts were each well known in their fields, with academic and professional accomplishments. The hourly fees charged were reasonabl comparable to similar experts, including those retained by Plaintiff, and in line with the fees ordinarily charged by experts in the respective fields.

Based on the above analysis, the Court determines that the fees incurred by Mr. Strombom and for Mr. Foster are compensable in their entirety, and the fees incurred for Mr. Klausner and Mr. Roll are compensable in reduced amounts. The compensable amounts are:

Mr. Klausner - $250,000

Mr. Roll - $250,000

Mr. Strombom - $152,000

Mr. Foster - $201,000

6. As to category 12, which stated costs incurred for e-discovery, the Court finds that the consulting fees that were included in the invoices would be more appropriate as a request for attorneys' fees or should not have been included as expert expenses, and justifies reducing the compensable amount to $450,000, which amount is reasonable considering the circumstances of this case.

7. The Motion to Retax is granted as to the expenses set forth in Categories 13-17.

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CONCLUSIONS OF LAW

1. In category 1, for filing fees, Reading and the director defendants other than Gould (hereafter collectively "Reading") are entitled to reimbursement of their costs in the amount of $9,160.24.

2. In Category 2, for Deposition Reporters' Fees, Reading is entitled to reimbursement of its costs in the amount of $111,208.15.

3. In Category 3, for expert witness fees, Reading is entitled to reimbursement of its costs in the amount of $853,000.00.

4. In Category 4, for process servers, Reading is entitled to reimbursement of its costs in the amount of $1,001.86.

5. In Category 5, for official reporters' fees, Reading is entitled to reimbursement of its costs in the amount of $3,874.89.

6. In Category 6, for photocopies, Reading is entitled to reimbursement of its costs in the amount of $12,931.73.

7. In Category 7, for telephone calls/conferences, Reading is entitled to reimbursement of its costs in the amount of $1,112.62.

8. In Category 8, for postage, Reading is entitled to reimbursement of its costs in the amount of $3,566.32.

9. In Category 9, for Deposition travel expenses, Reading is entitled to reimbursement of its costs in the amount of $52,053.77.

10. In Category 10, for computerized legal research, Reading is entitled to reimbursement of its costs in the amount of $53,936.41.

11. In Category 11, for couriers, Reading is entitled to reimbursement of its costs in the amount of $2,473.74.

12. In Category 12, for E-Discovery, Reading is entitled to reimbursement of its costs in the reduced amount of amount of $450,000.

13. Reading is not entitled to reimbursement of the costs claimed in Categories 13-17.

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ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' Motion to Retax and Settle Costs is Granted in Part and Denied in Part.

2. The Clerk shall enter final judgment in favor of Defendant Reading and against Plaintiff James J. Cotter, Jr. for costs in the amount of **$1,554,319.73**.

DATED this 5 day of November, 2018

Hon. Elizabeth Gonzales, District Court Judge

Respectfully submitted:

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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 READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES**)) **Date of Hearing: October 22, 2018**) **Time of Hearing: 9:00 a.m.**

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THIS MATTER CAME BEFORE THE COURT on the Motion for Attorneys' Fees filed by nominal defendant Reading International, Inc. ("RDI"). Defendants Ellen Cotter, Margaret Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Defendants") filed a Joinder to the Motion for Attorneys' Fees. Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. Marshall M. Searcy and Kevin M. Johnson appeared on behalf of Defendants. The Court, having considered the papers filed and arguments made in support of and in opposition to the Motion for Attorneys' Fees, and for good cause appearing, finds that this case does not meet the standards of NRS 18.010 to support an award of attorneys' fees. The fact that the Court ultimately granted summary judgment based upon ratification by the directors that the Court found to be independent does not make plaintiff's case a vexatious claim. Wherefore,

IT IS HEREBY ORDERED THAT the Motion for Attorneys' Fees and the Joinder are DENIED.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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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 READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR**)) **Date of Hearing: October 22, 2018**) **Time of Hearing: 9:00 a.m.**

THIS MATTER CAME BEFORE THE COURT on the Motion for Judgment in its Favor filed by Reading International, Inc. ("RDI"). Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. The Court, having considered the arguments made in the papers filed in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED that RDI's Motion for Judgment in its Favor is DENIED because RDI is a nominal party.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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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) DENYING READING) INTERNATIONAL, INC.'S) MOTION FOR ATTORNEYS' FEES))))))

PLEASE TAKE NOTICE that an Order Denying RDI's Motion for Attorneys' Fees was entered in this action on the 16th day of November, 2018

A copy of the Order is attached as Exhibit 1.

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CERTIFICATE OF SERVICE

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

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Attorneys for Nominal Defendant Reading International, Inc.

DATED this 20th day of November, 2018.

By: /s/ Patricia A. Quinn

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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 READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES** **Date of Hearing: October 22, 2018** **Time of Hearing: 9:00 a.m.**

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THIS MATTER CAME BEFORE THE COURT on the Motion for Attorneys' Fees filed by nominal defendant Reading International, Inc. ("RDI"). Defendants Ellen Cotter, Margaret Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Defendants") filed a Joinder to the Motion for Attorneys' Fees. Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. Marshall M. Searcy and Kevin M. Johnson appeared on behalf of Defendants. The Court, having considered the papers filed and arguments made in support of and in opposition to the Motion for Attorneys' Fees, and for good cause appearing, finds that this case does not meet the standards of NRS 18.010 to support an award of attorneys' fees. The fact that the Court ultimately granted summary judgment based upon ratification by the directors that the Court found to be independent does not make plaintiff's case a vexatious claim. Wherefore,

IT IS HEREBY ORDERED THAT the Motion for Attorneys' Fees and the Joinder are DENIED.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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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 DENYING READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR**))))))

PLEASE TAKE NOTICE that an Order Denying RDI's Motion for Judgment in its Favor was entered in this action on the 16th day of November, 2018

A copy of the Order is attached as Exhibit 1.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **NOTICE OF ENTRY OF ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR,** 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 20th day of November, 2018.

By: /s/ Patricia A. Quinn

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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 READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR** **Date of Hearing: October 22, 2018** **Time of Hearing: 9:00 a.m.**

THIS MATTER CAME BEFORE THE COURT on the Motion for Judgment in its Favor filed by Reading International, Inc. ("RDI"). Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. The Court, having considered the arguments made in the papers filed in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED that RDI's Motion for Judgment in its Favor is DENIED because RDI is a nominal party.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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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, AND MICHAEL WROTNIAK, READING INTERNATIONAL, INC., A NEVADA CORPORATION, Defendants, And READING INTERNATIONAL, INC, A NEVADA CORPORATION, Nominal Defendant	CASE NO.: A-15-719860-B DEPT. NO.: XI **NOTICE OF APPEAL**

Notice is hereby given that Nominal Defendant Reading International, Inc., by and through its counsel, Mark E. Ferrario, Esq., Kara B. Hendricks, Esq., and Tami D. Cowden, Esq. of the law

firm Greenberg Traurig, LLP, hereby appeals to the Supreme Court of the State of Nevada from the Eighth Judicial District Court, Department XI's Order Denying Reading International, Inc.'s Motion for Attorneys' Fees and Order Denying Reading's Motion for Judgment in its Favor, both of which were entered November 16, 2018 and noticed on November 20, 2018.

DATED this 14th day of December 2018.

GREENBERG TRAURIG, LLP

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Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused the foregoing ***Notice of Appeal*** to be e-served via the Court's Odyssey E-Filing system on the parties registered to this matter. 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 14th day of December 2018.

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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

Supreme Court Case No.: 75053

Dist. Court Case No.: A-15-719860-B

Related to Cases: 72261, 72356, 74759, 76981, 77648, 77333

VOLUME VIII

APPELLANT READING INTERNATIONAL, INC.'S APPENDIX VOLUME VIII of VIII FOR CASE 77733 (PAGES RDI-A10553 to RDI-A10801)

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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

SAO
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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.

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

STIPULATION AND ORDER RELATING TO PROCESS FOR FILING MOTION FOR ATTORNEY FEES

Plaintiff JAMES J. COTTER, Defendants MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and Nominal Defendant READING INTERNATIONAL, INC., hereby agree on the following process pertinent to any Motion for Fees filed in this matter. Specifically the parties agree that any Motion for Fees will include an affidavit or declaration supporting: (1) the total amount of fees billed over the life of the case for any firm requesting fees; (2) the firm's fees billed in each month since being retained; and (3) the name and number of timekeepers (attorneys and paralegals) who worked in each firm on this case and their hourly rates.

In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless and until the Court has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).

Dated this ____ day of August, 2018.

GREENBERG TRAURIG, LLP

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Dated this ____ day of August, 2018.

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Dated this 31st day of August, 2018.

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In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless and until the Court has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).

Dated this ____ day of August, 2018.

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In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless and until the Court has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).

Dated this 31 day of August, 2018.

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Dated this ____ day of August, 2018.

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ORDER

IT IS HEREBY ORDERED that any Motion for Fees will include an affidavit or declaration supporting: (1) the total amount of fees billed over the life of the case for any firm requesting fees; (2) the firm's fees billed in each month since being retained; and (3) the name and number of timekeepers (attorneys and paralegals) who worked in each firm on this case and their hourly rates. In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless ~~and until~~ the Court ~~has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).~~ further ordered by BG

DATED this 4 day of ~~August~~ September 2018.

DISTRICT COURT JUDGE

Submitted by:

GREENBERG TRAURIG, LLP

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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 on this day, I caused a true and correct copy of the forgoing **STIPULATION AND ORDER RELATING TO PROCESS FOR FILING MOTION FOR FEES** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 4th day of September 2018.

/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., individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

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

BUSINESS COURT

READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES

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COMES NOW, Reading International, Inc., ("Reading" or the "Company") by and through its counsel of record, the law office of Greenberg Traurig, LLP, and requests that this Court award it reasonably incurred attorneys' fees in this case pursuant to NRS 18.010. This Motion for Attorneys' Fees ("Motion") is made and based on the pleadings and papers on file with this Court, the following Memorandum of Points and Authorities, and any oral argument entertained by this Court at the time of hearing.

As set forth in more detail in the declarations of lead and local counsel for each of the defense teams in Exhibits A, B, C, D, E[1] should the Court find that Plaintiff should be liable for

[1] Included in the declarations is a list of all timekeepers from each respective firm, and a monthly total of fees incurred by the various defense teams.

attorneys' fees pursuant to NRS 18.010(2)(b), Reading will present evidence to support a claim of attorneys' fees totaling $15,907,354.61,[2] which amount includes fees incurred for the defense of Reading, and for the defense of the Individual Defendants, for whom Reading has a statutory duty of indemnity. Separately, the requested fees include $11,805,288.77 incurred for the Defense of all Individual Defendants, excluding Mssrs. Storey and Gould; $1,206,641.89 incurred for the Defense of Mr. Gould; and $2,895,423.95 for defense of the Company. Reading's D & O insurance paid $10,000,000 of the total, leaving Reading responsible for $5,907,354.61.

This Motion is directed to the issue of whether attorneys' fees should be awarded. In the event the Court determines that an award of fees is appropriate under NRS 18.010, Reading will then present the documentary support showing that the requested fees were reasonable for this Court's review.

Dated this 7th day of September 2018.

GREENBERG TRAURIG, LLP

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[2] This amount does not represent the total of all work performed, or even fees incurred in this action, as fees relating to defense against the T2 complaint have been excluded where possible to separate them, and any amounts written down or off by the respective firms have also been excluded.

NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the undersigned will bring this ***Motion for Attorneys' Fees*** on for hearing in Department XI, Eighth Judicial District Court, Clark County, Nevada on the ____ day of October 22, 2018, at 9:00 am. m., or as soon thereafter as counsel may be heard.

Dated this 7th day of September 2018.

GREENBERG TRAURIG, LLP

By */s/ Mark E. Ferrario*
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MEMORANDUM OF POINTS AND AUTHORITIES

Reading is entitled to an award of attorneys' fees incurred for the defense of itself, and for the defense the Individual Defendants, against the claims brought by Plaintiff James, J. Cotter, Jr., ("Plaintiff" or "Cotter Jr."). Plaintiff's claims were brought and maintained without *reasonable* grounds, and/or with the intent to harass all the Defendants, including Reading. While a derivative action is supposed to seek to remedy harm done to the company, Plaintiff's motivation was clearly quite different, as his principal goal was in obtaining his own reinstatement as CEO, coupled with a desire for revenge.

As the Court is well aware, Cotter, Jr. was not a typical derivative Plaintiff for many reasons:

- For many years prior to bringing the litigation Cotter, Jr. was an officer and director of Reading;
- Plaintiff had long term prior experience with Directors Adams, Gould, Kane, McEachern and Storey. Prior to bringing this litigation, he specifically voted in favor of

the appointment of Director Adams to the Board in 2014. Indeed, he likewise voted in favor of or otherwise supported the nomination of each of these directors without raising any issues regarding their independence;

- Unlike an outside derivative plaintiff, Cotter, Jr. was already familiar with these directors' history with Reading and with their various relationships with the Company and his father;
- As a long time director, and as the President for Reading for several years, he was (or should have been) intimately familiar with the Company's business and affairs, and with the internal governance of Reading; and
- He continued to be a Director of the Company throughout the litigation, and had full access to detailed information about the business and affairs of Reading.

Thus, this was not the case of an outside stockholder looking in, who needed discovery to determine if his suspicions were actually warranted. Plaintiff was, or should have been, fully informed of the facts before he even filed his complaint.

Despite intimate knowledge of the Company, throughout the litigation, Plaintiff engaged in actions that greatly increased the costs for all the Defendants, including making multiple demands for expedited discovery; excessive, often duplicative, demands for depositions and document production; and repeated amendments to his complaint, adding challenges to virtually every decision made by Reading's Board of Directors. Moreover, his complaint spawned a duplicative complaint filed by other stockholders. Significantly, even after those other stockholders determined that there was no merit to the claims, Plaintiff not only persevered, but increased his barrage, suggesting that these investors were colluding with the Defendants.[3] Furthermore, in addition to the proceedings in this Court, four writ proceedings emerged from this matter. As the result of Plaintiff's filing of this action, the Company was required to incur millions of dollars in attorneys' fees, an amount that was well over and above that covered by the Company's D & O Insurance.

It is beyond dispute that Plaintiff's claims against his sisters could have been maintained for

[3] While the Defendants were ultimately not able to view the correspondence between Plaintiff's counsel and counsel for T2, it is hard to believe that Plaintiff really in good faith believed that there was any collusion.

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three years, if at all, ***only if he also attacked the motivations of all other board members.*** Once this Court determined that Plaintiff's claims against Directors Codding, Gould, Kane, McEachern, and Wrotniak ("Independent Board Members") [4] were unsupported by any evidence, the futility of the remaining claims became apparent. Thus, absent such frivolous claims against the Independent Board Members, Cotter, Jr.'s case would from the start have been much narrower, as it would necessarily have been limited to challenging only two specific board member decisions, neither of which involved viable allegations of monetary harm to Reading. His concerns could have been addressed by the disinterested board members revisiting the challenged decisions (as ultimately occurred), or by using a special litigation committee to investigate the claims and determine whether the case was actually in Reading's best interests to pursue.

A derivative plaintiff who truly has the best interests of the corporation at heart would desire a speedy resolution of the claims, both to limit the disruption to management posed by the litigation, and to limit the costs to the company, who must not only defend itself, but also has an obligation to bear the cost of defense for the board members defendants. Indeed, a derivative plaintiff bears a fiduciary duty to prosecute the case fairly, and in a manner intended to benefit the corporation. Plaintiff did not fulfill that duty, but instead, persisted in maintaining claims that were groundless, and even prolonged the litigation, seeking constant delays in the trial for assorted reasons. Derivative cases sound in equity. Likewise, as a matter of equity, Reading and its stockholders should not be required to bear the burden of these fees. Plaintiff's actions warrant an award of fees pursuant to NRS 18.010(2)(b).

SUMMARY OF RELEVANT FACTS

This Court is familiar with the facts involved in this matter, and accordingly, only a summary of the facts, including those most significant to this Motion, is provided.

[4] The use of this shortened term to reference these five directors is solely to offer a shortened means of reference, and does not constitute a concession as to the validity that PLAINTIFF's claims that the actions of the remaining directors, Ellen Cotter, Margaret Cotter, or Guy Adams were motivated by self-interest. To the contrary, Reading is confident that had the trial proceeded, Cotter, Jr. would not have been able to present evidence to support a conclusion that Ellen and Margaret Cotter, and Guy Adams did not with a good faith believe that PLAINTIFF's termination was in the best interests of the corporation.

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Plaintiff was appointed CEO of Reading in August 2014, after the then-CEO, James J. Cotter, Sr., resigned for medical reasons. While Cotter, Sr. was in the hospital, Plaintiff, Jr. had an amendment to the James J. Cotter, Sr. Living Trust (the "Trust") drafted what became known as the "Hospital Amendment" to the Trust, and used undue influence to persuade his father to execute the same. Ex. F. Trust Decision. As relevant here, through that amendment Plaintiff attempted to alter the control over the majority of the Reading voting shares that Cotter, Sr. had directly and indirectly owned, by adding Plaintiff as a trustee, in addition to Margaret Cotter, and providing for rotating authority to vote the shares. Shortly after their father's death in the autumn of 2014, Ellen and Margaret Cotter filed suit to have the Hospital Amendment to the Trust declared invalid. Plaintiff fought that litigation vigorously. Ultimately their position in that lawsuit was vindicated, and Plaintiff's assertions that he was a trustee of the Cotter, Sr., Living Trust and the Voting Trust, were rejected. Repeatedly during the Trust Litigation, Plaintiff used the allegations in his complaint and the T2 Complaint to attack Ellen and Margaret Cotter.

Meanwhile Plaintiff continued in the position as President and CEO, and did an abysmal job. He devoted much of his time to discrediting his sisters, rather than developing any strategic business plans or otherwise furthering the business of Reading. While Plaintiff blamed his sisters for all his troubles, it is undisputed that tensions were high within Reading's management and on the Board. Things got so bad that one independent board member was charged with the duty of acting as an ombudsman.[5] Moreover, Plaintiff himself recognized his own inadequacies, surreptitiously hiring, at Company expense, a consultant to coach him. By June 2015, multiple board members had had enough, and Cotter Jr. was terminated.

The very same day he was terminated, Cotter, Jr. filed this action, which originally included both his own direct claims related to his termination, as well as a purported derivative claim. That filing was no surprise, Plaintiff's litigation counsel had attended one of the board meetings where Plaintiff's termination was discussed, and threatened to sue each board member if Plaintiff were to be terminated. Plaintiff also personally made such threats to individual board members.

[5] As the Court no doubt recalls, that director (Tim Storey) was sued by Plaintiff for his efforts, even though he voted not to terminate Plaintiff.

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In August 2015, Plaintiff brought a motion for a preliminary injunction, which sought, among other things, the voiding of the termination decision and Plaintiff's immediate reinstatement as President and CEO. *See* Pl.'s Mot. For Prelim. Inj. at 25-26. He also sought expedited discovery, pursuant to which the Defendants produced documents in September and October of 2015. But Plaintiff, after crying wolf and imposing the costs of expedited discovery on the Defendants and Reading, thereafter proposed waiting until February to hold the hearing on his motion, at which point this Court concluded that Plaintiff's conduct "belies the need for immediate relief" and vacated the request for preliminary injunction. *See* October 29, 2015 Minute Order.

Regular discovery then commenced, but it did not proceed on a steady path. Plaintiff made multiple amendments to his complaint, adding newly appointed Reading board members as defendants, and challenging virtually all board decisions that had occurred between complaint iterations. *See* FAC and SAC. This allowed Plaintiff to demand still more discovery from Reading. Indeed, even though on October 29, 2015, Plaintiff's counsel indicated that he "will be surprised if discovery that has been done so far is not a substantial part of the total production in this case," *see* October 29, 2015 Minute Order, Plaintiff made additional documents requests in November 2015, February, June and August 2016, and January 2018. Over the course of three years of litigation, Defendants and Reading produced nearly 27,000 documents to Plaintiff (approximately 128,000 pages). Additionally, excluding the witnesses specific to the T2 complaint, 23 witnesses were deposed, with several of the Individual Defendants being deposed over as many as five days. Significantly, more than 28% of Reading's own attorneys' fees were incurred in connection with Plaintiff's relentless discovery.

Yet, despite having obtained the wealth of information from the horrendously expensive discovery, Plaintiff was unable to submit evidence sufficient to support his claims that Directors Codding, Gould, Kane, McEachern or Wrotniak were somehow beholden to Ellen or Margaret Cotter, and therefore unable to exercise independent judgment—the foundational premise upon which his legal house of cards was built. This is a fact that, given his long-held position as a director and tenure as President, he knew or should have known from the beginning.

Remarkably, even after this Court granted judgment in favor of the Independent Board

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Members, and after those Directors ratified the two remaining challenged actions, Plaintiff persisted in pursuing this matter, causing Reading to incur yet more fees and costs.

Plaintiff made multiple requests for a continuance of the scheduled January 2018 trial date, which this Court refused. Whether such requests were prompted by the knowledge that his evidence was insufficient to support his claims, or because he knew his expert witnesses would not be appearing will not be known without a hearing. However, what is known is that despite admitted knowledge of a purported medical condition and necessary treatment (the nature of which he refused to disclose) for five or six weeks before the scheduled trial, he forced the Defendants to continue full blown trial preparation right up until the *literal* eve of the scheduled trial date. Moreover, it was only *after* he had obtained the desired continuance that it became known that Plaintiff would not be presenting any damages expert. Significantly, such information was not voluntarily proffered by Plaintiff; Defendants had to engage in motion practice to request the Court to order Plaintiff to disclose documents relating to the experts who would appear.

Moreover, even after his abandonment of his claims that the Company had been financially harmed by his termination and/or replacement by Ellen Cotter, Plaintiff still insisted on pursuing still more discovery, this time directed at the ratification process. In so doing, Plaintiff was thus able to drag out the proceedings an additional six months, greatly increasing Reading's e-discovery costs, as well as it attorneys' fees.

During the course of this litigation, the various defense teams were required to draft pleadings and briefs, including several rounds of dispositive motions; draft and prepare responses to discovery propounded by Plaintiff; facilitate electronic discovery collection; coordinate and facilitate expert reports; engage in electronic document review and production including production of numerous privilege logs; prepare for and attend depositions of more than 25 witnesses, many of whose depositions continued over multiple days; draft and prepare discovery and review documents produced by Plaintiff and other Defendants; handle discovery motions; and prepare for and attend more than 50 hearings; fully prepare for the aborted January 2018 trial, and engage in renewed trial preparation in anticipation of the scheduled July 2018 trial, including the preparation of defense expert witness at a time that Plaintiff knew, or should have known, that he would not be calling any

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expert witnesses on damages. This cost of this work, for the attorneys' fees alone, cost Reading more than $15,907,354.61. Considering that Plaintiff expressed indignation over a $50,000 payment to a director for additional service and $25,000 in Board approved compensation to Ellen Cotter —and that Plaintiff ultimately proved willing to jettison his claims for financial harm resulting from his termination and Ellen Cotter's appointment entirely while maintaining the claim for reinstatement---his "derivative" lawsuit has been exposed as the sham it was.

As a derivative plaintiff, Cotter, Jr. should have weighed the benefits to the Company (the beneficiary of his trust) against the costs. In addition to distraction and loss of executive time, Cotter Jr. cost the Company millions in defense attorneys' fees, and still kore in costs. On the potential upside of a suit: a $50,000 fee paid to a director; $25,000 in compensation paid to Ellen Cotter; the alleged but undiscernible loss resulting from the acceptance of Class A Stock to pay for the exercise of Class B Stock Options; and, since no expert witness was or would have been produced, the alleged, but unquantifiable purported to have resulted from Plaintiff's replacement as CEO. Simply put, Cotter Jr. caused Reading to spend millions to defend a claim that *at most* could have won $75,000 for the Company and its stockholders.[6]

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LEGAL ARGUMENT

A major weakness of representative litigation in general is that the agent controlling the litigation often does not have the same interests as the principal. In the case of

[6] The Company also had to defend vigorously, since Cotter Jr. alleged that Reading had made various false and misleading filings with the SEC. This was a matter that, if true, would have exposed the Company itself to potential fines and damages.

> *stockholder derivative actions, a meritless suit brought by a plaintiff without the corporation's best interest in mind can become a significant drain on the corporation's and its stockholders' resources. For better or worse, it is extremely difficult to win a derivative action because of the procedural hurdles in place. Since these barriers make success so unlikely, plaintiffs should be particularly conscientious of the merits of a case.*
>
> Amy M. Koopmann, A Necessary Gatekeeper:
> The Fiduciary Duties of the Lead Plaintiff
> In Stockholder Derivative Litigation,
> 34 J. Corp. L. 895, 896 (2009).

This Court should find that Reading is entitled to an award of attorneys' fees pursuant to NRS 18.010. The record shows that Plaintiff brought a claim that was unquestionably without merit as to at *least* five, if not all, of the named defendants. He did so to prevent expeditious resolution of this case, when he knew or should have known that such individuals were in fact independent. Moreover, he continued to maintain his claims over the course of three years, despite repeated, objective indications that his claims were fruitless. Despite his fiduciary obligations as a derivative plaintiff, Plaintiff heedlessly persisted in the litigation, with a desperate hope to win back his former position of CEO, regardless of the cost to the corporation, and thus, to the other stockholders. This Court should impose an award of attorneys' fees on Plaintiff, both to remediate the damage done to Reading, and to penalize Plaintiff for his conduct.

In Nevada, attorney's fees are recoverable to the prevailing party when authorized by rule, statute, or contract. NRS 18.010; *see also, Flamingo Realty Inc. v. Midwest Development, Inc.*, 110 Nev. 984, 991, 897 P.2d 69, 73 (1994). NRS 18.010(2)(b) provides:

> In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party. . . when the court finds that the claim . . . of the opposing party was *brought or maintained without reasonable ground or to harass the prevailing party.* The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS 18.010(2)(b)(emphasis added).

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As can be seen, the Nevada Legislature has indicated that the public policy of Nevada is that frivolous litigation should be thwarted and deterred by the imposition of attorneys' fees. The Nevada Supreme Court has emphasized that the "statutory language is clear" in that "it encourages the district court to award attorney fees" and "reflects the Legislature's intent to liberalize attorney fee awards." *Trustees of Plumbers & Pipefitters Union Local 525 Health & Welfare Tr. Plan v. Developers Sur. & Indem. Co.*, 120 Nev. 56, 62-63, 84 P.3d 59, 63 (2004). Thus, while the decision to award attorneys' fees is subject to a district court's sound discretion, *see Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687 (1995), Nevada courts should liberally award fees where the elements of NRS 18.020(2)(b) are met. The application of this rule in this situation is particularly appropriate given Plaintiff's fiduciary duties to Reading, his intimate knowledge of the relevant facts even before he brought the case, and his personal agenda in bringing and maintaining this case and further given the fact that if fees are not awarded, they will be borne by the Company and, ultimately, by its stockholders.

To support such an award, there must be evidence in the record that supports a conclusion that the claims were brought or maintained without reasonable grounds or to harass the other party." *See Chowdhry v. NLVH, Inc.,* 109 Nev. 478, 486, 851 P.2d 459, 464 (1993). Claims are groundless when their proponent is unable to proffer any credible evidence in support of them. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 721, 724 (1993). Whether a party has reasonable grounds to bring his claims "depends upon the actual circumstances of the case. . . ." *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. The Court is not limited to determining whether the plaintiff had "reasonable grounds" at the commencement of the action, but instead, should consider whether the plaintiff continued to have reasonable grounds to maintain the claims throughout the litigation, as the statutory language expressly provides that the maintenance of a of a groundless action warrants an award of fees. NRS 18.010(2)(b).[7]

[7] In *Duff v. Foster*, 110 Nev. 1306, 1309, 885 P.2d 589, 591 (1994), the court noted that "[i]f an action is not frivolous when it is initiated, then the fact that it later becomes frivolous will not support an award of fees." (internal quotation and citation omitted). However, at the time *Duff* was decided, the statute referred only to claims that were "brought without reasonable grounds."

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A Plaintiff cannot avoid an award of fees simply because his claims survived motions to dismiss. *Bergmann*, 109 Nev. at 675, 856 P.2d at 563 (1993) (concluding that "[t]he trial court could not base its refusal to award attorney's fees upon the 12(b)(5) ruling"); *see also Fountain v. Mojo*, 687 P.2d 496, 501 (Colo. Ct. App. 1984) (A claim is groundless if "the complaint contains allegations sufficient to survive a motion to dismiss for failure to state a claim, but which are not supported by any credible evidence at trial."). A motion to dismiss requires the Court to assume the pleaded facts are true, and thus, the denial of such a motion offers no evidence that the claims had merit.

Here, Reading is entitled to fees. The term "prevailing party," as used in NRS 18.020(2)(b), is "broadly construed so as to encompass plaintiffs, counterclaimants, ***and defendants***." *Valley Elec. Ass'n* vv. *Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (emphasis added). Judgment has been entered in favor of all the Defendants, and they are therefore the prevailing party on all claims

A. Plaintiff Brought and Maintained Groundless Claims.

Here, Plaintiff filed an action, including as defendants all of Reading's directors, other than himself, and claiming a litany of fiduciary breaches, all of which depended on a theory that his sisters were improperly taking control of Reading. The record and result in this case clearly demonstrate that Plaintiff lacked credible evidentiary support for his claims, and that his lawsuit was brought and maintained primarily to harass Defendants, to avenge his own injured sensibilities, and also so that he could have additional leverage in his larger battle with his sisters, over the control of their father's estate (and thus RDI). Notably, another court has already concluded that Cotter, Jr. "actively participated" to unduly influence James J. Cotter Sr. through "high pressure 'sales tactics,'" with the goal of "unduly benefitting" and "increasing his power" in RDI's operations at the expense of his dying father's true intentions. See Ex. F, Trust Decision, 1, 8-13).

Significantly, Plaintiff has never presented any evidence showing that Reading was being looted or that its assets were being dissipated to satisfy the whims of his sisters. He could not even present evidence of excessive salaries, because Reading's executives are compensated on the low

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In 2003, the legislature amended NRS 18.010(2)(b) to permit an award of fees where a claim has been "brought or maintained without reasonable grounds." 2003 Statutes of Nevada, p. 3478.

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end of the spectrum for comparable companies. As Plaintiff remained a Director of the Company throughout this litigation, he had access to the information regarding the -performance of the Company. In contrast to the evidence of his own demonstrated failures in the CEO position, Plaintiff could offer nothing to show that either of his sisters failed to perform the duties of their respective employment positions adequately. Instead, he was reduced to pointing to the fact that, after serving as interim CEO for more than six months, Ellen Cotter was appointed to the position, and called it proof of her claimed nefarious purpose. No discovery was needed to produce this evidence. It was timely reported in Reading's public filings. Evidence of Margaret Cotter's supposed intent to the harm Reading consisted of her being appointed to a VP position. Again, no discovery was needed, as her appointment was likewise reported in Reading's public filings

Yet, remarkably, this flimsy evidence was actually *more* substantial than any offered to show that any of the Independent Board Members lacked sufficient independence. His "evidence" against Codding and Kane consisted of them having friendships with Plaintiff's own parents—a fact known to him without discovery. Indeed, Plaintiff freely *admitted* that his suspicions regarding the interestedness of Directors Gould and McEachern were based solely on the fact that the directors had voted contrary to his wishes. Moreover, in his deposition in May 2016, Cotter, Jr. *admitted* that Gould and McEachern were independent, yet he never voluntarily dismissed them. **Ex. G,** Plaintiff's Depo, 79:12-80:8; 84:21-86:4. Similarly even though Reading prospered under the leadership of Ellen Cotter, reaching a stock price well above the average price during Cotter, Jr.'s tenure, he insisted that the company was being harmed. As a director, he knew or should have known that new directors Codding and Wrotniak were independent and acted independently in the board meetings in which he participated, yet he sued them anyway. Further, as a director, Cotter, Jr. knew that what he continuously mischaracterized as an "offer" from Patton Vision was, in fact, nothing more than a proposal to enter into negotiations, and not the basis for any legal claim against directors (as the Court ultimately ruled). Such actions are demonstrative of the groundless nature of the claims that RDI and the Director Defendants were forced to defend.

Plaintiff further pledged to the Court and Defendants that he would bring a barrage of witnesses to trial, many of whom were entirely irrelevant or outside of the jurisdiction of the Court.

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And, despite guaranteeing to the Court that all his experts were ready to testify at trial within a matter of days, Plaintiff's promise was exposed as a sham, as he had failed to pay those experts, had not prepared them for trial or done any work with them over the preceding year. Ultimately, Plaintiff withdrew his two damages experts due to lack of payment, and thus, could not have put on a damages case at trial. However, Plaintiff did not disclose his true intent, requiring Reading and the Individual Defendants to prepare for the case he had claimed he would bring.

In short, Plaintiff continually demonstrated an awareness that he could not prove his claims, yet he failed to call a halt to the litigation. In this regard, it is to be noted that the Company's D&O insurance was exhausted in November 2016. Accordingly, the Company bore the entire brunt of these unnecessary trial preparation costs.

B. Plaintiff's Purpose in Bringing the Actions was Harassment.

This litigation was never motivated by a rational concern for the welfare of Reading, but instead, was motivated by a desire to avenge Plaintiff's personal feelings of rejection and bitterness. As late as June of this year, Plaintiff was asserting as a claim the fact that he was allegedly "threatened" with termination: a claim which the court correctly noted that, if true, would be personal and not derivative in nature.[8] While Plaintiff styled himself as a champion of corporate governance, claiming he wanted to ensure that Reading was led by a Board that followed appropriate processes, throughout the litigation, the remedy he relentlessly sought was to achieve his own reinstatement as CEO, despite the fact that he clearly did not have the approval or confidence of any Reading Board member. Cotter, Jr.'s sham concern for corporate governance is further shown by simply looking at the improved corporate governance structure Reading's Board adopted subsequent to Plaintiff being removed as CEO. The Reading Board approved: the first ever Compensation Committee Charter which required that all of the members of the Compensation Committee be independent (as such term is defined under NASDAQ Stock Market guidelines)[9]; a

[8] Furthermore, it is a claim that was dismissed from the employment arbitration proceeding, as such "threats," even if true, do not violate California employment law, and therefore, do not support a claim of wrongful termination.

[9] Citadel, the company that is today RDI, was at one time a savings and loan holding company and, at that time, as a regulated financial institution holding company, likely had a Compensation Committee Charter.

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Supplemental Insider Trading Policy, significantly limiting the right of insiders to trade in RDI securities; a new state of the art Code of Business Ethics; a new state of the art Audit and Conflicts Committee Charter; a first ever stock ownership policy (obligating officers and directors to achieve and maintain certain minimum levels of stock ownership in RDI); and the first ever strategic business plan for the Company.

The very genesis of this action shows that Cotter Jr.'s did not care about corporate governance and that the lawsuit was intended to be harassing. Even prior to his termination, Plaintiff threatened litigation *on behalf of RDI itself* against RDI's Board—*i.e.*, those who controlled his continued employment—if they decided that it was in the best interests of the Company to fire him and threatened that he would use a suit to "ruin them financially." **Ex. H, McEachern Depo. at 78:14-79:2** He announced his intent to bankrupt the other directors, and indeed, as can be seen by the fees incurred here, had the independent directors not been entitled to indemnification, Plaintiff would likely have made good on his threat.

In these proceedings, Plaintiff used discovery as both a sword and shield with which to further harass Defendants and RDI. For instance, due to his preliminary injunction motion, Plaintiff gained access to early and expedited discovery. However, thereafter he slow-rolled the case, leading the Court to summarily deny the motion. Plaintiff also cried wolf every time dispositive motions or trial would near, asserting that he still needed even more discovery to prove his ever-elusive claims. It is clear Plaintiff did so in order to postpone an unfavorable judgment and keep alive his leverage in other cases. As a result, RDI's directors sat for multiple days of needlessly duplicative depositions, harming the Company's business operations and forcing Reading to waste resources that could have been used for capital improvements or other needs on the defense against his claims.

Significantly, Plaintiff knew that the litigation was itself harming Reading due to its cost. He knew that the D&O insurance had been exhausted. Nearly a year after he commenced the litigation, he frankly acknowledged an inability to cite any purported monetary damages that the Company had suffered after his termination, except for a purported drop in stock after his termination was announced (after which there was an admitted rebound), and *the costs incurred by*

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the company to defend against the derivative action. **Ex. G,** Cotter Depo, 67:10- 68:8; 69:21-24. Yet, despite acknowledging his lawsuit was damaging Reading, Plaintiff continued to prosecute claims that he knew could, at best, yield only a comparatively miniscule financial benefit, evidencing an intent to harass Reading.

Because Plaintiff brought his claims to harass the Defendants, this Court should award attorneys' fees pursuant to NRS 18.010

C. Cotter, Jr.'s Claims Against the Director Defendants Were Intended to Subvert Protections Against Frivolous Derivative Actions.

Derivative actions are an equitable tool that permits stockholders to pursue claims held by the corporation, but which the corporation's management refuses to pursue. *See e.g., Schoon v. Smith*, 953 A.2d 196, 200 (Del. 2008) ("To prevent "a failure of justice, courts of equity granted equitable standing to stockholders to sue on behalf of the corporation for managerial abuse in economic units which by their nature deprived some participants of an effective voice in their administration.) (citations and internal quotations omitted). However, a stockholder derivative action contravenes "a cardinal precept" of corporation law, *i.e*., that directors manage the business and affairs of the corporation. *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984). Because courts have long been aware of the potentially ruinous expense that derivative actions may have on a corporation, certain protections developed, with the intent of insuring that derivative actions have merit. *See* Koopmann, supra, 34 J. Corp. L at 907.

One significant protection is the requirement, codified in NRCP 23.1, that a stockholder make demand on the corporation's board of directors to bring the action, or, in the alternative, to show that demand would have been futile. *Id.* at 811-812 (stating that demand requirement insures that stockholders exhaust intra-corporate remedy, and provides a safeguard against strike suits). Another protection is the use of a special litigation committee to investigate the claims raised in the suit, and to determine whether the suit was in the best interests of the corporation. should be continued. *Zapata Corp. v. Maldonado*, 430 A.2d 779, 785 (Del. 1981) (noting that special litigation committee allows a corporation to "rid itself of detrimental litigation" and to avoid the situation where "a single stockholder in an extreme case might control the destiny of the entire

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corporation"). Both protections require that the directors involved be independent, which generally means that they have no personal interest in any challenged transaction, are not themselves at significant risk of personal liability should the claims proceed, and are not unduly influenced by directors who do have a personal interest. *See Police v. Brokaw (in Re Dish Network Derivative Litig.)*, 401 P.3d 1081, 1089 (Nev. 2017) (noting that in both the demand futility and the SLC context, the court should consider whether improper influences would prevent the directors from impartially considered the merits of the claims).

To avoid a demand requirement, a plaintiff must *plead* a lack of independence, but is not required to *prove* such lack until much later in the proceedings. *See In Re Amerco Derivative Lit., 127 Nev. Adv. Op. No. 17, 51629 (2011)*, 252 P.3d 681, (Nev. 2011) (requiring hearing to determine whether demand was futile before trial). Accordingly, the requirement of demand can easily be avoided by making allegations that all board members to whom demand might be made, without regard to whether the allegations will ultimately be proven. Making such allegations against all directors, including even those who join a board after the originally challenged decisions occurred, imposes an obstacle to the formation of a special litigation committee. As existing defendants, all such board members will automatically have a strike against them in any determination of independence, as they "would be materially affected either to [their] benefit or detriment, by a decision of the board." *Police v. Brokaw (in Re Dish Network Derivative Litig.)*, 401 P.3d 1081, 1090 (Nev. 2017) (noting bases for finding a lack of independence of members of special litigation committees).

Here, despite the significant discovery performed, Plaintiff was unable to support his allegations that the Dismissed Director Defendants were so beholden to Ellen or Margaret Cotter that they would disregard their fiduciary obligations. Having insufficient evidence after discovery had been completed, it necessarily follows that Plaintiff did not possess such evidence at the time he made his allegations. Yet, despite such lack, he made the allegations anyway, and thus avoided an earlier conclusion to this litigation. This Court should not countenance such deliberate tactics to avoid the protections against groundless derivative actions.

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D. As a Derivative Plaintiff, Plaintiff Had a Duty to Prosecute Claims Fairly and For the Furtherance of the Best Interests of the Corporation, Which Duty He Ignored.

Plaintiff's conduct in purposefully extending the litigation, and thereby increasing the fees and costs incurred by Reading, is particularly egregious considering his fiduciary obligations as a derivative plaintiff and the level of his inside knowledge about the Company and its corporate governance. From the date he filed a claim that purported to be derivative, i.e., filed on behalf of Reading, Plaintiff had a fiduciary to duty to both Reading and its stockholders, separate from and beyond the fiduciary duty he owed by virtue of his status as a director. *In re Fuqua Indus., Inc. S'holder Litig.,* 752 A.2d 126, 129 (Del.Ch.1999) ("[A] derivative plaintiff serves in a fiduciary capacity as representative of persons whose interests are in plaintiff's hands and the redress of whose injuries is dependent upon her diligence, wisdom and integrity."). "By agreeing to serve as the figurehead for the litigation, the lead plaintiff takes on the duty to be informed about the litigation, the prospects of success, and who is likely to pay the bill." Koopermann, *supra,* 34 J. Corp. L. at 914.

Plaintiff breached his fiduciary obligations as a derivative plaintiff in his prosecution of this case, because he continually failed to make an *objective* assessment of the merits of the case. He ignored his own admitted lack of evidence as to Gould and McEachern. So far from heeding the objective assessment of the claims and evidence produced in discovery made by the T2 Plaintiffs,[10] he actively fought against the settlement. He disregarded the inevitable consequences of this Court's December 2017 ruling. He failed to acknowledge the obviously validity of the ratification. Furthermore, it is now undeniable that the only remedy that Plaintiff was truly interested in was his

[10] Indeed, the truly independent stockholders realized the futility of the litigation as reported in Reading's July 13, 2016 press release, Messrs. Glaser and Tilson advised our Company in connection with the settlement of their Derivative Claims: "We are pleased with the conclusions reached by our investigations as Plaintiff Stockholders and now firmly believe that the Reading Board of Directors has and will continue to protect stockholder interests and will continue to work to maximize stockholder value over the long term. We appreciate the Company's willingness to engage in open dialogue and are excited about the Company's prospects. Our questions about the termination of James Cotter, Jr., and various transactions between Reading and members of the Cotter family - or entities they control - have been definitively addressed and put to rest. We are impressed by measures the Reading Board has made over the past year to further strengthen corporate governance. We fully support the Reading Board and management team and their strategy to create stockholder value."

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own reinstatement as CEO, showing that at all times, he placed his own personal interests above those of Reading and its stockholders.

Given his intimate association with the Company, as a director and former President, the conclusion naturally follows that he knew or should have known from the beginning that he would not be able to prove his case on lack of independence. Plaintiff's conduct in masquerading as a derivative plaintiff constituted both bringing and maintaining claim without reasonable grounds. Accordingly, this Court should hold Plaintiff liable for an award of fees under NRS 18.010(2)(b).

CONCLUSION

In this case, the question is – who bears the expense of this litigation-the Plaintiff or Reading and its stockholders? The Company believes that as a matter of both law and equity, this cost should be borne by the Plaintiff.

Despite his fiduciary obligations as a derivative plaintiff, Cotter, Jr. brought a harassing lawsuit without reasonable grounds. Given his pre-existing and ongoing access to information, it is reasonable to hold Cotter, Jr. to a stricter standard or reasonableness than might apply to a derivative plaintiff who is a true outsider, and has no conflicting interests. Plaintiff's insider and conflicted status, while not disqualifying him as derivative plaintiff, should surely be weighed in considering whether or not he acted reasonably and in good faith, and whether, on the balance of the equities, the cost of the litigation should be borne by the Reading's stockholders.

Plaintiff maintained this action for three years, despite his own admission that he had no basis to support allegations against two of the defendants, and despite numerous objective indications that his claims lacked merit. Cotter, Jr. acted in the guise of a representative plaintiff, even though he wished to achieve outcomes that benefited only himself, including his own reinstatement to the position of CEO, as well as leverage against his sisters in other litigation. Plaintiff's meritless lawsuit was prosecuted in a manner designed to result in the greatest cost and impose horrendous costs on Reading. Notably, the Company not only incurred substantial fees on its own behalf, but was and is required to indemnify each of the director defendants for the fees they

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incurred. Under the "actual circumstances" of this case, the factors for awarding attorneys' fees to Defendants and RDI as the prevailing parties under NRS 18.010(2)(b) are clearly satisfied, and such fees are plainly warranted.

Dated this 7th day of September 2018.

GREENBERG TRAURIG LLP

By */s/ Mark E. Ferrario*
MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
KARA B. HENDRICKS, ESQ.
Nevada Bar No.
TAMI D. COWDEN, ESQ.
Nevada Bar No. 8994
10845 Griffith Peak Drive, Suite 600
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Counsel for Defendant Reading International, Inc

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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 on this day, I caused a true and correct copy of the foregoing **READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES** to be e-filed and served via the Court's E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

Dated this 7th day of September 2018.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

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EXHIBIT A

DECL

MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
(NV Bar No. 7743)
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Counsel for Defendant Reading International, Inc.

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.

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

READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES

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DECLARATION OF MARK E. FERRARIO

I, MARK E. FERRARIO, declare as follows:

1. I am a duly licensed attorney, authorized to practice law in the State of Nevada. I am a shareholder with the law firm of Greenberg Traurig, LLP ("GT"), counsel of record for Reading International Inc. ("RDI") in the above-captioned action.
2. The facts contained herein are of my personal knowledge, and if called upon, I could and would competently testify to them.
3. This declaration is submitted in support of RDI's Motion for Attorneys' Fees.
4. As relevant to the Motion for Attorneys' Fees, the attorneys' fees incurred by Reading related to GT's representation of the Company in this action total $2,895,423.95.

5. Reading is not requesting that fees incurred for work specific to the defense against the claims filed by the T2 Plaintiffs, or with respect to the settlement of such claims, and therefore such fees, which totaled $229,386.55, have been excluded from the total in Paragraph 4.

6. GT's fees for each month it provided services related to this action are:

Month Time Billed	Total Fees Billed
June 2015	$3,911.00
July 2015	$5,001.00
August 2015	$155,266.20
September 2015	$171,894.15
October 2015	$157,475.70
November 2015	$147,489.75
December 2015	$110,214.45
January 2016	$67,493.25
February 2016	$148,113.00
March 2016	$152,221.05
April 2016	$150,315.84
May 2016	$153,975.15
June 2016	$86,003.10
July 2016	$53,579.70
August 2016	$87,457.50
September 2016	$100,198.80
October 2016	$118,873.46
November 2016	$66,895.89
December 2016	$48,364.20
January 2017	$49,546.26
February 2017	$32,232.60
March 2017	$10,961.55
April 2017	$12,357.45
May 2017	$3,449.35
June 2017	$18,837.00
July 2017	$30,035.25
August 2017	$24,747.75
September 2017	$24,564.15
October 2017	$28,842.75
November 2017	$50,987.70
December 2017	$153,502.65
January 2018	$90,888.75
February 2018	$54,831.15

March 2018	$55,297.80
April 2018	$57,034.35
May 2018	$116,941.50
June 2018	$64,474.20
July 2018	$31,148.55
Total Fees	**$2,895,423.95**

7. The name of the GT timekeepers for whose work a claim for fees is being made are set forth in Exhibit 1, hereto.

8. The amounts set forth above reflect services rendered by GT include time spent on drafting pleadings, including several rounds of dispositive motions; drafting and preparing responses to discovery propounded by Plaintiff; facilitating electronic discovery collection; electronic document review and production including production of numerous privilege logs; attending depositions of more than 23 witnesses, many on multiple dates (and excluding depositions specifically related to T2 claims); reviewing documents produced by Plaintiff and the Director Defendants; handling discovery motions; and preparing for and attending approximately 50 court hearings, among other related items.

9. GT's attorneys diligently pursued this matter to conclusion, ensuring all tasks were assigned and performed timely and effectively.

10. The amount of attorneys' fees incurred by RDI in this action are reasonable.

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

Executed on this 7th day of September, 2018.

/s/ Mark E. Ferrario
Mark E. Ferrario, Esq.

Exhibit 1

Time Keeper	Houly Rate/Hourly Rate Range
Askling, Jennifer	$220.50-$256.50
Bedker, Stephanie	$238.50-$292.50
Bonner, Michael J.	$675.00-$725.00
Brewer, John N.	$360.00-$585.00
Cappo, Anthony	$382.50-$472.50
Chipman, Hannah	$112.50
Coburn, Lance	$585.00
Cowden, Tami D.	$531.00-$590.00
Ferrario, Mark E.	$630.00-$690.00
Godfrey, Leslie S.	$400.50-$445.00
Hendricks, Kara B.	$360.00-$459.00
Hutcherson, Lee	$288.00-$310.10
Miltenberger, Chris	$436.50
Nicholas, Ann	$193.50
Noyce, Shayna	$225.00
Opie, Alayne	$306.00
Rosehill, Andrea	$148.50
Sankaran, Annapoorni R.	$405.00
Sheffield, Megan L.	$234.00-$256.50
Sifuentes , Lisa	$225.00-$234.00
Swanis, Eric W.	$369.55-$481.50
Titus, Jaycee	$119.00-$126.00
Welch-Kirmse, Whitney	$310.50

EXHIBIT B

DECL
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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

DECLARATION OF COUNSEL MARSHALL M. SEARCY III

DECLARATION OF COUNSEL 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 an attorney with Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), attorneys for Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak. 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.

2. As permitted by the attorney ethical codes of both California and Nevada, while the above named Defendants are my clients, as indicated under Nevada's corporate code, Reading International, Inc. is the party responsible for paying all fees and costs incurred on behalf of these Defendants, each of whom prevailed in this litigation.

3. This Declaration is submitted in support of Nominal Defendant RDI's Motion for Attorneys' Fees and Costs. The information contained in this declaration and the invoices from Quinn Emanuel are not intended to waive the attorney-client or work product privileges, nor should they be construed to waive those privileges.

4. Quinn Emanuel has frequently been named the "Business Litigation Law Firm of the Year" by numerous publications, including Benchmark Litigation (2018), Legal 500 USA (2015), ACQ Global Awards (2015), Worldwide Financial Advisor Awards Magazine Continental Award (2013-2015), Vault (2014), Dealmakers (2013-2015), and Lawyer's World (2013). Quinn Emanuel's business litigation practice is consistently ranked in virtually every national publication, and in 2012, 2014 and 2016 Legal Business named Quinn Emanuel "US Law Firm of the Year". The firm has also been voted as one of the four "most feared" firms by General Counsels at Fortune 500 companies. Quinn Emanuel's partners have tried over 2,645 trials and arbitrations and have won 88% of them.

5. As noted above, I am a partner at Quinn Emanuel. I am a graduate of Harvard Law School and have been practicing for over 20 years. I have been recognized as one of Southern

California's "Super Lawyers." I specialize in securities litigation and class action litigation. I have worked on this case since its inception in June 2015. In June 2015, my hourly rate was $845.75, which increased to $964.75 by July 2018.

6. Chris Tayback is a partner at Quinn Emanuel. Mr. Tayback is a graduate of Harvard Law School and a Fellow of the American College of Trial Lawyers. He has been rated "AV Preeminent" by Martindale Hubbell, its highest rating. He is also a member of the Multi-Million Dollar Advocates Forum, the Association of Business Trial Lawyers, and for over 10 years has been recognized as one of Southern California's "Super Lawyers." Mr. Tayback has tried or arbitrated over 100 cases, civil and criminal, in multiple states. Mr. Tayback has served as lead counsel in this case from its inception till present. Mr. Tayback's hourly rate in June 2015 was $913.75, which increased to $1,147.50 by July 2018.

7. David Armillei is Of Counsel at Quinn Emanuel. Mr. Armillei is a graduate of Stanford Law School and has been practicing for over 15 years. He specializes in complex securities litigation and has obtained dozens of favorable results for his clients, including settlements worth billions of dollars. Mr. Armillei also served a two-year term as a law clerk for the Honorable Colleen Kollar-Kotelly, United States District Judge for the District of Columbia. Mr. Armillei's hourly rate in April 2016 was $774.00, which increased to $805.50 by July 2018.

8. Noah Helpern is Of Counsel at Quinn Emanuel. Mr. Helpern is a graduate of Harvard Law School and has been practicing for over 11 years. His practice focuses on commercial litigation, with an emphasis on class actions and shareholder derivative lawsuits. From 2013 to 2017, Mr. Helpern was named a "Rising Star" by Southern California Super Lawyers. Mr. Helpern's hourly rate in June 2015 was $661.50, which increased to $796.50 by July 2018.

9. Lauren Lindsay (formerly Lauren Laiolo) is an associate at Quinn Emanuel. Mrs. Lindsay is a graduate of UCLA School of Law and has been practicing for over 7 years. Prior to joining Quinn Emanuel, Mrs. Lindsay served as a law clerk for the Honorable Fernando M. Olguin, District Judge for the United States District Court for the Central District of California.

Mrs. Lindsay was added to this case in August 2015. Mrs. Lindsay's hourly rate in August 2015 was $549.00, which increased to $733.50 by July 2018.

10. Skyler Cho was an associate at Quinn Emanuel. Mr. Cho is a graduate of Harvard Law School and has been practicing for over five years. Mr. Cho worked on this case from July 2015 until April 2017. Mr. Cho's hourly rate in July 2015 was $513.00, which increased to $675 by April 2017.

11. Ali Moghaddas is an associate at Quinn Emanuel. Mr. Moghaddas is a graduate of Loyola Law School and has been practicing for over three years. Prior to joining Quinn Emanuel, Mr. Moghaddas served as a law clerk for the Honorable Manuel L. Real, District Judge for the United States District Court for the Central District of California. Mr. Moghaddas was added to this case in September 2016. Mr. Moghaddas's hourly rate in September 2016 was $441.00, which increased to $585.00 by July 2018.

12. Rakan Nazer was an attorney at Quinn Emanuel. Mr. Nazer is a graduate of Southern California Institute of Law and has been practicing for over nine years. Mr. Nazer worked on this case from September 2015 until April 2016. Although hourly rates typically increase annually, Mr. Nazer's hourly rate remained fixed at $365.00 throughout the course of this case.

13. Lili Behm was an associate at Quinn Emanuel. Ms. Behm is a graduate of Northwestern Pritzker School of Law and has been practicing for over three years. Ms. Behm served as a law clerk in the Wisconsin Court of Appeals. Ms. Behm worked on this case from September 2015 until February 2016. Ms. Behm's hourly rate in September 2015 was $365.00, which increased to $441.00 by February 2016.

14. Homa Akram is an attorney at Quinn Emanuel. Ms. Akram is a graduate of Loyola Law School and has been practicing for over 13 years. Ms. Behm worked on this case from February 2016 until April 2016. Ms. Akram's hourly rate remained fixed at $738.00 throughout the course of this case.

15. Mario Gutierrez is a paralegal at Quinn Emanuel with over 20 years of paralegal experience. He has assisted in over 50 cases, 25 of which have gone to trial. Mr. Gutierrez was

added to this case in August 2015. Mr. Gutierrez's hourly rate in August 2015 was $300.00, which increased to $310.00 by July 2018.

16. Chris Grant is a paralegal at Quinn Emanuel with over 20 years of paralegal experience. He has assisted in over 100 cases, 70 of which have gone to trial. Mr. Grant was added to this case in December 2017. Mr. Grant's hourly rate remained fixed at $305.00 throughout the course of this case.

17. I am familiar with the billing rates for attorneys and paralegals in the Las Vegas legal market. While Quinn Emanuel's hourly rates may be higher than those in the Las Vegas legal market, as described more thoroughly in the Motion filed herewith, these rates are fair and reasonable in light of the complexity and sophistication of the legal matters involved. Moreover, courts across the country have found Quinn Emanuel's fees to be fair and reasonable. See Transweb, LLC v. 3M Innovative Props. Co., No. 10-cv-04413-FSH (D.N.J. Sept. 24, 2013) (ECF No. 567) (Special Master's ruling finding that Quinn Emanuel was a "premier litigation firm" and that total fees of $26,146,493.45 were reasonable); DIRECTV, Inc. v. NWS Corp., Am. Arbitration Assoc., Case No. 72 494 Y 00219 09 NOLG (June 15, 2010) (finding Quinn Emanuel's rates and hours reasonable); Lockton v. O'Rourke, Case No. BC361629 (Cal. Super. Ct. Feb. 23, 2011) (attaching Feb. 14 court order finding Quinn Emanuel's rates and total hours reasonable); Monrovia Nursery Co. v. Rosedale, Case No. BC351140 (Cal. Super. Ct. Jan. 12, 2009) (finding Quinn Emanuel's rates and total fees reasonable); Riverside Cnty. Dept. of Mental Health v. A.S., Case No. 08-cv-00503-ABC (C.D. Cal. Feb. 22, 2010) (ECF No. 123) (awarding full amount of attorneys' fees sought for work performed by Quinn Emanuel); Academy of Television Arts & Sciences v. National Academy of Television Arts & Sciences, Am. Arbitration Assoc., Case No. 72 140 00247 07 JENF at ¶ 2.2 (May 19, 2008) (finding Quinn Emanuel's billable rates and hourly totals reasonable); In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047, Dkt. 3695 (Bankr. D. Del. Apr. 14, 2008) (finding attorneys' fees requested by Quinn Emanuel were reasonable); Packaging Advantage Prop. Assocs., LLC v. Packaging Advantage Corp., Case No. VC045957 (Cal. Super. Ct. Nov. 6, 2007) (granting full amount of Quinn Emanuel's fee request); Bistro Executive, Inc. v. Rewards Network, Inc., Case No. 04-cv-4640-

CBM (C.D. Cal. Nov. 19, 2007) (ECF No. 357) (finding Quinn Emanuel's attorney rates and hours were reasonable).

18. All the work performed in this case was necessary to obtain the results reflected in this Court's certified Judgment dated January 4, 2018 (granting summary judgment as to Individual Defendants Edward Kane, Douglas McEachern, Judy Codding, Michael Wrotniak and William Gould) and the Findings of Fact and Conclusions of Law dated August 8, 2018 (granting summary judgment as to the remaining Individual Defendants Ellen Cotter, Margaret Cotter and Guy Adams) (entered on August 16, 2018). Individual Defendants' counsel performed extensive research, conducted dozens of depositions and prepared related motions including numerous motions to dismiss, motions to compel and motions for summary judgment. In addition, counsel prepared for and attended countless hearings on procedural and dispositive motions and performed extensive work in preparation for trial, which never came to pass. All the work done was consistent with civil litigation practice in Las Vegas, Nevada in similar cases. This case presented unique legal issues along with a complex and protracted procedural history. Indeed, the Court and counsel often remark of the lack of any comparable case to this in the country. Additionally, this case was extremely contentious.

19. In connection with the foregoing work, each timekeeper's work was billed on an hourly basis and reflected in Quinn Emanuel's monthly invoices, which were required to be made at or about the time of the activity reflected therein.

20. Quinn Emanuel's monthly bill totals are as follows: $121,145.03 billed on July 15, 2015; $159,061.55 billed on August 19, 2015; $309,147.81 billed on September 16, 2015; $394,966.02 billed on October 12, 2015; $482,009.03 billed on November 5, 2015; $329,085.59 billed on December 3, 2015; $312,637.09 billed on January 15, 2016; $195,635.50 billed on February 19, 2016; $384,648.85 billed on March 15, 2016; $478,375.06 billed on April 14, 2016; $674,728.93 billed on May 18, 2016; $592,783.11 billed on June 8, 2016; $516,177.10 billed on July 12, 2016; $490,168.18 billed on August 4, 2016; $655,640.10 billed on September 15, 2016; $728,171.60 billed on October 17, 2016; $726,059.70 billed on November 10, 2016; $312,896.17 billed on December 12, 2016; $281,673.86 billed on January 11, 2017; $249,377.61 billed on

February 15, 2017; $141,917.04 billed on March 10, 2017; $51,699.47 billed on April 12, 2017; $37,116.27 billed on May 8, 2017; $88,882.64 billed on June 13, 2017; $42,600.09 billed on July 13, 2017; $63,817.78 billed on August 4, 2017; $38,447.09 billed on September 7, 2017; $35,990.90 billed on October 5, 2017; $99,006.68 billed on November 10, 2017; $300,431.84 billed on December 18, 2017; $938,134.47 billed on January 10, 2018; $500,000.92 billed on February 8, 2018; $132,504.77 billed on March 5, 2018; $118,075.19 billed on April 12, 2018; $214,672.00 billed on May 14, 2018; $314,272.31 billed on June 14, 2018; and $385,679.75 billed on July 16, 2018.

21. In total, Quinn Emanuel billed Individual Defendants $11,734,276.77 for services performed relating to Individual Defendants' defense of Plaintiff James Cotter, Jr.'s claims.

19. This Declaration is made in good faith and not for the purpose of delay.

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

Executed on September 7, 2018, in Los Angeles, California.

/s/ Marshall M. Searcy III
Marshall M. Searcy III

EXHIBIT C

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

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.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

JAMES J. COTTER, JR.,

Plaintiff,

v.

READING INTERNATIONAL, INC., a Nevada corporation; DOES 1-100, and ROE ENTITIES, 1-100, inclusive,

Defendants.

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

Coordinated with:

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

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

DECLARATION OF H. STAN JOHNSON IN SUPPORT OF MOTION FOR FEES

DECLARATION OF H. STAN JOHNSON

I, H. STAN JOHNSON, declare as follows:

1. I am a duly licensed attorney, authorized to practice law in the State of Nevada. I am a partner with the law firm of Cohen|Johnson|Parker|Edwards ("CJPE"), local counsel for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak ("Defendants") in the above-captioned action.
2. The facts contained herein are of my personal knowledge, and if called upon, I could and would competently testify to them.
3. This declaration is submitted in support of RDI's Motion for Attorneys' Fees.
4. The CJPE attorneys' fees incurred by Defendants' representation in this action total $71,012.00.
5. CJPE's fees for each month it provided services related to this action are:

Invoice Month	Amount Billed
July 2015	$493.50
August 2015	$1,519.00
September 2015	$2,434.50
October 2015	$4,388.50
November 2015	$1,666.50
December 2015	$875.50
January 2016	$1,125.50
February 2016	$2,421.00
March 2016	$4,556.00
April 2016	$2,886.00
May 2016	$2,523.50
June 2016	$1,170.00
July 2016	$525.00
August 2016	$4,017.50
September 2016	$1,890.00
October 2016	$6,462.50
November 2016	$310.00
December 2016	$1,160.00
January 2017	$1,172.50
February 2017	$1,042.50
March 2017	$675.00
April 2017	$70.00
May 2017	$0.00
June 2017	$692.50
July 2017	$100.00
August 2017	$62.50
September 2017	$750.00
October 2017	$870.00
November 2017	$2,232.50

December 2017	$4,815.00
January 2018	$7,355.00
February 2018	$1,117.5
March 2018	$1,062.50
April 2018	$1,137.50
May 2018	$1,902.50
June 2018	$4,090.00
July 2018	$332.50
August 2018	$1,025.00
September 2018	$82.50
Total	$71,012.00

6. The name and role of the CJPE timekeepers who worked on this action and their hourly rates are as follows:

Name	Title	Hourly Rate
H. Stan Johnson, Esq.	Attorney	$350.00
C.J. Barnabi	Law Clark	$125.00
Jennifer Russell	Legal Assistant	$95.00
Michael V. Hughes. Esq.	Attorney	$220.00
Sarah Gondek	Paralegal	$125.00
James L. Edwards., Esq.	Attorney	$350.00
C.J. Barnabi, Esq.	Attorney	$250.00
Kevin M. Johnson, Esq.	Attorney	$250.00

7. CJPE's attorneys and staff diligently pursued this matter to conclusion, ensuring all tasks were assigned and performed timely and effectively.

8. The amount of CJPE attorneys' fees incurred by Defendants in this action are reasonable for the reasons set forth in RDI's Motion for Attorneys' Fees.

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

Executed on this 6th day of September, 2018.

H. Stan Johnson, Esq.

EXHIBIT D

DECL

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Attorneys for Defendant William Gould

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and on behalf of READING INTERNATIONAL, INC., Plaintiff, vs. MARGARET COTTER, et al., Defendant. and READING INTERNATIONAL, INC., Nominal Defendant.	Case No. A-15-719860-B Dept. XI Case No. P-14-082942-E Dept. XI Related and Coordinated Cases **BUSINESS COURT** **DECLARATION OF SHOSHANA E. BANNETT IN SUPPORT OF MOTION FOR FEES** Assigned to Hon. Elizabeth Gonzalez

DECLARATION OF SHOSHANA E. BANNETT

I, Shoshana E. Bannett, declare as follows:

1. I am an active member of the Bar of the State of California and an Associate with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, A Professional Corporation ("BMBW"), which served as attorneys of record for Defendant William Gould ("Gould") in this action. I make this declaration in support of RDI's Motion for Attorneys' Fees. Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. The attorneys' fees incurred by Gould related to BMBW's representation in this action total 1,149,357.50.

3. BMBW's fees for each month it provided services related to this action are:

Invoice Month	Amount Billed
July 2015	11,211.00
August 2015	13,870.50
September 2015	33,598.50
October 2015	40,992.00
November 2015	30,422.00
December 2015	22,511.50
January 2016	29,924.00
February 2016	53,361.50
March 2016	24,000.00
April 2016	58,748.50
May 2016	86,702.00
June 2016	74,683.50
July 2016	17,348.00
August 2016	71,924.00
September 2016	137,151.50
October 2016	136,321.50
November 2016	38,271.50
December 2016	10,080.50
January 2017	760.00
February 2017	2,527.50
March 2017	7,107.50
April 2017	3,332.50
May 2017	2,960.50
June 2017	8,950.00
July 2017	13,158.50
August 2017	0.00
September 2017	7,065.00
October 2017	10,567.50
November 2017	32,702.50

Invoice Month	Amount Billed
December 2017	81,683.00
January 2018	22,120.00
February 2018	3,330.00
March 2018	5,846.50
April 2018	16,037.00
May 2018	30,159.50
June 2018	9,682.00
July 2018	246.00
Total	**1,149,357.50**

4. The name of the BMBW timekeepers who worked on this action and their hourly effective rates are set forth in **Exhibit 1**, hereto. The code PT indicates a partner. The code AS indicates an associate. The code PL indicates a paralegal or litigation support staff.

5. The amounts set forth above reflect for services rendered by BMBW include time spent on drafting pleadings, including several rounds of dispositive motions; drafting and preparing responses to discovery propounded by Plaintiff; facilitating electronic discovery collection; electronic document review and production; attending depositions of numerous witnesses many on multiple dates; reviewing documents produced by Plaintiff and the other Director Defendants and RDI; handling discovery motions; and preparing for and attending hearings, and preparing for trial, among other related items.

6. BMBW's attorneys diligently pursued this matter to conclusion, ensuring all tasks were assigned and performed timely and effectively.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I executed this declaration on September 6, 2018, at Los Angeles, California.

/s/ Shoshana E. Bannett
Shoshana E. Bannett

Exhibit 1

Sorts: Actual employee code (Subtotal only)

Ranges:
Include "Client code" from 4284 to 4284
Include "Case suffix" from 2 to 2
Include "Transaction date" from 01/01/1981 to 07/31/2018

(1) Cl code	(2) Ca sfx	(3) Act Emp	(4) Actual employee name	(5) Act Emp Cls	(6) Actual employee class desc	(7) Billable Hours	(8) Billable Dollars	(9) Effective Bill Rate
4284	2	ADB	Bowman, Ashley D.	AS	Associate	8.60	3,354.00	390.00
4284	2	ASB	Bender, Amy S.	PL	Paralegal	157.10	42,417.00	270.00
4284	2	AXM	McTernan, Andrew	AS	Associate	74.10	28,528.50	385.00
4284	2	BDM	Moore, Bonita D.	PT	Partner	131.80	73,149.00	555.00
4284	2	DEF	Findley, DeHavilland E.	PL	Paralegal	67.50	16,893.00	250.27
4284	2	EER	Rhow, Ekwan E.	PT	Partner	580.40	393,010.00	677.14
4284	2	EK	Kim, Emerson H.	AS	Associate	0.50	147.50	295.00
4284	2	HDV	Vera, Hernan D.	PT	Partner	130.30	69,710.50	535.00
4284	2	JKS	Liu, Joanne Seto	PL	Paralegal	124.20	33,649.50	270.93
4284	2	LDB	Biksa, Liene D.	PL	Paralegal	9.10	2,457.00	270.00
4284	2	PHJ	Jun, Patricia H.	AS	Associate	2.30	1,000.50	435.00
4284	2	SEB	Bannett, Shoshana E.	AS	Associate	1,341.80	479,116.00	357.07
4284	2	SVA	Allen, Stacey V.	PL	Paralegal	21.70	5,925.00	273.04
						2,649.40	1,149,357.50	

13 records printed.

EXHIBIT E

DECL
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Attorneys for Defendant William Gould

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.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Coordinated with:

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

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

DECLARATION OF DONALD A. LATTIN IN SUPPORT OF MOTION FOR FEES

JAMES J. COTTER, JR.,

Plaintiff,

v.

READING INTERNATIONAL, INC., a Nevada corporation; DOES 1-100, and ROE ENTITIES, 1-100, inclusive,

Defendants.

DECLARATION OF DONALD A. LATTIN

I, DONALD A. LATTIN, declare as follows:

1. I am a duly licensed attorney, authorized to practice law in the State of Nevada. I am a shareholder with the law firm of Maupin, Cox & LeGoy ("MCL"), co-counsel of record for William Gould ("Gould") in the above-captioned action with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C. ("BIRD, MARELLA").
2. The facts contained herein are of my personal knowledge, and if called upon, I could and would competently testify to them.
3. This declaration is submitted in support of Defendants' Motion for Attorneys' Fees.
4. The attorneys' fees and costs incurred by Mr. Gould related to MCL's representation in this action total $57,284.39.
5. MCL's fees for each month it provided services related to this action are:

Invoice Month	Amount Billed
July 2015	$1082.50
August 2015	$3123.19
September 2015	$8907.25
October and November 2015	$1960.79
December 2015 and January 2016	$720.00
February 2016	$880.00
March 2016	$2,250.50
April 2016	$5,534.82
May 2016	$923.50
June 2016	$841.00
July 2016	$547.37
August 2016	$1,343.50
September 2016	$2,211.50
October 2016	$5,420.96
November and December 2016	$1,275.93
January 2017	$0
February 2017	$0
March 2017	$0

April 2017	$683.50
May 2017	$0
June 2017	$320.00
July 2017	$0
August 2017	$0
September 2017	$0
October 2017	$0
November 2017	$1,094
December 2017	$643.50
January 2018	$1,577.50
February 2018	$588.22
March 2018	$1,891.25
April and May 2018	$8,320.43
June 2018	$4,374.65
July 2018	$540.00
August 2018	$225.00
Total	**$57,284.39**

6. The name of the MCL timekeepers who worked on this action and their hourly rates are as follows:

   Donald A. Lattin: 400.00

   Carolyn K. Renner: 300.00

   Christopher Stanko: 180.00

7. The amounts set forth above reflect services rendered by MCL time spent as co-counsel with the law firm of BIRD, MARELLA in order to defend all claims made by Plaintiffs against our clients in this matter. This included drafting legal memoranda, appearing in court and providing input on Nevada law to our co-counsel, BIRD, MARELLA.

8. The amount of attorneys' fees and costs incurred by Gould in this action are reasonable for the reasons set forth in the Motion.

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

Executed on this 6th day of September, 2018.

Donald A. Lattin, Esq.

EXHIBIT F

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In Re: JAMES J. COTTER LIVING TRUST ELLEN MARIE COTTER MARGARET COTTER Petitioners, vs. JAMES J. COTTER Jr., Respondent.	Case No.: BP159755 STATEMENT OF DECISION

The court makes the following findings in this case:

The "hospital amendment" is invalid due to the lack of capacity of James Cotter, Sr. and undue influence when he signed this document.

The significant assets of Sr.'s estate begins with the company that the parties state Sr. built, RDI, and specifically the company stock. RDI was his family business and he owned the majority at the end of his life. RDI has a dual-class stock structure with non-voting (Class A) and voting (Class B) stock. At his death, Sr. owned roughly 1.2 million voting shares (70% of the voting stock), which are not actively traded, and about 2.2 million non-voting shares.

His assets also included citrus farms in Tulare and Fresno counties, consisting of over 2000 acres of orchards and a packaging house, Cecelia Packing, that processed citrus both from the its own orchards and other farms. The court does not sense that Sr.'s children have a sentimental attachment to these Central Valley orange groves as with a traditional family farm or ranch.

Sr. owned numerous private investments and real estate, often as partnership shares of real-estate ventures. These investments include, among others, the properties known as Sutton Hill,

Shadow View, Sorento, and Panorama, and a Laguna Beach condominium. Sr. owned 100% of the 120 Central Park South Cooperative Apartment that his daughter Margaret has lived in for over 20 years. Sr.'s Supplemental Executive Retirement Plan ("SERP") from RDI is worth approximately $7. 5 million.

Timeline of Events

The court incorporates most of the petitioners' "timeline of events" preceding the death of Sr.:

June 2013 Sr. executes 2013 Trust, drafted by Charles Larson

Fall of 2013 Guy Adams and Scot Kirkpatrick become involved in Sr.'s estate planning

February 24, 2014 Scot Kirkpatrick has a meeting with Sr. regarding estate planning

April 4,2014 Scot Kirkpatrick sends Sr. technical changes to the trust and an amendment to his trust

Last week of May 2014 Jr. sees 2013 Trust for first time

May 28 Sr. and Scot Kirkpatrick in a phone conversation; Sr. instructs Kirkpatrick to revise his trust and divide the voting stock 1/3-1/3-1/3

June 6 Scot Kirkpatrick sends Sr. a complete restatement of his trust

June 11 The "Capital Grille Dinner"

June 16 Sr. falls at his Los Angeles apartment, and is admitted to Cedars Sinai

June 17 Sr. undergoes a brain MRI which reveals multiple strokes; Sr. and the family is told the next day

June 18 Jr. videotapes discussion of estate plan with Sr. and Margaret in the evening

June 19 (7am) Jr. has Larson prepare the Hospital Amendment

June 19 (12:30 pm) Jr. and Margaret have Sr. sign the Hospital Amendment, videotapes signing

June 19 (1:45 pm) Sr. undergoes procedure; consent form signed by Jr. in lieu of S.

June 19 Scot Kirkpatrick sends Jr. the "June 19 Draft."

June24 Sr. sent to rehab unit at Cedars Sinai

June 25 Sr. diagnosed with "Major Neurocognitive Disorder"; parties stipulate Sr. has lost capacity and all documents after this point are invalid

June 25 Jr. sends Hospital Amendment to Scot Kirkpatrick and requests that Kirkpatrick conform his June 19 draft to Hospital Amendment

June26 Scot Kirkpatrick sends JR. a revised draft, conforming to the Hospital Amendment (except for Rotating Trustee Provision)

July 9,2074 Sr. discharged from Cedars Sinai rehab unit

July 26,2014 Sr. readmitted to Cedars Sinai

July-August 2014 Jr., Ellen, and Margaret have their father execute or themselves execute a series of documents principally related to transferring the citrus properties out of Sr.'s estate into Cotter Family Farms

September 73,2014 Sr. passes away

CAPACITY

Capacity to make or amend a trust or will is evaluated under California Probate Code, Section 6100.5 standards rather than California Probate Code, Section 810, which sets forth standards for capacity to enter into contracts. (See, *Anderson v. Hunt* 196 Cal.App.4th 722, 730-31(2011))

> "Accordingly, sections 810 to 812 do not set out a single standard for contractual capacity, but rather provide that capacity to do a variety of acts, including to contract, make a will, or execute a trust, must be evaluated by a person's ability to appreciate the consequences of the particular act he or she wishes to take. More complicated decisions and transactions thus would appear to require greater mental function; less complicated decisions and transactions would appear to require less mental function."
> "When determining whether a trustor had capacity to execute a trust amendment that, in its content and complexity, closely resembles a will or codicil, we believe it is appropriate to look to section 6100.5 to determine when a person's mental deficits are sufficient to allow a court to conclude that the person lacks the ability "to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question." (§ 811(b).) In other words, while section 6100.5 is not directly applicable to determine competency to make or amend a trust, it is made applicable through section 811 to trusts or trust amendments that are analogous to wills or codicils."

Pursuant to California Probate Code, Section 6100.5, a person is not mentally competent to make a will if at the time of making the will either of the following is true:

> (1)The individual does not have sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual's property, or (C) remember and understand the individual's relations to living descendants, spouse, and parents, and those whose interests are being affected by the will.
> (2) The individual suffers from a mental disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in the

individual's devising property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.

Even if someone has a mental disorder in which there are lucid periods, it is presumed that his or her will has been made during a time of lucidity. (*Estate of Goetz* 253 Cal.App.2d 107, 114 (1967).) A finding of lack of testamentary capacity can only be supported if the presumption of execution during a lucid period is overcome. (*Estate of Mann* 184 Cal.App3d 593, 603-04 (1986))

The court believes that the evidence at trial established that James Cotter Sr. ("Sr."), had suffered several recent strokes before June 19, 2014, the date of the Hospital Amendment. The court finds by a preponderance of evidence that Sr. did not have either testamentary capacity, whether it be understanding the effect of his testamentary acts, or the higher standard to understand the consequences and legal effects of the hospital transactions. There may be isolated entries in the medical records indicating possible slight improvements in his condition at times, but the overall review of the records, most importantly combined with the compelling videos, supports the court's conclusion that Sr. lacked capacity to execute a testamentary document of this complexity.

Several significant facts establish Sr.'s incapacity. When the video of Sr. on November 13, 2013 is viewed with the June, 2014 videos, there is a substantial difference in awareness, affect, and ability to converse. An hour after the Hospital Amendment was signed, the Cedars Sinai staff determined Sr. could not sign a consent to a medical procedure. Jr. signed this document. Dr. Wertheimer, a neuropsychologist, evaluated Sr. six days after the Hospital Amendment was signed. There was no evidence of any new strokes or other significant medical developments. The diagnosis was "major neurocognitive disorder," which is circumstantial evidence that his condition on June 25th would not have declined from June 19th. The videos taken on June 18 and 19 show a Sr. that was inattentive, minimally responsive, and possibly confused, supporting the court's finding that Sr. lacked capacity on June 19.

There was conflicting testimony by two very qualified geriatric psychiatrists. Dr. James Spar, after Sr.'s strokes, concluded that he was substantially unable to manage his financial resources or resist fraud or undue influence. Dr. Spar further did not see any positive evidence that Sr. had capacity; however, he does not believe a lack of "positive evidence" leads to a conclusion that someone lacks capacity. This court did comment that experts in other cases have

stated that they did not administer various diagnostic tests on a patient, because it would be unnecessary and wasteful when the patient was clearly stable, clear thinking, non-delusional, etc. As Dr. Spar testified, "positive evidence" is not necessary to determine levels of impairment, to which this court concurs. However, with Sr., the court believed there was substantial evidence of impairment, as summarized in this decision.

The court believes that the evidence at trial established that Sr.'s mental function was impaired on June 19th. Sr. was videotaped during discussions of the trust and its subsequent signing. Sr. states that Ellen should be included in the rotation as chairman with control of the voting stock-which is not included in the Hospital Amendment. For the remainder of the discussion, Sr. either makes irrelevant statements or is disengaged about other matters.

In addition to the June 25th exam, a doctor the next day on June 26th concluded: "Not currently able to make major decisions/financial decisions." Dr. Posadas's medical notes from Sr.'s admission document that on Tuesday and Wednesday of the preceding week, Sr. had "collapsed from fatigue," on Friday Sr. had difficulty walking, and on Saturday Sr. was "disoriented." On June 14, Sr. left a voicemail message for Scot Kirkpatrick in which Sr. had difficulty recalling his home phone number that he had for thirty years.

On the morning of June 17, Dr. Posadas referenced the "problem" of "confusion." which was "worsening" and commented that he"[a]gree[d] with the neurology workup. Later on June 17, Dr. Susan Lee, a neurologist, saw Sr. She learned about Sr.'s medical history from Margaret, because Sr. was unable to provide the necessary facts. Dr. Lee observed that although Sr. was "oriented to self, year and hospital" and knew his date of birth, he had several severe deficiencies; he did not know the name of his prominent hospital, the month, and his occupation, and had difficulty following instructions. His failure to know his job is especially disconcerting as he was very involved with his business.

His physical therapist on June 18 commented on his "delayed processing", requiring 10 seconds to answer simple questions, such as if he is" working or retired." He needed "constant verbal and tactile cuing and maximal assist" throughout the session. Later on June 18, Dr. Lee observed cognitive difficulty, including difficulty naming his own grandchildren. The videos taken by JR. that night corroborate Sr.'s impairment. Margaret has to feed Sr. Guy Adams called the Jim Cotter Sr. in the June 18 videos "a shadow of the Jim Cotter I knew," and saw only "sparks" of the

old Jim Cotter. Although Guy Adams is not medically trained, the court found this comment persuasive, as unlike the doctors, Guy Adams could compare a person he knew well at different times. The court recognizes that Guy Adam's income greatly depends on the current RDI management.

The results of Sr.'s June 17th brain MRI showed "multiple small acute ischemic infarctions", strokes, and fragments circulating from a blood clot. Dr. Lee told Sr., Margaret, and JR. about the strokes, and they continued to discuss these estate planning issues. Neither Jr. nor Margaret appear to make any serious attempts to determine if their father understands what is happening.

On June 19th when the Hospital Amendment was signed, an occupational therapist conducted an assessment, stating that Sr. had impaired cognition." The therapist mentioned that Sr. needed strong encouragement to participate in therapy, and "delayed" answering questions. Later that morning, Dr. Ng noted that Sr.'s "mental status appeared to be improving" overnight, but included "altered mental status" to Sr.'s list of problems.

On June 19th, Sr. did not appear to read the Hospital Amendment, but simply listens in his bed as the seven bullet points are read to him by Margaret. As Margaret recites the bullet points, a nurse interrupts them to change some batteries. Margaret continues to read the bullet points about 90 seconds later. When Sr. signs the Hospital Amendment, in the video Sr. needs help with his pen.

About an hour after Sr. signed the Hospital Amendment, a nurse asked who would consent for a procedure with Sr. and his family. Two and a half hours after the Hospital Amendment is signed, a hematologist, based on a resident's exam, states Sr. is "overall disoriented". That night, Sr. refused to take his medication and asked to go home. He believed that he was in Chicago. At his deposition, Dr. Wertheimer testified that Sr. answered 11 out of 30 questions correctly on an orientation test versus a normal score of over 25. Dr. Nasmyth concluded that Sr.'s "[c]ognition remained] significantly impaired" and that Sr. could not make major financial decisions."

Under the Probate Code, Sr. lacked the capacity to execute legal documents on June 19. The parties have agreed that in this case, capacity should be judged by the standards governing contractual capacity. As a result, Sr.'s capacity accordingly must be evaluated under Probate Code

section 812, although the court would make the same decision if section 6100.5 governed in this case.. See *Andersen v. Hunt*, 796 Cal. App. 4th 722 (2011). Under Section 812, "a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following".

(a) The rights, duties, and responsibilities created by, or affected by the decision.

(b) The probable consequences for the decision maker and, where appropriate, the persons affected by the decision.

(c) The significant risks, benefits, and reasonable alternatives involved in the decision.

The rebuttable presumption in California Civil Code section 39(b) applies if a person is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Dr. Spar stated that Sr., would have been substantially unable to manage his finances and resist fraud and undue influence . . . " Dr. Spar also said that Sr. could not have read the Hospital Amendment because he could not concentrate for more than 10 seconds. Although reading a testamentary document is not a prerequisite for capacity, it can be a relevant factor. Sr. also had several deficits according to Dr. Read. A significant impairment was his ability to concentrate, demonstrated on the June 19th video.

His memory for basic facts was poor, which the court has previously summarized. Sr. had difficulty repeating the estate plans that Jr. had described, and understanding or communicating with others. Regarding abstract concepts, Sr. was unable to appreciate, hence consent, for the risks of a medical procedure. He lacked the ability to act in his self-interest with the occupational therapist on June 19. Regarding Sr.'s logical processing, Dr. Wertheimer suggested that Sr. be given him no more than two options because Sr. had difficulty with more complex information.

Sr. was asked to make some significant changes to his trust, including his considerable business holdings, and he was presented with several options relating to his children. This involved their cooperation in exercising control of RDI. Sr. could not remember basic facts about his life, such as his job, which raises the question of how could he remember more complicated facts such as his ownership of RDI, whether his kids even worked there, what constituted the "Citrus Operation", and how the Hospital Amendment changed his 2013 estate plan regarding the

future of RDI and the citrus farms. Sr. could not appreciate or understand the changes from the 2013 Trust, which he did not have in his room. All of these factors support the court's finding that he lacked capacity. Even with a presumption of capacity, if applicable, the evidence is sufficient to overcome this presumption and proves a lack of capacity on June 19, 2014.

PARTIAL INVALIDITY

JR. has suggested that the Court could save the Hospital Amendment by voiding only parts. This would not apply if Sr. lacked capacity. The petitioner cites *In re Baker's Estate*, 176 Cal. 430, 435. "The invalidity which attaches to a will on the ground of insanity in the testator at the time of its execution attaches to all of its provisions." In this case, we do not have evidence of insanity, and some of the bullet points are less complex, and thus pursuant to the sliding scale of *Anderson*, may involve a lesser standard of capacity than contractual. However, this court does not believe the Hospital Amendment can be divided up and considered in part and incorporate Sr.'s intent, when combined with the 2013 trust. The provisions of this complex estate plan are sufficiently interrelated that selecting some of the parts and eliminating others is not practical, and there has been insufficient evidence in this hearing on the effect on the overall trust of permitting specific gifts for the residuary beneficiaries.

UNDUE INFLUENCE

Notwithstanding a finding of capacity, the petitioners have also proven there was undue influence, regardless of the applicability of any presumption under California law.

Regarding such a presumption of undue influence, it arises when there is a concurrence of the following elements: (1) the existence of a confidential or fiduciary relationship between the testator and the person alleged to have exerted undue influence; (2) active participation by such person in the preparation or execution of the will; and (3) an undue benefit to such person or another person under the will thus procured. (*Estate of Gelonese* 36 Cal.App.3d 854, 861-862 (1974); *Estate of Peters* 9 Cal.App.3d 916, 922 (1970); *Estate of Morgan* 148 Cal.App.2d 811, 814 (1957).)

Jr. and Sr., as father and son, had a confidential relationship. See, e.g., *Estate of Gelonese*, 36 Cal. App. 3d 854, 863 (1914) (explaining that a "confidential relationship is present as a matter of law because] [s]uch a relation is presumed to exist between parent and child"). Second, JR.

"actively participate[]" in procuring the Hospital Amendment. Third, JR. unduly benefitted from the execution of the Hospital Amendment by increasing his power over the voting stock and the citrus operations, and by getting the rotating trusteeship.

The petitioners have established that Jr. participated in the preparation and execution of Hospital Amendment. Case law, on admittedly different yet relevant facts, state that neither urging a testator to make a will nor procuring an attorney to prepare the will are themselves sufficient to trigger the presumption of undue influence. To sustain an undue influence finding, the court looks for additional evidence such as deception, overreaching or excessive persuasion. (*Estate of Swetmann* 85 Cal.App.4th 807, 821 (2000); *Estate of Beckley* 233 Cal.App.2d 341, 346-348 (1965).) In the present case, there was credible evidence presented that Jr. was involved in overreaching or excessive persuasion. Sr. was isolated in his hospital room, although friends and relatives were free to visit him, and lawyers. As such, the additional element has been satisfied.

The evidence demonstrates that many of the Hospital Amendment terms were never dictated or discussed with Sr., whose intent, according to Scot Kirpatrick, was to leave a trust that would have divided control of Sr.'s estate equally between his three children. Jr. was concerned about such a possibility, which would result in his loss of any meaningful role in the management of his father's company. The hospital amendment is inconsistent with Sr.'s intent as was discussed with Scot Kirkpatrick and Guy Adams, but also different from Sr.'s intent discussed with Jr. on the June 18 tapes.

Neither Margaret nor Junior's explanations for their conduct on June 19th are credible, that they were tired, rushed, relying on others, sacrificing personal interests for the greater good of RDI, etc. They knew their father was dying, and they wanted to get him to sign what they perceived at the time to be a better trust instrument. Undue influence consists of conduct which subjugates the will of the testator to the will of another and causes the testator to make a disposition of her property contrary to and different from that which he would have done had he been permitted to follow his own inclination or judgment. (*Estate of Franco* 50 Cal.App.3d 373, 382 (1975).) Evidence of some pressure on the testator is not enough. Rather, there must be proof that the testator's free will was completely overborne by the pressure of the undue influencer. (*Hagen v. Hickenbottom* 41 Cal.App.4th 168, 204-05 (1995).)

After 2013, Sr. initially considered revising his trust to incorporate a parent's natural split of his estate evenly between his three children. After the 2013 trust was signed, Sr. contemplated additional estate planning during the fall with Guy Adams instead of Charles Larson, who had prepared the 2013 Trust. Sr. then hired an Atlanta lawyer Scot Kirpatrick to change the voting stock distribution. Under the 2013 Trust, Margaret had sole control of the voting stock. Sr. wanted his three children to work together, which unfortunately is now impossible.

According to Scot Kirkpatrick, on May 28, Sr. asked him to divide his estate, including control of the voting stock, into thirds for his three children. On June 6, 2014, Kirkpatrick sent Sr. a draft revision of his trust and will. The June 6 draft split control of the voting stock 1/3-1/3-1/3 between Ellen, Margaret, and Jr.. and would result, in Kirkpatrick's words, in "Majority rule." This meant that the sisters would outvote Jr., and thus run RDI. Jr. saw that the 2013 Trust gave Margaret sole control of the voting stock, and thus control of RDI. Jr. believed he was destined to assume the management of RDI based on promises by Sr. Hence, Jr. wanted that Hospital Amendment.

There is the much discussed "Capital Grille dinner" on June 11,2014, five days before Sr.'s hospital admission, when Jr. discusses his concerns with Sr.. There are, of course, different accounts of the conversation, and as with much of the testimony in this case, each corresponds with the self-interest of the participant. As the court has stated, the credibility of both Jr. and Margaret is lacking due to other testimony of both of them regarding Sr.'s capacity at different times, incorrect statements to Sr. at the hospital, subsequent comments to the estate lawyers, and the signing of the later testamentary documents. Margaret may have stated at her deposition that she was "zoned out" at this dinner, but it does not necessarily follow that she recalled nothing about the content of any conversation, and the court must still assess the accuracy of Jr.'s recollection about what was discussed.

According to Scot Kirkpatrick, Sr. did speak with Kirkpatrick on June 14, three days after the Capital Grille dinner, and apparently did not request any changes to the June 6th draft, such as excluding Ellen. At Jr.'s request, Kirkpatrick inserted Article IX (requires unanimous consent) into his June 6 draft, and circulated a revised draft on June 19, when Sr. was in the hospital. This may indicate Sr.'s intent that Ellen be included, yet she was not included as a trustee of the grandchildren's trust which had been recently executed. However, Ellen did not have children.

On June 18th, Jr. recorded what he says was the majority and most important of the conversation. The rotating trustee provision is not discussed on the tapes. Sr. is virtually silent except for some affirmative responses. Sr. does comment that Ellen would have a year as the chair, which she does not get in the hospital amendment. There is no clear explanation of this request on the tape.

Jr. then asks for Chuck Larson to rejoin the drafting of the Hospital Amendment on June 19th. Kirkpatrick does not know of Sr.'s strokes, and does not believe he received the video supposedly stating Sr.'s intentions. Larson drafts the alternating chair provisions excluding Ellen, and drafts the 7 bullet points.

On the June 19th video, Jr. inexplicably tells his father that the Hospital Amendment only made "minor changes", an ironic statement in view of the extensive litigation about this amendment. This statement alone supports a finding of undue influence, as it grossly misstates the effect of the hospital amendment. Jr. says the Hospital Amendment "reflect[s] exactly what we talked about yesterday," notwithstanding it did not, and the final version was drafted by Larson, not the attorney ultimately hired by Sr. Margaret says the version reflects what Scot is drafting, which she later admits she did not read. Margaret's explanation for her misstatements, blaming a lack of sleep and relying on Jr., is unconvincing in view of her later quickly handing documents to an incapacitated Sr. to make sure she got her Manhattan apartment. Sr. says before signing, "If it works, so let it be." Jr. confuses the rotating trustee section with rotating chairs in describing the amendment to his father.

When Margaret reads the bullet points to her father, he doesn't ask a single question. In fact, when Margaret reads to her father the bullet point about rotating the chairmanship between the three children, she asks her father: "Is that what you wanted? Dad?" Sr. never responds.

Jr. is visibly agitated in this tape. He exaggerates that without the Hospital Amendment, the family will be facing financial disaster, and that practically every asset will go to the foundation. Again, this threat of financial ruin to Sr.'s family legacy alone could be undue influence. Margaret first says he has no will, then says it is old, also untrue. The videos repeatedly demonstrate Margaret's ignorance of her father's estate. She wishes to blame her brother. If she did not know the facts, she shouldn't be guessing and supplying false information to her sick father. Margaret dishonestly assures her father she has read it to persuade him to sign the papers, which apparently she did not.

Jr. even swears to a dying grandfather on his grandchildren's lives. Jr. says this document, which is signed and thus has legal effect if Sr. had capacity, can be completely modified, but "we need to get something on the books, dude." It has been described as just a "placeholder" and a "temporary fix", also a misstatement. If this is what Sr. wanted, why would it be temporary, to be "completely modified" in the immediate future. Again, there are specific acts supporting a finding of undue influence. All of this takes place in ten minutes, including another issue involving the forgiveness of a $1.5 million dollar loan to Jr.

Kirkpatrick testified that as an attorney, he would not be able to understand the Hospital Amendment from the bullet points without some guesswork. There are significant changes, specifically the rotating chair excluding Ellen, unanimous votes for the orange farms, and generating skipping shares. As discussed at the trial, there are several unworkable and ambiguous provisions with the rotating chair, such as who begins as the chair, what is an "important" issue, and what happens if there is a major conflict on January 2nd. Furthermore, it is difficult to assess the impact of these changes without Sr. having some briefing of the 2013 trust which would be superseded.

Undue influence . . . is the legal condemnation of a situation in which extraordinary and abnormal pressure subverts independent free will and diverts it from its natural course in accordance with the dictates of another person." *Estate of Sarabia*, 221 Cal.App. 3d 599, 605 (1990). Probate Code section 86 defines undue influence as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." "Direct evidence as to undue influence is rarely obtainable and hence a court or jury must determine the issue of undue influence by inferences drawn from all the facts and circumstances." *In re Hannam's Estate,*106 Cal. App. 2d 782,786 (1951). However, in this case, the videos presented direct evidence.

Welfare & Institutions Code section 15610.70(a) provides criteria to assess whether there is undue influence. Sr. was obviously vulnerable due to his medical condition. The tapes support that he is virtually helpless with tasks as simple as using the correct point of his pen. Jr. was exercising whatever authority he had over his father. He used affection or coercion, citing a potential loss for his estate with everything going to the foundation, and the family getting "screwed". He clearly said it had to be done in haste. He, in effect, represented he had some

expertise, as he was the principle family member working with the lawyers with the drafting of the trusts. Jr. controlled most of the access to information, as Sr. was in the hospital. He changed lawyers.

The result is inequitable to the extent the court can discern Sr.'s intended estate plan. The Hospital Amendment is different than the 2013 Trust, but Sr. was working on changes. Kirkpatrick's June 6 draft may have been moot with Sr. after the Capitol Grille dinner if one accepts Jr.'s account of the conversation.

In his June 14 call with Kirkpatrick, Kirkpatrick says that Sr. told him that he was satisfied with his June 6th draft, and was ready to sign but for a few technical changes. Sr. then suffers falls, strokes, and his admission to Cedars. The petitioner asserts that the June 6 draft is the closest evidence we have regarding a statement of Sr. 's intent as of June 2014, as Sr. did read it after a discussion with Scot Kirkpatrick. However, it fails to address any changes to the voting stock and rotating trustees. There are other documents indicative of a different intent, such as Jr.'s designation on the health directive, and Jr. and Margaret as trustees on the grandchildren's trust. To add to the ambiguity, Margaret and Ellen are the executors of his will. The Hospital Amendment incorporates changes that may have been the product of the Capital Grille dinner discussion. For whatever reason, the 2013 trust specifically gives exclusive power to Margaret and not Jr.

The court does not question, as expressed in the objections, that Sr. asked Jr.'s input in the estate planning process, nor that he was given permission to talk to the lawyers. However, this request does not correlate with the absence of undue influence when Sr.'s medical condition rapidly declined when he was in the hospital. Jr. concedes that he "implored" his father in the hospital, which he believes was innocent as his father had requested his help. This request does not immunize Jr. from the misstatements and pressure tactics described in the trial and summarized in this statement of decision.

With the conversations in the hospital, high pressure "sales tactics", factual mistakes, a ten minute signing ceremony, amidst panic, control of a $300 million entity at stake (Jr.'s testimony about its capitalization), all thrust on an invalid, it is impossible for this court to read the mind of Sr. regarding his testamentary intent so as to negate undue influence. However, as the court has stated on previous occasions, Sr.'s ultimate intention with all of these drafts and discussions,

regardless of the lawyer, dinner conversation, who is to blame, and anything else presented in this case, was that this company was to be run by his three children for the mutual benefit of the family. Jr. has been stripped of any authority with RDI, contrary to Sr.'s expressed intentions in a testamentary document, and forced to resign. Unfortunately, Sr.'s intent has become impossible to achieve due to the acrimony that is the Cotter family today. The only intent we know is that his three children were to run the company, with Jr. as the president, with whatever actual responsibilities that came with this new position.

ELDER ABUSE

The holding in *In re Estate of Dito*,198 Cal. App. 4th 791, 803-04 (2011) does not support the complete disinheritance of Margaret and Ellen should they have committed elder abuse.

Probate Code section 259(c) provides for disinheritance to the extent of any money damages awarded to the elder because of the abuse. The court of appeal stated that Probate Code section 259 does not necessarily disinherit an abuser entirely but rather restricts the abuser's right to benefit from his or her abusive conduct . . . . Thus, a person found liable under subdivision (a) of section 259 is deemed to have predeceased the decedent only to the extent the person would have been entitled through a will, trust, or laws of intestacy to receive a distribution of the damages and costs the person is found to be liable to pay to the estate as a result of the abuse. *Dito* specifically contrasts the limited disinheritance remedy provided by section 259 with the complete disinheritance imposed on someone who killed the decedent. Contrary to Jr.'s argument, this court does not believe this text is simply dictum, but believes it is bound by the court of appeal's decision.

Each counsel alleges forgery by either Jr. or the daughters in an effort to prove elder abuse. Forgery, Penal Code section 470 requires a fraudulent intent, rather than simply signing another person's signature without consent. This court does not find there is sufficient evidence of an intent to defraud Sr., with the various signings of documents, a necessary finding to a charge of elder abuse. As the court has previously noted, it is difficult to discern Sr.'s intent with the multitude of legal documents presented in this case.

LOAN FORGIVENESS

As opposed to the complexities of the Hospital Amendment, the court does not find that Sr. lacked capacity, whether contractual or testamentary, to make the relatively simple decision of granting Jr. full ownership of his home by forgiving the loan. This was not a complex decision. Sr. had discussed this long before, including on a video, and although he did not sign any documents to forgive the loan at that time, there is no evidence of any coercion or deception, or undue benefit. The circumstances had changed from earlier discussions about the loan. A parent forgiving a son or daughter's loan, while lay dying in a hospital, is a natural and understandable act, versus demanding that a child continue to make loan payments. (In view of the full original paragraph in the Tentative Statement of Decision, the court does not understand the objection/question asking if the court is only relying on "parental impulse", unless sarcasm was the intent.) The court did not observe any the coercive, high pressure, tactics or incorrect or misleading statements regarding the forgiveness of the loan. There was no evidence of different plans regarding forgiveness of the loan as with the multiple drafts of trust documents. The absence of Sr. signing a document to forgive the loan is insufficient to negate his expression of his intent. The court does not believe Sr. intended to give this house to his daughters or any other relatives, instead of Jr.

As for the question/objection regarding the effectiveness of the concurrent grant of the Manhattan condo to Margaret, the court does not recall that this issue is before the court.

UNCLEAN HANDS

The court does not believe the doctrine of unclean hands applies to this case, notwithstanding its earlier inquiry. It has not been used in probate disputes involving capacity, and there is insufficient evidence that Jr. was harmed by the conduct at issue.

CONCLUSION

A potential sale of RDI, and the appointment of a trustee ad litem, will be addressed in a separate statement of decision. For the reasons set forth in this decision, the 2014 "hospital amendment" is invalid.

BASED UPON THE FOREGOING, THE COURT RULES AS FOLLOWS:

1. The standard of capacity for the amended trust executed by James Cotter, Sr. on June 19, 2014 is governed by California Probate Code, Section 6100.5.

2. James Cotter Sr. lacked capacity to execute the "Hospital Amendment" on June 19, 2014.

3. James Cotter Sr. was subject to undue influence on June 19, 2014 when signing the "Hospital Amendment."

4. The 2014 "Hospital Amendment" is invalid.

5. James Cotter Sr. had capacity to understand the $1.5 million loan forgiveness for James Cotter Jr. pursuant to California Probate Code, Section 6100.5 and was not subject to undue influence in violation of California Welfare and Institutions Code, Section 15610.70 , as this document was consistent with his intentions and did not constitute an undue benefit.

6. No party has committed elder abuse.

7. No party shall be awarded punitive damages or double damages.

8. Neither James Cotter Jr., Ellen Cotter, or Margaret Cotter are deemed to have predeceased James Cotter Sr. pursuant to Probate Code section 259.

11. Each party shall bear their own costs.

12. Counsel for Margaret and Ellen Cotter shall prepare a judgment and order consistent with this statement of decision.

IT IS SO ORDERED.

Dated 12/8/17

CLIFFORD L. KLEIN

Clifford L. Klein
Judge of the Los Angeles Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Probate Division
Stanley Mosk Dept. - 9

BP159755
In re: COTTER, JAMES J. LIVING TRUST DTD 8/1/2000

December 12, 2017
8:30 AM

Honorable Clifford Klein, Judge

Sharon McKinney, Judicial Assistant
Terrilynn Edwards, Court Services Assistant

Elsa Lara (#3226), Court Reporter
Luis A Flores, Deputy Sheriff

NATURE OF PROCEEDINGS: Court Order Hearing re Notice of Entry of Statement of Decision

The following parties are present for the aforementioned proceeding:

No appearances.

Out of the presence of the court reporter, the Court makes the following findings and orders:

The parties are hereby notified that the Court has issued its Statement of Decision on Phase 1 of the trial on December 8, 2017. A copy of the Statement of Decision is sent to the parties as indicated below this date by the Clerk.

Counsel are ordered to pick up Phase 1 trial exhibits by December 28, 2017.

CLERK'S CERTIFICATE OF MAILING/ NOTICE OF ENTRY OF ORDER

I, SHERRI R. CARTER, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of December 12, 2017 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: December 12, 2017

By: /s/ Sharon McKinney
Sharon McKinney, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Probate Division

Stanley Mosk Dept. - 9

BP159755

In re: COTTER, JAMES J. LIVING TRUST DTD 8/1/2000

December 12, 2017
8:30 AM

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EXHIBIT G

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs. Case No.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive, A-15-719860-B
Defendants.

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
Los Angeles, California
Monday, May 16, 2016
Volume I

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2312188
Pages 1 - 297

MR. KRUM: Objection --

BY MR. TAYBACK:

Q. -- as illustrative of a lack of process?

MR. KRUM: Sorry.

Objection, calls for a legal conclusion, document speaks for itself. 11:12:05

THE WITNESS: It's more illustrative of the lack of process.

BY MR. TAYBACK:

Q. Of these various griev- -- perceived grievances, the lack of process and your termination as CEO, do you believe the company has suffered any monetary damages, that is, the shareholders, have they suffered any monetary damages? 11:12:15

MR. KRUM: Objection, foundation, may call for a legal conclusion. 11:12:42

THE WITNESS: I do.

BY MR. TAYBACK:

Q. How?

A. Well, number one, shortly after my termination, the stock price had dropped fairly significantly. That's one reflection of the damages that were suffered by the company. 11:12:51

I don't know, the damages in terms of the costs that have been incurred by the company in 11:13:30

defending the action could be one reflection of the level of damages.

And the -- just in terms of monetary damages?

Q. Yes, monetary damages. 11:13:46

MR. KRUM: Same objections.

THE WITNESS: I mean, again, and this is -- yeah, I mean, that's the extent of my answer.

BY MR. TAYBACK:

Q. The stock price drop that you referenced, 11:14:01 how long after your termination did you -- do you understand that the price of Reading shares dropped? Is it the day you were terminated?

A. I --

Q. A week? 11:14:16

A. Mr. Tayback, I can't recall without looking at a graph of the stock price. It's my recollection, sitting here today.

Q. And do you remember thinking that at the time? 11:14:26

A. I don't know if I remember thinking that at the time, no.

Q. And how long would you say that the company stock price was -- fell because of your termination?

Withdraw that question. 11:14:39

Is it -- you're saying that the stock price dropped because you were terminated?

A. I don't know why the stock price dropped. I mean, it did drop, I believe, after -- shortly after my termination. 11:14:50

Q. But you have no opinion about what the cause was of that?

A. No.

Q. No, you have no opinion; correct?

A. Correct. 11:15:01

Q. And do you have a view as to how long -- well, withdraw that.

The price didn't stay depressed. It continued to fluctuate over time, correct, between then and now? 11:15:13

MR. KRUM: Objection, vague.

THE WITNESS: Without looking at the stock price, I cannot say.

BY MR. TAYBACK:

Q. Other than the stock price and the cost incurred to the company to defend -- when you say defend the action, you mean the derivative suit? Is that what you're referring to? 11:15:27

A. Yes.

Q. Other than the stock price drop that you 11:15:41

MR. KRUM: Same objections.

THE WITNESS: Again, technically, he may be independent. Yes. I mean --

BY MR. TAYBACK:

Q. Yes, he's independent, in your view? 11:28:22

A. I mean, I'm -- again, Mr. Tayback, I'm not a lawyer. I -- so I don't --

Q. I'm not asking the legal definition. I'm asking your view. You've stated that some people in your view aren't independent, and so now I'm asking about these other people. 11:28:33

Mr. Gould, in your view, is he independent?

A. Technically, I believe he's independent.

Q. Technically.

Are you giving me a legal definition there, or are you telling me -- 11:28:47

A. I don't --

Q. -- what you think?

You don't know.

So with respect to -- I mean, all the other people we've asked about, Ms. Codding, Mr. Wrotniak, you said, I'm not giving you the legal definition, I'm telling you what I think. 11:28:54

A. Right.

Q. Because you expressed a concern that there 11:29:03

aren't enough independent directors on the board and on this executive committee, and I'm trying to find out if you have a view as to whether Mr. Gould is independent or not.

And you think, in your view, he's independent? 11:29:13

A. For a period of time, Bill was independent but has -- yes, I mean, he is independent.

Q. Okay. And why do you think he's independent? 11:29:23

Does he have no connection to your family?

A. At least he doesn't have a relationship going back with me and my two sisters that would be of such that would question his independence.

Q. How long have you known Mr. Gould? 11:29:44

A. Maybe since -- at least since 2002.

Q. Was he a friend of your father's?

A. He was.

Q. A close friend?

A. I don't know. I mean, he was a business associate with my dad's. I wouldn't describe him as a close friend. 11:30:03

Q. So he did business with your father?

A. He's -- I think he's been on the board for a number years, going back to perhaps 1985. 11:30:16

He would often go out to dinner with the two of them and his family.

I really didn't have that level. So I would describe my two sisters' relationship with Ed Kane and his family to be different than the one that I had. 11:33:59

BY MR. TAYBACK:

Q. And do you feel that was your choice or his choice to not have that kind of relationship with Mr. Kane? 11:34:08

A. I mean, I don't know what he was thinking. I just didn't have it with him. I mean, I --

Q. Were there occasions where you asked him to go to dinner more and he --

A. No.

Q. -- wouldn't?

A. No, no, no. No. I would never -- outside of Reading, my interaction with Ed Kane and his family was limited, or certainly much more limited than Ellen and Margaret's. 11:34:37

Q. Mr. McEachern, is he independent, in your view?

A. Yes. I mean, he's -- I mean, again, he's independent. He's got no relationship with Ellen and Margaret or, you know, no business relationship 11:34:58

with Ellen and Margaret. So --

Q. No business relationship -- Mr. Kane has no business relationship with Ellen and Margaret also; correct?

A. That's correct. 11:35:20

Q. So in your view, Mr. McEachern is independent and has always been independent?

MR. KRUM: Asked and answered.

THE WITNESS: Yeah, the testimony speaks for itself. 11:35:30

BY MR. TAYBACK:

Q. So the answer's yes?

MR. KRUM: Well, asked and answered. He said what he said.

BY MR. TAYBACK:

Q. Well, was your answer --

MR. KRUM: But it was yes with an explanation.

Do you want him to withdraw the explanation? 11:35:41

MR. TAYBACK: No. I was going to say, he's independent and he's always been independent.

BY MR. TAYBACK:

Q. I think you can answer it yes -- or not. But I think the answer's yes, and I want to make 11:35:48

sure I understand the answer.

MR. KRUM: All right. Same objections.

You can answer.

THE WITNESS: Okay. Yes.

BY MR. TAYBACK: 11:35:54

Q. Guy Adams, is he independent?

MR. KRUM: Same -- may call for a legal conclusion.

BY MR. TAYBACK:

Q. In your view? 11:36:03

A. No.

Q. Okay. Why not?

A. A significant portion of his income derives from entities that are controlled by my two sisters, a significant portion. And I don't see how 11:36:28 Mr. Adams can make decisions that, in one way or the other, impact Ellen and Margaret and do so in an independent way.

He is fully involved with a number of entities that my two sisters now purportedly 11:36:48 control, and his livelihood really depends on them.

Q. Would he be independent if you controlled those entities?

MR. KRUM: Objection, calls for a legal conclusion, incomplete hypothetical. 11:37:11

EXHIBIT H

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 DOUGLAS McEACHERN

TAKEN ON MAY 6, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

technique or something in between?

A. I'm trying to think of how I do -- sometimes I try to do the normal typing. That's -- that may be about 50 percent of the time. And then the other 50 I have to go and find out where the letters are or the numbers.

Q. Well, as I said, I'm old enough to ask that question.

Did you ever communicate to Jim Cotter, Jr., that you were assessing whether he should remain C.E.O. of RDI?

MR. SEARCY: Objection. Vague, vague as to time.

THE WITNESS: Sometime in May Jim Cotter, Jr., and I had a discussion about replacing him as C.E.O. And I remember the discussion, I think it was in his office, and he told me that I could not fire him as C.E.O. And he told me that if I were to vote to fire him, he would sue me and ruin me financially, to which my response was "Jim, we have D and O insurance."

His response was "I don't think it covers this."

"Well, Jim, we have an indemnification from the company."

"It's not any good. I'm going after everybody."

And that -- because of that discussion, we did talk about it and I remember it. I can't tell you when it happened.

BY MR. KRUM:

Q. Was it after the first supposed RDI board of directors meeting at which the subject of his termination was raised?

MR. SWANIS: Objection. Form.

MR. SEARCY: Join.

THE WITNESS: I'm sorry. What?

MR. SEARCY: He objected to form.

THE WITNESS: Oh. I do not know if it was before or after.

BY MR. KRUM:

Q. So you believe that you may have spoken to Jim Cotter, Jr., and indicated to him that you were prepared to vote to terminate him prior to the subject being raised at an RDI board of directors meeting?

MR. SWANIS: Objection. Form.

MR. SEARCY: Join. Object that it's vague.

THE WITNESS: I don't know that I had

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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.

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

READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR

Date: _____
Time: _____

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Nominal Defendant Reading International, Inc. ("RDI"), a Nevada corporation, by and through its undersigned counsel of record, hereby moves this Court to enter judgment in its favor, or in the alternative, to amend the judgment entered on August 16, 2018 to include judgment in Reading's favor. This motion is based upon the files and records in this matter, the

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attached memorandum of authorities, and any argument allowed at the time of hearing.

DATED this 12th day of September 2018.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden
Mark E. Ferrario, Esq. (NBN 1625)
Kara B. Hendricks, Esq. (NBN 7743)
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10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

Counsel for Reading International, Inc.

NOTICE OF HEARING

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing ***Reading International, Inc.'s Motion for Judgment in its Favor*** on for hearing before Department 11 of the above-entitled Court on the _____ day of October 22, 2018, at the hour of 9:00 ___ a.m.

DATED this 12th day of September 2018.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden
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Tami D. Cowden, Esq. (NBN 8994)
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

Counsel for Reading International, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

Reading, named as a nominal defendant in this action, has not yet received judgment in its favor. However, all bases upon which relief might have been granted against Reading have been resolved against Plaintiff. There is no sound basis for denying judgment in Reading's

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favor. Accordingly, this Court should grant the Motion for Judgment, and issue judgment in favor of Reading. In the alternative, this Court should add the following

> As the resolution of the claims remaining against the Individual Defendants establishes that Plaintiff is not entitled to the relief requested against Reading, judgment in favor of Reading is granted.

to the Judgment noticed on August 16, 2018.

STATEMENT OF RELEVANT FACTS

Plaintiffs Second Amended Complaint, named Reading as a Nominal Defendant. The First, Second and Third Causes of Action were directed against "all Defendants." SAC, pp. 47:26; 49:9; 50:27. Plaintiff did not exclude Reading from inclusion in those claims. Additionally, Plaintiff sought relief that would have infringed upon Reading's rights, including its right to have its board of directors determine its officers and to determine the qualifications to sit on that board. SAC, 53:12-54:23. Reading filed responsive pleadings to Plaintiff's various complaints. Reading's Answer to the Second Amended Complaint requested that judgment be entered in favor of RDI and that RDI be its costs and attorneys' fees. *See Reading's Answer to Plaintiff's Second Amended Complaint*, filed December 20, 2016, 27:8-11.

While Plaintiff has at times *contended* that Reading was not a true party to this matter, Plaintiff has nonetheless continually *treated* Reading as a Party, including by directing four sets of written discovery requests to Reading, and requiring Reading to produce a PMK to testify for a deposition.

On December 28, 2017, this Court granted summary judgment in favor of Individual Defendants Judy Codding, William Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak. Reading joined in the Motions for summary judgment that was granted in December, but was not included in the resulting written judgment. On June 16, 2018, this Court orally granted summary judgment in favor of the remaining individual Defendants, Ellen Cotter, Margaret Cotter, and Guy Adams. Because of that ruling, this Court determined that Reading's Motion to Dismiss was moot, thereby recognizing that resolution of the claims against the Individual Defendants also resolved claims against Reading. The Court executed a written ruling

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on August 8, 2018, which ruling was noticed on August 16, 2018 ("Judgment"). The Judgment did not include judgment in favor of Reading.

LEGAL ARGUMENT

Reading is entitled to entry of judgment in its favor. The December 28, 2017 and August 16, 2018 Judgments do not constitute a final judgment in this matter, as neither results in the formal resolution of all the "rights and liabilities" of Reading. NRCP 54(b). Without such a formal resolution of the claims against Reading, this matter cannot be finally concluded.

A. Reading is Entitled to Judgment as a Matter of Law.

The relief Plaintiff requested against Reading would have required orders directing Reading to take certain actions, including accepting reinstatement of Plaintiff to an executive position, termination of Reading's chosen CEO and President; adherence to specific requirements for appointment to its Board of Directors; refraining from using committees as permitted in the Company's bylaws, and more. See SAC, Prayer for relief, 3(a)-(e). Such incursions into Reading's affairs required it to defend against Plaintiff's claims. *See Blish V. Thompson Auto. Arms Corp*, 30 Del. Ch. 538, 542 (Del. 1948) ("A corporation may defend a stockholder's derivative action . . . if corporate interests are threatened by the suit. . . ."); *National Bankers v. Adler*, 324 S.W.2d 35, 37 (Tex. Civ. App. 1959) ("If the derivative action threatens rather than advances the corporate interests, the corporation may actually defend the action. "); *Swenson v. Thibaut*, 39 N.C. App. 77, 100 (N.C. Ct. App. 1978) (noting that corporation may be required to defend against claims that seek to enjoin corporation action or interfere with internal corporate governance). Accordingly, Reading properly took an active role in the matter, and was thus, as a practical matter, more than a "mere" nominal defendant.

The relief sought that would have directly impacted Reading's rights was premised upon the allegations of misconduct by the Individual Defendants. Because all claims relating to such conduct have been resolved, there is no remaining basis by which Plaintiff may obtain his requested relief as against Reading. Accordingly, Reading is entitled to judgment as a matter of law.

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B. In the Alternative, this Court Should Amend the Judgment Noticed on August 16, 2018 Pursuant to NRCP 60(a).

This Court may amend a judgment where there is a clerical mistake arising from "oversight or omission," as well where a judgment is the result of mistake and inadvertence. NRCP 60(a) and 60(b)(1). Since there is no basis for continuing the litigation against Reading, the omission of Reading from the Judgment noticed on August 16, 2018 was not the result of a judicial determination, but instead, merely a mistake in writing. *See Channel 13 of Las Vegas v. Ettlinger*, 94 Nev. 578, 580 (Nev. 1978) ("[A] clerical error is a mistake in writing or copying. As more specifically applied to judgments and decrees a clerical error is a mistake or omission by a clerk, counsel, or judge, or printer which is not the result of the exercise of a judicial function. In other words, a clerical error is one which cannot reasonably be attributed to the exercise of judicial consideration or discretion"). Accordingly, this Court may amend that Judgment to include judgment in favor of Reading.

CONCLUSION

As set forth above, Reading is entitled to entry of judgment in its favor, either in a separate order, or, pursuant to NRCP 60(a) or 60(b)(1), through an amendment of the Judgment noticed on August 16, 2018.

DATED this 12th day of September 2018.

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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 on this day, I caused a true and correct copy of the ***Reading's International, Inc.'s Motion for Judgment in its Favor*** to be filed and served via the Court's Odyssey E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 12th day of September 2018.

/s/ Andrea Lee Rosehill

AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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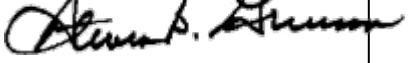

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, 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

DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, JUDY CODDING AND MICHAEL WROTNIAK'S JOINDER TO READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES

Dismissed Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak, by and through their counsel, hereby submit this Joinder to Defendant Reading International, Inc.'s Motion for Attorneys' Fees filed on September 7, 2018.

Dated: September 17, 2018

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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

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 **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, JUDY CODDING AND MICHAEL WROTNIAK'S JOINDER TO READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES** to be served via the Court's Wiznet E-Filing system on all registered and active parties.

Dated: September 17, 2018

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

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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **PLAINTIFF'S OPPOSITION TO MOTION FOR ATTORNEYS' FEES**)) **Date: October 22, 2018**) **Time: 9:00 am**

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Plaintiff James J. Cotter, Jr. ("Cotter") hereby submits his Opposition to RDI's Motion for Attorneys' Fees ("Fee Motion"). This Opposition is based on papers and pleadings on file, the exhibits attached hereto, the following points and authorities, and any oral argument the Court may allow.

I. INTRODUCTION

The defendants' rambling portrayal of this case in an effort to justify their request for **$15.9 million** in discretionary attorneys' fees is largely based on *ad hominem* attacks on the Plaintiff and his counsel, unsupported arguments, subjective opinions, and wishful thinking. None of these "criteria" is a measure under which discretionary fee requests are evaluated under NRS 18.010(2)(b). What counts is the record evidence, which RDI by and large ignores in its Fee Motion, and for good reason: the evidence does not support RDI's claim that Plaintiff filed or maintained his case without reasonable grounds or to simply harass the defendants. For example:

1. The defendants admitted to key conduct that formed the basis of Plaintiff's complaints.

2. The Court did not find that the Plaintiff had *no* evidence to support or maintain his claims; the Court ruled the Plaintiff had not submitted enough evidence to prove the lack of independence of five of the directors.

3. Until the eve of trial, the Court found that Plaintiff had raised *genuine* issues of material fact as to the independence of three of the Cotter defendants.

4. RDI consistently lost every motion to dismiss based on demand futility it filed in this case.

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5. The Court sanctioned the defendants—*not* Plaintiff— for dilatory discovery conduct when they withheld relevant ratification documents.

Even assuming the defendants had met their burden under NRS 18.010(2)(b)—as shown below, they clearly did not—the Court should use its discretion to deny this exorbitant fee request outright. The word "may" in NRS 18.010(2)(b) does not mean "shall." As some courts have held, this verb "sometimes means 'won't,' "especially when the amount sought is "outrageously excessive. . . .' " *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980). For these reasons and those more fully set out below, the Court should deny RDI's Fee Motion in its entirety and award them $0.00.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Until August 7, 2014, James Cotter Sr. was the CEO and Chairman of the board of RDI and controlled 70% of RDI's Class B-voting stock. Compl. ¶ 17. When Cotter Sr. resigned, the board of directors of RDI unanimously appointed Plaintiff James Cotter Jr. CEO of RDI, as per Cotter Sr.'s wishes. Compl. ¶ 7. Less than a year later, Cotter Jr.'s two and only sisters—who represented themselves as majority shareholders of RDI following Cotter Sr.'s death—together with three RDI directors voted to have Cotter Jr. removed as CEO. *Id.* ¶ 6. Once Plaintiff was terminated, his sister Ellen Cotter was appointed interim CEO, and ultimately—following an aborted CEO search—CEO. *See* Defendants' Answer, ¶ 14. Plaintiff's other sister, Margaret Cotter, was granted her wish to become RDI's Executive Vice President of Real Estate Management and Development-NYC. *Id.* ¶ 15.

On June 12, 2015, Plaintiff filed a derivative complaint against the seven individual board members, naming RDI as a nominal defendant. *See* Compl., on file. Although Plaintiff did not make claims against RDI and

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in fact sought damages and injunctive relief *on behalf* of RDI, Compl. ¶¶ 133-134, RDI employed Greenberg Traurig to represent it in this lawsuit. *See* Ferrario Decl., Ex. A to Fee Motion, ¶ 6. All individual defendants engaged Los Angeles-based law firms to represent them: The Cotter sisters, Ed Kane, Guy Adams, and Douglas McEachern (hereafter, the "Cotter defendants") hired Quinn Emanuel; defendants William Gould and Timothy Storey hired Bird, Marella. *See* Exs. B, D to Fee Motion.

At no time did RDI's board of directors form a special litigation committee to assess the lawsuit. Fee Motion at 5:7-10. Although RDI contends Plaintiff's concerns "could have been addressed" by ratification, *id.*, it was not until the eve of trial that a special independent committee was created, met, and proposed to ratify the challenged board's decisions on December 29, 2017. Instead, the defendants *and* RDI embarked on an aggressive litigation path to defend against Plaintiff's claims. In just seven months—before even a single deposition was taken—nominal defendant RDI had already incurred more than $800,000 in legal fees, which pales in comparison to the **$2 million** in legal fees Quinn Emanuel had billed by the end of January 2016. Fee Motion, Ex. A ¶ 6; Ex. C at 5 ¶ 20.

A. Defendants' unsuccessful motions to defeat Plaintiff's lawsuit.

On August 10, 2015, the Cotter defendants filed a motion to dismiss, arguing, in relevant part, that Plaintiff: (1) failed to adequately plead demand futility; and (2) could not adequately represent the interests of RDI's shareholders. *See* Motion to Dismiss, on file, at 4. RDI joined in the motion. Before the hearing on this motion, the Cotter defendants filed a second motion to dismiss arguing that Plaintiff failed to adequately plead demand futility. *See* Sept. 3, 2015 Motion to Dismiss, on file. The Court denied the motion(s), finding that the "plaintiff had adequately alleged

demand futility and interestedness." Sept. 10, 2015 Hearing Tr. at 16:2-3; *see also* Oct. 19, 2015 Order.

On August 31, 2015, RDI filed a motion to compel arbitration, arguing that Plaintiff's lawsuit was "about nothing more than the termination of Mr. Cotter's employment" and therefore subject to arbitration under the parties' employment agreement. Motion to Compel Arbitration at 3, on file. The Court disagreed and denied RDI's Motion. *See* Oct. 12, 2015 Order.

During the August 9, 2016 hearing, RDI's counsel opposed Plaintiff's motion to amend his complaint to address events and actions by the board that post-dated his initial complaint. The Court granted Plaintiff's motion and, again, found "that demand would be futile on the board under the circumstances." August 9, 2016 Hearing Tr. at 23:1-2.

On September 23, 2016, the Cotter defendants filed six motions for partial summary judgment ("Partial MSJs"), each addressing certain issues or board actions alleged in the complaint, such as the directors' independence (No. 2), or the decision to appoint Ellen Cotter (No. 5). RDI joined in each one of them. *See* RDI's October 3, 2016 Joinders, on file.[1] Gould filed a separate motion for summary judgment. RDI also joined in Gould's MSJ. *See* October 3, 2016 Joinder, on file. The Court denied Partial MSJ No. 1 regarding Plaintiff's termination, finding there were "genuine issues of material fact and issues related to interested directors participating in the process." Oct. 27, 2016 Hearing Tr. at 117:9–12. The Court granted in part and denied in part Partial MSJ No. 4 (Executive Committee), and

[1] RDI's counsel was allowed to present argument on the Partial MSJ on the director independence, over the objections of Plaintiff's counsel that RDI was a nominal defendant. Oct. 27, 2016 Tr. at 70:12-76:18. RDI's counsel also spent considerable time attempting to change the Court's mind on its ruling to admit aspects of Judge Steele's expert testimony. *Id.* at 130:12-139:2.

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denied the remaining four Partial MSJs on Rule 56(f) grounds. *See* Dec. 21, 2016 Order. The Court had just five minutes left to hear Gould's MSJ, but Gould's counsel declined to use them. *See* Oct. 27, 2016 Hearing Tr. at 139:18-140:3; 151:20-152:6. Gould did not re-notice his MSJ until more than a year later. *See* Gould's December 1, 2017 Request for Hearing, on file.

On October 11, 2017, the Cotter defendants filed a Motion for Evidentiary Hearing Regarding Plaintiff's Adequacy as a Derivative Plaintiff, in which RDI and Gould joined. The Court found nothing new in defendants' argument that Plaintiff was "using this derivative case to pursue solely personal remedies." Nov. 20 2017 Hearing Tr. at 6:8-22 ("we've known that and I've known that when I did not dismiss the derivative portion of the case"). In denying the Motion, the Court pointed out to defense counsel that not all aspects to Plaintiff's derivative claim were solely personal to him. *Id.* at 9:16-19 ("that's not the whole allegations that he's made as part of his derivative claim. You understand that").

In November, 2017 the Cotter defendants supplemented their Partial MSJs. At the December 11, 2017 hearing, the Court granted Partial MSJ Nos. 1 (Termination) and 2 (Independence) as to defendants McEachern, Kane, Gould, Codding, and Wrotniak on the grounds that Cotter Jr. had failed to raise a disputed issue of material fact regarding their disinterestedness. Dec. 11, 2017 Hearing Tr. at 41:4–20; 45:1-4. The Court granted Partial MSJ No. 3 (the Offer) on separate grounds, but *denied* Partial MSJ Nos. 1, 2, 5, and 6 as to the Cotter sisters and Guy Adams because there were genuine issues of material fact related to their disinterestedness and/or independence. *Id.* at 41:8-12; 44:20–25; 48:17–22; 49:11–52:15; Dec. 28 Order, on file at 4.

On the eve of trial, RDI filed a Motion to Dismiss for Failure to Show Demand Futility, and the Cotter defendants filed a Motion for

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Judgment as a Matter of Law (based on the recent ratification vote). The Court denied both motions without prejudice, finding they were untimely filed. Jan. 8, 2018 Hearing Tr. at 10:20-11:4. Notably, the Court faulted RDI for never requesting an evidentiary hearing:

> You never requested it for the [three] years or so we've been in litigation. . . You didn't request it after the motion to dismiss was denied because it appeared the allegations at that time were well founded. You never again requested or renewed that motion with a request for an evidentiary hearing.

Id. at 14:22-15:3.

Finally, on June 1, 2018, RDI filed a "Motion to Dismiss Pursuant to NRCP12(b)(2), or in the Alternative, NRCP 12(b)(5) for Lack of Standing" and the remaining three Cotter defendants filed a motion for summary judgment based on ratification ("Ratification MSJ"). After an omnibus hearing on June 19, 2018, the Court granted summary judgment in favor of the three remaining Cotter defendants based on ratification, and denied RDI's Motion to Dismiss as moot. June 19 Hearing Tr. at 49:2-15.

III. ARGUMENT

A. Neither Gould, nor RDI is entitled to attorneys' fees under NRS 18.010(2)(b).

1. Gould did not file a timely motion for attorneys' fees.

Rule 54(d)(2)(B) states, in relevant part:

> Unless a statute provides otherwise, the motion [for attorney fees] must be filed no later than 20 days after notice of entry of judgment is served.... The time for filing the motion may not be extended by the court after it has expired.

NRCP 54(d)(2)(B).

Post-judgment motions (such as those under Rules 55 and 59) toll the 20-day time limit, and allow a prevailing party to file a motion for attorneys' fees within 20 days "after the resolution of the last post-judgment tolling motion." *Barbara Ann Hollier Trust v. Shack*, 131 Nev. Adv. Op. 59,

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356 P.3d 1085, 1091 (2015). "Once the 20–day period expires, however, the extra sentence in Nevada's statute would then *prohibit* any type of extension." *Id.*; *see* Nev. R. Civ. P. 54(d)(2)(B)("The time for filing the motion [for attorneys' fees] may not be extended by the court *after* it has expired") (emphasis added).

Here, defendant Gould prevailed on his summary motion on December 28, 2017 and all Plaintiff's claims were dismissed against him. *See* Order, on file. This portion of the order was certified as final under Nev. R. Civ. P. 54(b) by order dated January 4, 2018, in which the Court "direct[ed] entry of judgment as to defendants . . . William Gould . . . on all Plaintiff's claims against them." Notice of entry of the order was given that same day. *See* Jan. 4, 2018 Notice of Entry of Order, on file. Plaintiff's motion for reconsideration was denied by order dated January 4, 2018. Notice of entry of that order was given on January 5, 2018. *See* January 4 Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration; January 5 Notice of Entry of Order, on file.

Thus, Gould had 20 days from January 5, 2018 to file his motion for attorneys' fees. Because the time to do so has already "expired," it no longer can "be extended by the court . . . ." Nev. R. Civ. P. 54(d)(2)(B). Moreover, Mr. Gould passed away on August 6, 2018. RDI's Fee Motion—purportedly filed on behalf of Gould—cannot revive Gould's expired rights. The Court should deny all attorneys' fees sought on behalf of former defendant Gould.

2. RDI is not a "prevailing party."

The term "prevailing party" is a legal "term of art." *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 603 (2001). A "prevailing party" is a "party who has been awarded some relief by a court . . . ." *Id.* (citing cases). Although a

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third-party defendant may be deemed a prevailing party if the third-party and the non-prevailing plaintiff are "functionally adverse," *Copper Sands Homeowners v. Flamingo 94 Ltd.*, 335 P.3d 203, 206 (Nev.2014), a *nominal* defendant is functionally *aligned* with the plaintiff: It is the "real party in interest" on whose behalf the derivative case was brought. *Ross v. Bernhard*, 396 U.S. 531, 538-39 (1970). As one court observed:

> Whatever be the circumstances furnishing license to the individual stockholder to bring a class action of this kind, the fact remains that when suit is brought and determined on its merits the company must be treated in all respects, including liability for costs and counsel fees, as any other complainant in the ordinary cause.

Solimine v. Hollander, 129 N.J. Eq. 264 (N.J. 1941).

Here, RDI is not a "prevailing party" because the Court did not award it *any* relief. Plaintiff did not bring any claims against RDI and did not seek damages or injunctive relief *against* RDI but *on behalf of RDI* . *See, e.g.*, June 12, 2015 Compl. ¶¶ 133-134; Oct. 22, 2015 Am. Compl., ¶¶ 192-193 (" . . . *the Company . . .* and other RDI shareholders *have suffered . . . injury* . . . .*the Company*, and other shareholders will suffer irreparable harm. . . .") (emphasis added); *see also* Sept. 2, 2016 Second Am. Compl. at 45 ("**RDI AND RDI SHAREHOLDERS ARE INJURED**"); *id.* at 53, ¶ 202 ("unless such injunctive relief is granted, Plaintiff, the Company and other shareholders will suffer irreparable harm"); *id.* at 54 (Prayer for Relief, ¶ 5) ("For. . . damages incurred by RDI. . . .").

Moreover, RDI *lost* all its motions based on demand futility filed with the Court. *See supra*, Section II.A. RDI could not unilaterally transform itself into a "prevailing party" by joining in the individual defendants' Partial MSJs and Gould's MSJ, as it did here—especially when

Plaintiff made no claims against it. Thus, there is no legal basis—*none*—on which to award RDI attorneys' fees.[2]

B. Legal standard for discretionary attorneys' fees under NRS 18.010(2)(b).

Attorneys' fees under NRS 18.010(2)(b) are discretionary. The Court "may" award attorneys' fees if the Court finds that Plaintiff's "claim . . . was brought or maintained [1] without reasonable ground or [2] to harass the prevailing party." NRS 18.010(2)(b). While the Court "must liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations," there must be "evidence in the record"—not mere argument—that the claim was brought or maintained without reasonable basis or to harass the defendants. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 486, 851 P.2d 459, 464 (1993). Without such record evidence, a fee award is subject to reversal as an abuse of discretion. *See Pub. Employees' Ret. Sys. Of Nev. v. Gitter*, 133 Nev. Adv. Op. 18, 393 P.3d 673, 682 (2013) (granting writ petition and directing clerk to vacate award for attorneys' fees for lack of evidence in the record that defense was frivolous); *Las Vegas Metro. Police Dep't v. Buono*, Case No. 54106, 127 Nev. 1153, 373 P.3d 934 (2011) (reversing order for sanctions because there "was no evidence that LVMPD engaged in any delaying or obstructing tactics"); *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213, 234 (2009) ("Although a district court has discretion to award attorney fees as a sanction, there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass").

[2] To the extent that the argument that follows pertains to RDI or Gould, it is made strictly in the alternative, should the Court disagree with Plaintiff's arguments under III.A.1 and III.A.2 above.

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C. RDI did not meet its burden under NRS 18.020(2)(b) to prove that any attorneys' fees are warranted.

While RDI on page 11 of its Fee Motion expressly recognizes that "there must be evidence in the record" to support a "conclusion that the claims were brought or maintained without reasonable grounds," RDI's Fee Motion by and large *ignores* the record. For example, RDI's 4-page "Summary of Relevant Facts" is replete with gratuitous *ad hominem* attacks and arguments that are unsupported by *any* citation to the record. *See* Fee Motion at 5-9 (*e.g.*, alleging Plaintiff used the complaint "to attack" his sisters; alleging RDI incurred 28% of its fees due to his "relentless discovery"; and dismissing Plaintiff's "purported medical condition").[3]

RDI provides no support for its arguments that Plaintiff's claims were "unquestionably without merit," "fruitless" and "clearly" lacking evidence. *E.g., id.* at 10:8-16. RDI's Motion drones on for pages without providing evidence to support its arguments that Plaintiff brought baseless claims to harass the defendants. *E.g., id.* at 12:14-20; 12:24-13:16; 13:18-15:5; 15:14-28; 18:15-19:5.[4] Without any record evidence to back up RDI's hysterical claims, the Court should deny RDI's Fee Motion in its entirety. It

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[3] These attacks—which permeate the Fee Motion—are so personal and display such hostility that they *support* the merits of Plaintiff's claims, rather than show the claims were frivolous.

[4] It is ironic that RDI should argue that Plaintiff "never presented any evidence showing that Reading was being looted . . . to satisfy the whims of his sisters" or that the directors defendants lacked independence. Fee Motion at 12:24-26. RDI and its directors spent $15.9 million dollars on legal fees—exceeding the D&O policy by more than $5 million, *id.* at 2—and spent $2.9 million in costs, including on decadent items such as limos from Los Angeles to Las Vegas for Ellen Cotter, one-way $2,800 airfare tickets for Margaret Cotter, and a $1,200 dinner at Nobu for four—all of which expenses flagrantly violated RDI's Travel & Expense Policy. *See* Travel & Expense Policy, **Exhibit 1** hereto. All of Margaret and Ellen Cotter's extravagant expenses were approved and signed off by "independent" director McEachern. *See* Opp'n to Motion to Retax, Exhibit Pages 1713-1946.

would be an abuse of discretion to award the defendants fees in the absence of evidence to support them. *Gitter*, 393 P.3d at 682.

D. The Court has already found that Plaintiff's claims were not brought or maintained without reasonable grounds.

The mere fact that a claim fails to survive summary judgment is not evidence that the claim lacked a reasonable basis. In *Baldonado v. Wynn Las Vegas, LLC*, the Nevada Supreme Court affirmed the district court's order denying Wynn attorneys' fees—even though Wynn prevailed on summary judgment—because of the complexity and unsettled nature of the labor laws under which the plaintiffs sued. 124 Nev. 951, 968, 194 P.3d 96, 106-07 (2008). In *Bower v. Harrah's Laughlin, Inc.*, the Nevada Supreme Court held that the district court abused its discretion in awarding Harrah's attorneys' fees under NRS 18.010(2)(b) even though: (1) Harrah's prevailed on summary judgment based on claim preclusion; and (2) "other factually similar cases were decided in favor of Harrah's." 125 Nev. 470, 494, 215 P.3d 709, 726 (2009), *modified on other grounds by Garcia v. Prudential Ins. Co. of Am.*, 293 P.3d 869 (Nev. 2013) ("*Bower*"). The Nevada Supreme Court held that the plaintiffs had reasonable grounds to bring their claims because the existence of "other factually similar cases" decided in Harrah's favor" did not "necessarily support issue preclusion." *Id.* at 494, 215 P.3d at 726. Moreover, the fact that Judge Denton had denied Harrah's summary judgment motion against Bower illustrated that "reasonable minds could disagree as to whether issue preclusion barred [plaintiffs]' claims." *Id.*

Here, the record of this case belies RDI's unsupported arguments that Plaintiff lacked a reasonable basis to bring or maintain his claims.

First, the Court did not just deny one motion to dismiss, as in *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993)—a case on which RDI relies—the Court denied at least *three* motions to dismiss based on demand

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futility that the Cotter defendants and RDI filed over the course of this case. *See* Oct. 19, 2015 Order; Jan. 8, 2018 Tr. at 14:22-15:3; Aug. 14, 2018 Order.

Second, the Court twice denied the Cotter defendants' Partial MSJ No. 1 on Plaintiff's termination claims that formed the basis of his initial complaint. In October 2016, the Court denied Partial MSJ No. 1 as to *all* defendants on the grounds that there were "genuine issues of material fact and issues related to the directors participating in the process." Oct. 27, 2016 Hearing Tr. at 117:9-12. In December 2017, the Court denied Partial MSJ No. 1 as to the Cotter sisters and Guy Adams, on the grounds that there were genuine issues of material fact related to their disinterestedness and independence. *See* Dec. 28, 2017 Order. Thus, the Court rejected defendants' argument that there was "clearly" no evidence to support or maintain Plaintiff's initial complaint.

Third, the Court consistently denied the Cotter defendants' Partial MSJ No. 2 on "Independence" as to the Cotter Sisters and Guy Adams. *See* Dec. 28, 2017 Order. The Court also denied Partial MSJ Nos. 1, 4 (in part), 5, and 6 against them. *Id.* But for the ratification vote, Plaintiff's claims against these three defendants would have proceeded to trial. And while the Court ultimately found that Plaintiff failed to raise a *genuine* issue of material fact as to the disinterestedness or independence of the other five directors, *id.*, the Court did *not* find that Plaintiff lacked *any* evidence to bring or maintain his claims against them. Just in their answer alone, these defendants admitted a great number of key factual allegations of Plaintiff's Second Amended Complaint that formed the basis of his claims that these defendants were not independent. *See* Defendants' Nov. 28, 2017 Answer, *e.g.*, ¶¶ 5-6, 10-12, 14-15, 18, 24-25.

Fourth, the Court also rejected defendants' argument that Plaintiff's complaint was merely filed for personal reasons, and disagreed

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with defendants' characterization of the decision rendered in the California Trust litigation. *See* Nov. 20, 2017 Hearing Tr. at 8:5-9:19. This California decision is not only wholly irrelevant—because it is not part of the record evidence in *this* case—but it does not help the defendants. As the Court correctly observed, Plaintiff was not found to have engaged in any "forgeries," let alone attempts to deprive his sisters of their share of the Trust. *Id*. at 8:11-13; 20-22. As the Cotter sisters' counsel, Mr. Tayback, acknowledged, the judge in that case is "unhappy with *all* the litigants," including Margaret Cotter. *Id*. (emphasis added).[5]

E. The complex and novel legal issues in the case also preclude an attorneys' fee award.

The Nevada Supreme Court has consistently held that it is an abuse of discretion to award attorneys' fees if claims are based on "novel and arguable, if not ultimately successful, issues of law." *Gitter*, 393 P.3d at 682. Just this month, the Nevada Supreme Court reversed an order awarding attorneys' fees because the case presented a novel issue of state law, even though "the evidence produced and Nevada's current jurisprudence [did] not fully support the Trust's suit." *Frederic and Barbara Rosenburg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. Adv. Op. 69, __P.3d __, 2018 WL 4402363134, at *7 (Sept. 13, 2018). As the Nevada Supreme Court remarked:

> Though we understand the Legislature's desire to deter frivolous lawsuits, this must be balanced with the need for attorneys to pursue novel legal issues or argue for clarification or modification of existing law.

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[5] In fact, Margaret Cotter admitted to forging a document on behalf of her father which had the effect of transferring an apartment to an entity that Margaret controlled. The Judge in the Trust Litigation asked the attorney for the Cotter sisters: "What do you do about the fact that your clients testified by their own admission to some shameful conduct? Possibly criminal . . . ."

Id.

The Nevada Supreme Court also held that it is an abuse of discretion to award attorneys' fees where the complaint presented complex legal questions. *See Key Bank v. Donnels*, 106 Nev. 49, 53, 787 P.2d 382, 385 (1990) (holding it is abuse of discretion to award attorneys' fees where law not clear and complaint presented complex legal questions concerning statutory interpretation and legislative intent); *see also Baldonado*, 194 P.3d at 106-07 (affirming district court's order denying Wynn attorneys' fees because of the complexity and unsettled nature of the labor laws under which the plaintiffs sued).

Plaintiff's derivative case presented complex and novel issues of law that did not fit squarely in typical derivative cases.[6] Notably, this case was filed two years before the Nevada Supreme Court defined the scope of the directors' duty of care and the business judgment rule. *See Wynn Resorts, Ltd. v. Dist. Ct.*, 133 Nev. __, __, 399 P.3d 334, 343-44 (2017).[7] One of these issues was whether a lack of director independence can be shown

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[6] RDI's counsel repeatedly argued that he had never seen a derivative case like this. *E.g.*, Oct. 27, 2016 Tr. at 71:11-12 (Mr. Ferrario: "We can't find a derivative case that parallels this anywhere"); June 19, 2018 Hearing Tr. at 13:23-14:4 (Mr. Ferrario: "So do I agree with Mr. Krum that I've never seen anything like this, you bet I haven't."). But Plaintiff's case was certainly not the first derivative case that involved family disputes or involved the termination of a CEO. *See Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006) (derivative case brought by Paul Shoen against Mark Shoen and others); *In Re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 697 (Del. Ch. 2005) (derivative suit alleging "that the director defendants breached their fiduciary duties in connection with the 1995 hiring and 1996 termination of Michael Ovitz as President of The Walt Disney Company").

[7] This is why Plaintiff had a reasonable basis to bring and maintain his complaint against Mr. Gould (and McEachern), because his claims were based on factual allegations pertaining to his breach of duty of care and, later, his duty of loyalty. *See* Compl. *e.g.,* ¶¶ 2, 112, 115; First Am. Compl. *e.g.*, ¶¶ 3, 9, 150, 160, 174, 181; *see also* Answer, on file ¶¶ 12, 15, 94, 126, 137 (admitting key factual allegations pertaining to fiduciary duty claims).

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based on a pattern of decision-making conduct that consistently benefitted the Cotter sisters personally—as distinguished from benefitting all shareholders. Another issue was whether a lack of independence or disinterestedness was the only way to rebut the business judgment rule. An issue that arose late in the litigation was whether board decisions to terminate a CEO and or decisions to invoke a share option were "transactions" that could be ratified under NRS 78.140. The Court itself questioned whether NRS 78.140 applied in this case. *See* June 19, 2018 Hearing Tr. at 27:22-28:9; 28:21-29:2; 29:21-30:20.

Although Plaintiff was ultimately unsuccessful, these complex and novel issues preclude a fee award as a matter of law. *Gitter*, 393 P.3d at 682. The Cotter defendants apparently agree, because their counsel contends that while Quinn Emanuel's attorney rates "may be higher than those in the Las Vegas legal market, the rates are fair and reasonable in light of the "***complexity*** and sophistication of the ***legal matters involved***." Searcy Decl. ¶17 (emphasis added); *see also* Cost Memo at 10 (arguing that the "complexity of the litigation" warrants a higher cost award for expert witness costs than $1,500); *id*. at 5 (seeking more than $45,000 in Westlaw legal research). Thus, the admitted complexity and novelty of the legal issues provides a separate basis to deny the Fee Motion in its entirety.

F. RDI fails to meet the "harassment" standard of NRS 18.010((2)(b).

When determining whether to award sanctions under NRS 18.010(2)(b) for bringing or maintaining a claim to harass, courts look at whether a litigant's conduct in filing or maintaining suit was reasonable. *See American Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 605, 606, 729 P.2d 1352, 1355 (1986) (reversing award of attorneys' fees under NRS 18.010(2)(b) because "AEI's conduct in filing suit was not unreasonable"); *Sargeant v. Henderson Taxi* , Case No. 70837, 2017 WL

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10242277, at *1 (Nev. Dec. 1, 2017) (affirming district court's order awarding a portion of Henderson Taxi's attorneys' fees where "Sargeant embarked on a series of filings that sought to revisit the court's denial of class certification, prolonging the litigation without advancing or redefining his remaining claims").

Although there is a paucity of Nevada law applying the harassment factor of NRS 18.010(2)(b), the cases decided by the Ninth Circuit Court of Appeals on Rule 11 sanctions on the grounds of harassment are instructive. These cases hold that harassment is not determined by how the defendant subjectively perceives the complaint. The claim must "more than in fact bother, annoy or vex the complaining party." *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831-32 (9th Cir. 1986), *abrogated on other grounds*, 496 U.S. 384 (1990)) (emphasis added). Rather, there must be *objective* evidence of a party's improper purpose, such as repeated filings based on arguments already rejected by the Court. *E.g., id*. at 832 ("Without question, successive complaints based upon propositions of law previously rejected may constitute harassment under Rule 11"); *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir.1997) (same); *accord Sargeant*, *supra*, at * 2 (affirming a partial attorney fee award where the plaintiff repeated previously rejected arguments in a series of motions).

Moreover, when a plaintiff makes non-frivolous claims, it is irrelevant whether his "motives for asserting those claims are not entirely pure." *Townsend v. Holman Consulting Corp.*, 929 F. 2d 1358, 1362 (9th Cir. 1990) (citing *Zaldivar*, 780 F.2d at 834); *accord, e.g., In re Marsch*, 36 F. 3d 825, 829 (9th Cir. 1994) (holding same); *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir.1987) (a "nonfrivolous complaint cannot be said to be filed for an improper purpose."). Without such standard, every complaint could be deemed to "harass" the other side.

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1. There is no objective evidence of an improper purpose.

Here, the objective record evidence (which the Fee Motion ignores) shows no intent to file or maintain the lawsuit to harass the individual defendants. The fact that the defendants admitted many alleged facts that called into question the independence of the directors shows that the complaint was *non*-frivolous. *See*, *e.g.*, Defendants' Nov. 28, 2017 Answer, ¶¶ 5-6, 10-12, 14-15, 18, 24-25. Thus, even assuming Plaintiff or his counsel had threatened the RDI board with litigation, this does not prove harassment under NRS 18.010(2)(b), because Plaintiff had an objectively reasonable basis to bring his litigation. *Zaldivar*, 780 F.2d at 834. Moreover, up until the eve of trial, this Court agreed with Plaintiff that there were "genuine issues of material fact and issues related to interested directors participating in [Plaintiff's termination] process." Oct. 27, 2016 Hearing Tr. at 117:9–12. The termination process was the very basis of Plaintiff's initial complaint. If the five directors found to be independent had not "ratified" the termination vote, this claim would have proceeded to trial.

Unlike the plaintiff in *Sargeant*, Plaintiff did not "embark[] on a series of filings" to revisit the Court's adverse rulings that needlessly prolonged the case. Plaintiff's two amended complaints were based on new events that further supported his initial claims rather than on previously rejected legal propositions. Until December 28, 2017, Plaintiff had *prevailed* on most dispositive motions. The only two motions for reconsideration Plaintiff filed involved entirely different issues, were promptly filed and decided, and not renewed. *See* Dec. 19, 2017 Motion for Reconsideration of Rulings on Partial MSJs and Gould's MSJ on OST; August 8, 2018 Motion for Reconsideration on OST (re in camera review), both on file.

Plaintiff also did not needlessly prolong the case or abuse the discovery process. As RDI admits, Plaintiff sought expedited discovery at the outset. He filed several discovery motions that the Court granted in full

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or in part. *See, e.g.,* October 3, 2016 Order Granting Plaintiff's Motion to Permit Certain Discovery on OST, on file; July 12, 2018 Order Granting in Part Motion to Compel and Motion for Relief, on file; see also Oct. 27, 2016 Hearing Tr. at 32:12-16 (Court asking Mr. Ferrario about status of outstanding production of documents). The parties twice stipulated to extend the discovery deadline. *See* June 21, 2016 SAO to amend deadlines (second request), on file. If the discovery on ratification prolonged the case, it was because (1) the *defendants* did not take a ratification vote until the eve of trial; (2) the *defendants* filed an untimely motion for judgment based on the ratification on the eve of trial; and (3) the *defendants* did not timely produce all relevant ratification documents and privilege logs to Plaintiff's counsel after the Court allowed discovery on the subject. *See* July 12, 2016 Order at 2. The Court even imposed an evidentiary sanction against the defendants for their belated and incomplete production of the ratification documents. *See id.* [8]

RDI's argument that Plaintiff unreasonably prolonged the proceedings by failing to make an "objective assessment" of this lawsuit like the T2 plaintiffs allegedly did is also unavailing. Unlike the T2 Plaintiffs, Plaintiff was on RDI's board of directors. He knew that the facts often differed from those represented in the public filings. His inside knowledge *supported* rather than refuted his claims. By way of example (only), he knew that Ellen Cotter was not elected CEO as a result of the CEO search but because the CEO search was aborted. *E.g.*, Spitz Depo Tr., **Exhibit 2** hereto at 125:20-25; 144:5-145:17. He knew that Timothy Storey did not voluntarily retire but was asked to leave following discussions by the "nominations committee" with the Cotter sisters. Storey Dep. Tr., **Exhibit 3**

[8] To the extent the defendants complain about "multiple days of needlessly duplicative depositions," Fee Motion at 15, this argument cuts both ways. It took defendants' counsel four days to complete Plaintiff's deposition.

hereto, at 201:19-202:13. To suggest, as RDI does, that Plaintiff only filed this case to get his job back overlooks the fact that Plaintiff was and remains a significant shareholder seeking to protect his and his children's investment in RDI just as any other shareholder would.

2. RDI and the individual defendants are to blame for this protracted case and their outrageous attorneys' fees.

RDI and the Cotter defendants made a number of litigation and corporate governance gaffes that put them in the situation they now regret and lament.

First, in a derivative suit alleging that the directors breached their fiduciary duties to the corporation in which the corporation is named as a nominal defendant, the corporation " 'is required to take and maintain a wholly neutral position taking sides neither with the complainant nor with the defending director.' " *Swenson v. Thibaut*, 250 S.E. 2d 279, 293-94 (N.C. App. 1978) (quoting *Solimine v. Hollander*, 129 N.J.Eq. 264, 19 A.2d 344 (1941)). Instead, RDI took a very aggressive adversarial position. Its counsel attended most depositions, conducted an inordinate amount of legal research, and joined in many substantive motions filed by the directors.

Second, the defendants filed a total of four motions to dismiss based on demand futility—*after* the Court had already denied the first motion. *See* Aug. 10, 2015 MTD; Sept. 3, 2015 MTD; Jan. 8 Hearing Tr. at 10-14; June 19 Hearing Tr. at 49. What the defendants should have done was seek an evidentiary hearing "to determine . . . whether the demand requirement nevertheless deprives the shareholder of his or her standing to sue" *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 645, 137 P.3d 1171, 1187 (2006). But, as the Court pointed out to the defendants, they "never again requested or renewed that motion with a request for an evidentiary hearing" in all the three "years or so we've been in litigation." Jan. 8, 2018 Hearing Tr. at 14:22-15:3. Even after this "hint," defendants still did not ask for an

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evidentiary hearing. Instead, RDI on June 1 filed yet another motion to dismiss "under NRCP 12(b)(2)," which the Court later denied as moot.

Third, the defendants say in their Cost Memo that "each of [Plaintiff's] claims could have ***easily*** been resolved by ratification, as ultimately occurred, thereby saving Reading millions of dollars." Cost Memo at 2 (emphasis added). But it took RDI directors two years to create a special independent committee, and its conflicted counsel did not advise this committee to recommend ratification until December 20, 2017, which did not occur until December 29, 2017—more than two and a half years after Plaintiff filed suit.

Fourth, the director defendants never established a special litigation committee to assess the merits of this case. RDI's "excuse" for not doing so is baseless. Contrary to what RDI contends on page 17 of its Motion, *In Re Dish Network* does not hold, let alone suggest, that board members who are "existing defendants . . . will automatically have a strike against them" in the determination of whether they are independent and can serve on an SLC. The Nevada Supreme Court held the exact opposite: "The independence standard that applies to directors in the demand-futility context is equally applicable to determine whether an SLC is independent." *In re Dish Network Derivative Litig.*, 401 P.3d 1081, 1089 (Nev. 2017) (citing cases).

Fifth, despite having a sophisticated searchable database and paying its E-discovery vendor thousands of dollars per month to conduct searches that were billed as "consulting fees," RDI was repeatedly unable to timely produce the requested documents—resulting in **thirty-seven** productions over the course of three years. *See* Ex. 4 to Plaintiff's Motion to Retax Costs; *see also* Ex. 3 to Plaintiff's Reply in Support of Motion to Retax Costs at REP65-164, on file.

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Sixth, Gould's counsel chose not to use the last five minutes of the October 27, 2016 hearing to argue Gould's MSJ, and thereafter did not request a hearing or re-notice his MSJ until December 1, 2017—more than a year later. *See* Gould's Dec. 1, 2017 Request for Hearing, on file.

Last but not least, the Cotter defendants filed six Partial MSJs on issues; not MSJs on claims by defendant. As the Court recognized and advised their counsel when arguing the Partial MSJ on the Issue of Director Independence, "[i]t's not summary judgment, counsel." Oct. 27 2016 Hearing Tr. at 83:16; *see also id*. at 83:8-11. The piecemeal filing of six Partial MSJs on issues was inefficient and resulted in piecemeal rulings that did nothing to move the case along or dispose of parties or claims.

G. The sheer size of RDI's attorneys' fees warrants an outright denial of the Fee Motion.

Even assuming the defendants had met their burden under NRS 18.010(2)(b)—as shown above, they did not—where, as here, the Court has discretion to award attorney's fees under a fee-shifting statute, "such discretion includes the ability to deny a fee altogether when, under the circumstances, the amount requested is outrageously excessive." *Clemens v. New York Central Mutual Fire Ins. Co.*, __ F.3d __, 2018 WL 4344678, at *5 (3d Cir. Sept. 12, 2018) (citing *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980); *Envtl. Def. Fund, Inc. v. Reilly*, 1 F.3d 1254, 1258–60 (D.C. Cir. 1993); *Fair Hous. Council of Greater Wash. v. Landow*, 999 F.2d 92, 97 (4th Cir. 1993); *Lewis v. Kendrick*, 944 F.2d 949, 956–58 (1st Cir. 1991)).

In *Clemens*—which was decided this month—the plaintiff prevailed and was awarded $100,000 in punitive damages under Pennsylvania's bad faith statute. *Clemens*, __ F.3d __, 2018 WL 4344678, at *1. His counsel filed a request for $946,526.43 in fees and costs but was ultimately awarded $0.00. The court in *Clemens*, like many courts in

Nevada, began its analysis with the "lodestar" method—*i.e.*, "the multiplication of the actual number of hours spent in pursuing the claim by a reasonable rate." *Id.* at * 2. *Compare, e.g.*, *Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989) (The lodestar approach involves multiplying "the number of hours reasonably spent on the case by a reasonable hourly rate"). The district court found "eighty-seven percent of the hours billed . . . vague, duplicative, unnecessary, or inadequately supported by documentary evidence." *Clemens*, __ F.3d __, 2018 WL 4344678, at *1. For example, the court found 562 hours spent to prepare for trial "outrageous" under the circumstances, and the fee motion did not explain which one of the many attorneys working on the case performed which task. *Id.* at * 4. "After making that [87%] reduction, the court then decided to award no fee at all in light of the excessive nature of the request." *Id.* at *3.

Here, the **$15.9 million** in legal fees incurred by the defendants is also unjustifiably excessive and mostly self-inflicted. As a nominal defendant, RDI could and should have limited its legal fees to only those related to Plaintiff's standing to bring suit. Nevertheless, RDI incurred **$2.9 million** in attorneys' fees.[9] Although it is hard to tell from Mr. Ferrario's declaration, which does not identify the roles of the **23 timekeepers** who

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[9] Under the parties' stipulation, RDI's counsel was supposed to list in his declaration each attorney who worked on the case and his or her billable hour. *See* Sept. 4 SAO Relating to Process for Filing Motion for Attorney Fees, on file, at 1. However, Mr. Ferrario's chart merely lists 23 timekeepers with "hourly rate ranges" without saying what hourly rate was charged to RDI. *See* Ex. 1 to Ferrario Decl. Unlike the declaration of Mr. Searcy, Mr. Ferrario's declaration does not identify which individuals are attorneys and which individuals are paralegals (or assistants); when each worked on this case, and what hourly rate each charged at a given time. This was especially sloppy given the generous accommodation granted to RDI by Plaintiff's counsel that RDI did not yet have to support its motion for discretionary attorneys' fees with its billing records. Sept. 4 SAO, on file, at 2.

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worked on the case, there appear to be **ten** attorneys who worked on the case at some point in time for this nominal defendant. *See* Ex. 1 to Ferrario Decl. RDI admits, and the bills show, that on December 7, 13, 15, 20, and 21, 2017, RDI's counsel was in California to prepare the two Cotter sisters—who were alleged to have breached their fiduciary duties ***to*** RDI—for trial. *See* Opp'n to Motion to Retax Costs at 28:6-12; *id*. Ex. 11 and EP 1607-1608; EP 1614; EP 468; EP 629-630; EP 632. RDI admits, and its cost bills show, that Greenberg Traurig played a lead role throughout this case and would have played a lead role at trial, *id*. at 27 fn. 19, when its role as a nominal defendant should have been "wholly neutral" under the cases it cites. *See, e.g., Swenson v. Thibaut*, 250 SE 2d 279, 293-94 (N.C. App. 1978).

The Cotter director defendants and Gould—who were especially aware of the D&O policy limits—recklessly spent more than the entire D&O policy on attorneys' fees—and this *before* trial on the merits had even begun. *See* Fee Motion Exs. B-F. It apparently was not enough to have three experienced Harvard graduates to defend the Cotter defendants against Plaintiff's claims they have consistently characterized as frivolous. The Cotter defendants had between **eight and ten** Quinn Emanuel ("QE") attorneys to represent them over the course of the litigation who billed between $365 and $1,147 per hour. Searcy Decl.¶¶ 5-14. Director Gould was represented by **eight** attorneys: six Bird Marella attorneys—three partners and three associates—and two Nevada attorneys. *See* Ex. 1 to Bannett Decl.; Lattin Decl. Collectively, Gould incurred **$1.4 million** in legal fees when his role and exposure in the case was admittedly minimal.

The RDI directors' failure to monitor their attorneys' fees, allowing them to exceed the D&O policy, is a testament of reckless and irresponsible corporate governance. None of the work performed by the many attorneys is described or allocated; we only know the total fees

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incurred per month, but this much we do know: On average, QE billed $325,000 each month for the three years of litigation. *Id.* ¶ 21 ($11,734,276 divided by 36 months). Just let that sink in for a moment.

In the first month of litigation alone, QE billed more than $120,000. *Id.* ¶ 20 (July 15, 2015 bill). And for what? There were no dispositive motions pending, no depositions taken or court hearings held, *nothing*. By November 2015—months before depositions were taken or scheduled—QE's monthly bill was almost half a million dollars. *Id.* ¶ 20. RDI's claim that *Plaintiff* caused the defendants to incur these fees is offensive and unsupported. Fee Motion at 4:24-26. Plaintiff's discovery requests were limited in scope and in time. *See* Ex. 1 to Reply in Support of Motion to Retax Costs, on file. Even when depositions began in February 2016, no reason is offered why the Cotter defendants were "required" to incur more than **$3 million** in legal fees between February and August, 2016—*i.e.*, $500,000 per month. Searcy Decl. ¶ 20. QE mainly *defended* their clients in fact witness depositions during that time. *See* **Exhibit 4** hereto. QE took only 11 depositions over the entire course of the litigation—five of which as a result of the T2 complaint. *See id.; see also* **Exhibit 5** hereto.

Based on the thoughtlessly excessive amount of attorneys' fees alone, the Court should follow the lead of the federal courts cited above and use its discretion to deny the Fee Motion in its entirety. Doing so would not require the Court to make any findings. *See Stubbs v. Strickland*, 129 Nev. 146, 152 n.1, 297 P. 3d 326, 331 n.1 (2013) ("While we require a district court to "make findings regarding the basis for awarding attorney fees and the reasonableness of an award of attorney fees [] this court has not required such findings when a district court denies a motion for attorney fees") (internal citation omitted). Should the Court nevertheless be inclined to award defendants' attorneys' fees, Plaintiff is entitled to see all law firms'

billing statements and reserves the right to make any and all arguments against any award of fees.

IV. CONCLUSION

For all the reasons discussed above, the defendants did not meet their burden of proof to support a discretionary award of attorneys' fees under NRS 18.010(2)(b). Even assuming they had met their burden, the $15.9 million fee award they seek is so extravagantly excessive that it justifies an outright denial. The Court should therefore use its discretion and deny the Fee Motion in its entirety.

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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'S OPPOSITION TO MOTION FOR ATTORNEYS' FEES** 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 27th day of September, 2018.

By: /s/ Patricia A. Quinn

EXHIBIT 1

Reading International, Inc.

Policy Handbook

Last Updated January 2013

READING INTERNATIONAL, INC.
AND SUBSIDIARIES

Table of Contents

Last Updated April 2009

READING INTERNATIONAL, INC.
AND SUBSIDIARIES

Non-Discrimination Policy

Reading International strongly believes in equal opportunity for all, without regard to race, religion, color, national origin, citizenship, sex, veteran's status, age, marital status, sexual preference, disability or any other protected characteristic. In addition, the company will endeavor to make reasonable accommodations for known physical or mental limitations of otherwise qualified employees and applicants with disabilities unless the accommodations would impose an undue hardship on the operation of our business. Equal employment opportunity will be extended to all individuals in all aspects of the employment relationship, including recruitment, hiring, promotion, transfer, discipline, layoff, recall and termination.

At Reading International equal opportunity is not only a legal commitment, it also is a moral commitment. If you feel you have been the victim of discriminatory treatment or harassment of any kind, please speak with your supervisor or manager or any management personnel with whom you feel comfortable. If you are not satisfied with the results of the response by the individual to whom you first complained, you should speak with the Payroll Department at (213) 235-2244 or the Benefits Coordinator at (323) 213-4989.

READING INTERNATIONAL, INC.
AND SUBSIDIARIES

Anti-Harassment Policy

The company prohibits all forms of harassment based on an individual's protected characteristics, including sexual harassment. Sexual harassment of any kind is illegal, will not be tolerated and may be grounds for immediate termination. Sexual harassment includes many forms of offensive behavior and may include:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making threatening reprisals after negative response to sexual advances
- Visual conduct such as leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters
- Verbal conduct such as making or using derogatory comments, epithets, slurs or jokes
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations.
- Physical conduct such as touching, assault, impeding or blocking movements

The company also prohibits any other form of harassment based on race, color, religion, creed, age, sex, national origin or ancestry, marital status, sexual preference, veteran's status, or status as a qualified individual with a disability, and any other protected characteristic, in accordance with applicable laws.

While harassment is not easy to define, examples include verbal (including improper joking or teasing) or physical conduct that denigrates or shows hostility or aversion towards an individual because of these protected attributes, and that (1) has the purpose or effect of creating an intimidating, hostile or offensive working environment as defined by law; or (2) has the purpose

or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

The following steps have been put into place to ensure a work environment that is professional and free from unwelcome harassment.

- Reporting – If an employee believes that harassment has occurred, you should report such incident(s) to your manager, or any Reading International management personnel with whom you feel comfortable. If you are not satisfied with the results of the response by the individual to whom you first complained, you should speak with the Payroll/Benefits manager.
- Investigation – Upon receipt of such a report, Reading International will conduct an investigation, as discretely as possible, consistent with the need to identify and terminate any improper conduct.
- Corrective Measures – Upon completion of the investigation we will take corrective measures; if it is determined that such measures are necessary. These may include, but are not limited to counseling, suspension, or dismissal of an employee engaging in misconduct.

No employee will be subject to, and the company prohibits any form of discipline or retaliation for reporting incidents of unlawful harassment, pursuing any such claim or cooperating in the investigation of such reports.

Complaint Procedure

The company believes it is important for employees to bring work-related problems to the attention of management. It is the company's hope to resolve these problems promptly and at the lowest level of the organization as possible. Work related problems include an employees expressed dissatisfaction concerning conditions of employment or treatment by management, supervisors or other employees. Examples of work related problems are improper applications of rules and procedures, unfair administration of promotions or training opportunities, harassment, discrimination, or improper administration of employee benefits.

If you have a work related problem, as quickly as possible you should bring the matter to the attention of your supervisor or manager, or any of the company's management personnel with whom you feel comfortable. You should feel free to discuss work concerns and solutions candidly.

If you are not satisfied with the response by the individual to whom you first complained, you should speak with the Payroll/Benefits Manager.

READING INTERNATIONAL, INC.
AND SUBSIDIARIES

Whistleblower Policy

Purpose

To establish a process by which employees may disclose to the Audit Committee of the Board of Directors ("Audit Committee") alleged (1) improper accounting or auditing matters, (2) fraud or (3) breaches of the Company's financial and internal controls (collectively "Accounting Matters").

Making a Disclosure

An employee who becomes aware of Accounting Matters must make a report of the foregoing as soon as practical after becoming aware of the conduct. Company employees should primarily report such matters to the Chief Financial Officer, Chief Legal Officer, or Chief Executive Officer, in which case, a letter should be addressed and mailed as follows:

Personal and Confidential
Chief (Financial/Legal/Executive) Officer
Reading International, Inc.
6100 Center Drive
Suite 900
Los Angeles, CA 90045

However, where an employee does not feel comfortable addressing the matter to these individuals, such employee may make such report to the Audit Committee. Employees may make reports to the Audit Committee by mailing a letter addressed as follows:

Personal and Confidential
The Audit Committee
Reading International, Inc.
6100 Center Drive
Suite 900
Los Angeles, CA 90045

As soon as practical after receipt of the report, the Audit Committee will nominate a director to handle the report who does not have a conflict of interest in the matter being investigated (the "Handling Director"). The Handling Director and/or his designees will conduct an investigation into the allegations and will take any necessary corrective action that they deem appropriate. Where the Handling Director determines the employee's allegations do not involve Accounting Matters, the Handling Director shall refer the matter to the appropriate Company officer to address the employee's concerns.

False Allegations of Wrongful Conduct

An employee who knowingly makes false allegations shall be subject to discipline, up to and including termination of employment, in accordance with Company policies and procedures and applicable law.

No Adverse Action

No adverse personnel action may be taken against an employee in retaliation for making a complaint or any disclosure of information under this policy or otherwise pursuant to law, which information the employee in good faith believes evidences actual or potential Accounting Matters. No employee with authority to make or materially influence significant personnel decisions shall take or recommend an adverse personnel action against an employee in retaliation for reporting such alleged wrongful conduct. Any employee found to have so violated this policy shall be disciplined, up to and including termination, in accordance with existing Company policies, and procedures and applicable law.

It shall not be a violation of this policy to take adverse personnel action against an employee where legitimate business reasons warrant separate and apart from that employee's making a report.

Retaliation Complaints

As soon as an employee is notified or becomes aware of an adverse personnel action against him or her and if the employee believes the action was based on his or her prior report of actual or

potential violations of applicable laws and regulations regarding the Company's audits or internal controls to the Audit Committee, he or she may protest the action by filing a written complaint with the Company's Chief Legal Officer. The Chief Legal Officer, on receipt of such a complaint, will investigate such complaint promptly and thoroughly. If the Chief Legal Officer has a conflict of interest in the matter being reviewed, he will appoint a substitute officer to handle the complaint. The Chief Legal Officer shall notify the complainant in writing of the results of the review and whether the adverse personnel action is affirmed, reversed, or modified in a timely manner.

Retention of Reports

Any allegations submitted and investigations performed under this policy shall be retained in confidential files by the Company for a period of seven (7) years from the date the matter was resolved.

READING INTERNATIONAL, INC.
AND SUBSIDIARIES

Vacation Policy
Updated: September 30th, 2008

The Company encourages its employees to take vacation on a regular basis within the particular demands of the business. The management of the Company believes that a workforce that regularly and fully utilizes its vacation time, helps to maintain the health and well being of employees as well as being more productive at work.

The following summarizes the vacation policy in force for all employees of Reading International Inc. and its U.S. subsidiaries:

Vacation for Corporate full-time salary employees is earned as follows:

- Less than 5 years of employment: 80 hours per year (6.666 hours per month),
- After 5 years of employment: 120 hours per year (10 hours per month),

Vacation for Cinema managers (salary and hourly) is earned as follows:

- Less than 5 years of employment: 80 hours per year (3.077 per pay period or 0.0385 hours for every hour worked to a maximum of 80 hours per year),
- At least 5 years of employment: 120 hours per year (4.615 per pay period or 0.0577 hours for every hour worked to a maximum of 120 hours per year),

Vacation for Cinema hourly employees and Live Theater salary employees is earned as follows:

- Less than 1 year of employment: 40 hours per year (0.0192 hours for every hour worked to a maximum of 40 hours per year) earned after the first year,
- From 2 years to 5 years of employment: 80 hours per year (0.0385 hours for every hour worked to a maximum of 80 hours per year),
- After 5 years of employment: 120 hours per year (0.0577 hours for every hour worked to a maximum of 120 hours per year),

NO OTHER VACATION ACCRUALS WILL BE PERMITTED OUTSIDE OF THE STIPULATED CRITERIA ABOVE.

Vacation time must be approved by the relevant supervisor and should not be taken at work sensitive periods, as applicable to each department and as defined by the department supervisor.

Unused vacation cannot accumulate to more than the maximum vacation an employee may earn over a 21 month period depending on their length of service. For example, an employee with less than 5 years of service may accumulate a maximum of 140 unused vacation hours, while an employee with at least 5 years of service may accumulate a maximum of 210 unused vacation hours. Once the cap is reached, an employee will earn no additional vacation hours until they take vacation. An accumulated balance based on the above calculation may be carried over from one year to the next.

All vacation requests on the appropriate completed form (attached) must be submitted to the relevant department supervisor prior to the beginning of the vacation period, who will forward the approved request to Corporate Payroll department in Los Angeles.

At every December 31st, employees will be required to sign a form to confirm their vacation usage during the past year and any small amounts of unused vacation carried forward into the next year.

Sick Time Policy

The following summarizes the sick time policy in force for all employees of Reading International Inc. only:

- Employees are entitled to 10 business days of sick time per calendar year, without regard to length of service.
- Sick time is to be used for periods of illness and/or doctor/dentist visits. Under no circumstances may sick time be used to supplement vacation days.
- No sick time may be carried forward from one calendar year to the next, nor will any sick time be paid out under any circumstances.
- Sick time must be reported to the relevant supervisor and the Corporate Payroll Department in Los Angeles as soon as is practicable.

Sick time requests for Cinema and Live Theater employees is administered strictly on a case by case basis and should be requested and approved by the Vice President of Domestic Theater Operations and Chief Operating Officer of Live Theaters, respectively.

Bereavement Policy

Death in Immediate Family - With Management approval, you will be granted a personal leave of absence in the event of a death in your immediate family (spouse, child, brother, sister, parent, grandparent, grandchild, or spouse's parent). The maximum period of leave will be three days if required travel is within 400 miles and five days if distance is over 400 miles.

READING INTERNATIONAL, INC.
AND SUBSIDIARIES

Jury Duty Policy
Effective Date: September 1st, 2008

Reading International, Inc. supports employees in fulfilling their civic duty by testifying as a witness in judicial proceedings or serving as jurors because of a jury duty summons. The following items summarize the jury duty policy in effect for full-time exempt employees of Reading International, Inc. and its U.S. subsidiaries:

- Supervisors may request that employees postpone jury duty service based upon business necessities.
- Employees must promptly notify their immediate supervisor of jury duty summons and the start date of such service. It is the responsibility of the employee to keep their supervisor informed of their jury duty service.
- Full-time exempt employees will receive a maximum of 5 full days of regular pay while completing jury duty service. Employees must present evidence of jury duty service upon completion.

Travel & Expense Policy
Effective Date: April 1st, 2009

Office Expenses

The Company, at management's discretion, will provide coffee, tea, accompanying condiments, and water from water dispensers for employee use.

Telephone

Certain employees will be authorized to receive reimbursement for mobile telephones for Company business. Authorization for reimbursement will be approved by the CEO/President or the Chief Financial Officer (CFO), or the President. Full copies of all such bills must be presented with the expense report in order to be reimbursed. No home telephone bills will be reimbursed unless a copy of the detailed bill, accompanied by business reasons, is submitted with the expense report. The Company has issued discount calling cards to those employees incurring long distance phone charges related to Company business while outside of the office. The discount calling cards should be used whenever possible to reduce expenses.

Equipment Purchases

The purchase of equipment including, but not limited to, home computers, hand held organizers, laptops, blackberries, home fax machines, and mobile telephones, is not automatically reimbursable. In order to be reimbursable, such purchases must be approved in advance of the purchase by the CEO/President or CFO.

Private Clubs

As a general rule, the Company does not reimburse private club membership fees except when approved under special circumstances by the CEO/President where such membership is required for business reasons.

Airline Clubs

Airline club lounge memberships may be approved by the CEO/President for certain employees who fly frequently.

Meals

Employee meals may be reimbursable when the employee is traveling with the authorization of the Company for a business purpose, provided that the meal expenses are reasonable.

The Company will only reimburse meals between employees when they are meeting for a specific business purpose and such purpose is submitted with the expense report. The most senior employee is to pay for the meal and claim it on his or her expense report.

When not traveling, the Company will reimburse employees for the reasonable costs of meals with vendors, suppliers, and industry contacts, where such meetings in combination with dining is beneficial to the Company. The Company will generally not reimburse for the cost of meals between employees, except when such meetings between employees in conjunction with dining is for a specific business purpose beneficial to the Company and the cost of the meal is reasonable.

The Company will not reimburse employees for extravagant restaurant dining (any amount in excess of $30 Breakfast / $40 Lunch / $50 Dinner per person will on the surface be considered extravagant).

Travel

Upon determination that a trip is necessary, a Travel Request Authorization Form must be filled out and signed by the Senior Supervisor and the Chief Executive Officer/President (CEO) for all Operations, New Zealand, and Australia Staff or the Chief Financial Officer (CFO) for all U.S. Finance and U.S. IT Staff prior to travel. The Chief Executive Officer will approval all direct reports' travel requests and can provide approvals in the CFO's absense. Include the purpose(s) of the trip and the estimated costs of airfare, lodging, and any other incidental expenses. Incur only expenses that are consistent with business needs and exercise care in determining appropriate expenditures. Please use the current Travel Request Authorization Form for all out of town travel only. This form is available in electronic format in the "Global HR" shared network folder located within your mapped drives.

By Automobile

• Travelers are expected to use rental agencies with which the Company has contracts that include insurance coverage. When renting a car on Company business, do not purchase any insurance offered by the rental agency as the Company has a blanket policy in effect that covers all liabilities.

• At the discretion of Management, car allowances may be offered to certain employees. Employees with car allowances may not claim vehicle-related expenses through the expense report. A car allowance is paid through payroll, and is intended to cover all Company-related vehicle expenses, including mileage, maintenance, insurance, and gas.

• An employee without a car allowance, upon authorization by his or her supervisor, may use his or her personal vehicle on business-related travel, and may claim reimbursement for such travel at the mileage rate published by the United States Internal Revenue Service, Australian Taxation Office, or New Zealand Inland Revenue Department, effective on the day when the travel occurred. Business-related travel does not include travel between one's home and the office.

By Air

• Requests for air travel must be made in advance wherever possible to allow enough time for approval while maximizing savings on airfare.

- As such, commitments must not be made prior to approval on the basis that travel will be approved. When travel is urgent and unavoidably requires an oral request, the CEO/President may waive the written request requirement at his discretion.

- All domestic flights within the US (including Alaska, Hawaii, and Puerto Rico), Australia, and New Zealand must be booked using the best priced economy class fares.

- All international travel over eight (8) hours duration may be booked using business class. When business class is full or not offered, the best priced economy or premium economy class should be booked.

- For extremely long duration international flights, special consideration may be given by the Chief Executive Officer (CEO) to allow for first class travel if two employees are traveling together and are able to obtain a two-for-one offer on first class.

- Employees may use their own frequent flyer mileage to upgrade from economy class to a higher class of service provided no additional cost is incurred by the Company (i.e. if a normal coach ticket is $100, but the coach ticket fare available to upgrade is $150, the Company will reimburse the employee for $100). Any other fees associated with upgrading are not reimbursable.

Hotels

Pre-approval for overnight hotel accommodation whether linked to air travel or not, must also be obtained prior to making any business related commitment. Hotel expenses should be reasonable, and should be comparable to or less expensive than the Marriott, Hyatt, or Hilton hotel chains.

Monthly Expense Report

Employees must submit expense reports for the reimbursement of business-related expenses in a timely manner. All such submitted expense reports will be paid within 7 days. Expense reports must be completed using the current Company authorized form. This form is available in electronic format in the "Global HR" shared network folder located within your mapped drives. Travel and Expense Policy (Version: April 1, 2009) Page 5 of 5 The policies in this document supersede and replace all previous versions.

Original receipts must be attached to the expense report for all expenses in excess of $25.00, and wherever possible when $25.00 or less.

Expense reports must be approved by the employee's immediate supervisor before submission to the CFO for all Finance/IT staff and the CEO/President for all Operations staff for final approval.

Employees holding corporate credit cards are personally responsible for making payments directly to the credit card company. The corporate credit cards have been set up on a calendar month cycle in order to coordinate with the expense report process.

Any invoices addressed personally to an employee for his own account must be reimbursed through the expense report process, and will not be paid directly by the Company.

Temporary Worker/Consultant Policy

- All hiring of temporary workers or consultants must be pre-authorized by the CEO or CFO.
- A request for a temporary worker/consultant must be submitted to the CEO or CFO at least one week in advance of their anticipated first day at work. The request should be made on the appropriate form and must state the number of work hours anticipated, the requested hourly pay, the period of time for which the temporary worker/consultant is needed, and the reasons why the work requirements cannot be met by company employees. Any changes to the original written request must be approved by the CEO or CFO. Each payment of compensation for services of temporary workers must be approved by the CFO.
- The individual requesting the temporary worker is responsible for setting their work hours, supervising their performance, recording the number of hours they have worked, and requesting written approval of compensation from the CFO. The individual requesting the temporary worker is also responsible for ensuring that the temporary worker exits the premises at the end of the day, and for informing the temporary worker of any applicable Company policies.

EXHIBIT 2

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

CERTIFIED TRANSCRIPT

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

vs. Case No.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive, A-15-719860-B
Defendants.

and

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

VIDEOTAPED DEPOSITION OF RICHARD SPITZ, Vol. I
Los Angeles, California
Wednesday, December 7, 2016

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2489983
Pages 1 - 227

but --

THE WITNESS: To answer your question, if you just ask me the question again, then I'd be able to answer it because I'm not sure I understood your question. So if you want to ask me the question again, I'll be happy to answer it. 01:47PM

BY MR. HALPERN:

Q. How, if at all, do you believe that the RDI decision maker was not fully informed about the CEO search? 01:47PM

A. Well, a number of different ways.

First, they -- the search process did not include candidates that were comparable to Ellen Cotter as far as background and experience. That was not part of the formal search process. 01:48PM

It would appear to me that the search -- formal search process did not invest sufficient time in interviewing other internal candidates or potential internal candidates.

The search process did not include Korn Ferry interviewing Ellen Cotter; did not include having her go through the assessment, the Korn Ferry assessment; did not include other candidates going through the Korn Ferry assessment. And for those reasons, those candidates and her 01:48PM 01:48PM

A. Where?
Q. The last sentence of paragraph 40.
A. Okay. I see that.
Q. What do you mean by "adequate"?
A. What I mean is that the considerations that the search committee used to terminate the search and nominate Ellen Cotter as the permanent CEO did not align with the search parameters set forth in the Position Specification, and that's where the disconnect is. 02:13PM
Said another way, the formal search was looking for oranges and the search committee selected an apple, and you can't say you conducted a search for an apple because you conducted a search for an orange. Yes, you chose an apple, but the search process itself focused squarely on oranges. And I think there's a lot of conflation between the two. 02:14PM
I'm just saying the formal search process was looking for what was in the spec and selection of Ellen Cotter didn't seem to match it, and that -- I found that vexing and not convincing that the search process itself was the result that Ellen -- Ellen Cotter selection was a result of the formal search process. 02:14PM

MR. KRUM: Okay.
THE VIDEOGRAPHER: We are off the record at 4:19 p.m., and this concludes today's testimony given by Richard A. Spitz.
The total number of media used was three and will be retained by Veritext Legal Solutions. 04:19PM
Thank you.

(TIME NOTED: 4:19 p.m.)

I, JANICE SCHUTZMAN, Certified Shorthand Reporter of the State of California, do hereby certify:
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that the testimony of the witness and all objections made by counsel at the time of the examination were recorded stenographically by me, and were thereafter transcribed under my direction and supervision; and that the foregoing pages contain a full, true and accurate record of all proceedings and testimony to the best of my skill and ability.
I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.
IN WITNESS WHEREOF, I have subscribed my name this 21st day of December, 2016.

JANICE SCHUTZMAN
CSR No. 9509

EXHIBIT 3

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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recognize the document.
MR. KRUM: Okay.
Q. I mean, you've been shown a document.
A. I don't think I was -- I don't think I had any involvement --
Q. All right. Very well.
A. -- in the matter, as far as I can recollect. It was simply sent to me.
Q. We're done with that then.
I'll ask court reporter to mark as Exhibit 45, a one-page document bearing production number TS 604.
(Whereupon the document referred to is marked by the reporter as EXHIBIT 45 for identification.)
MR. KRUM:
Q. Mr. Storey, I'm not going to ask you much of anything about the substance of this.
A. Uh-huh, I recognize the document.
Q. What do you recognize it to be?
A. It is an e-mail from me to Guy Adams confirming a discussion we had.
Q. Okay.
And was the document true and correct at the time you sent it?
MR. SEARCY: Objection. Vague.
MR. KRUM: Let me rephrase that.

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THE WITNESS: I think --
MR. KRUM:
Q. Does it accurately reflect your understanding of the discussions referenced in it?
A. I thought I discussed this with Doug McEachern, to be honest, but I might have sent it to Guy. But in any event, I think the outcome -- the initial discussion I had was with Doug McEachern. I can recollect that. Perhaps I had a subsequent conversation with Guy and confirmed the arrangement.
Q. Well, you see it's carbon-copied to Ellen Cotter and Doug McEachern?
A. Yes, it gets to the same place, my discussions with Doug and confirming my arrangement.
Q. So let me ask the question again to get a clear record. Does Exhibit 45 accurately reflect your understanding of the discussion it describes?
MR. SEARCY: Objection. Vague. Lacks foundation.
THE WITNESS: I think it accurately reflects the discussion I had with Doug McEachern and Guy Adams.
MR. KRUM: Okay. That answers the question.
This is really, at this stage of this proceeding, Mr. Robertson's matter, so I'm going to be interested in getting out of the way. I'm not going to ask any further questions about that. I'll let him do so if he

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sees fit.
MR. SEARCY: So if we're switching over, if it's a natural breaking point.
MR. KRUM: Not quite.
MR. SEARCY: Sorry, I misunderstood you.
MR. ROBERTSON: It was a tease.
MR. FERRARIO: I was right then.
MR. KRUM: I'll ask the court reporter to mark as Exhibit 46, a three-page document bearing production numbers TS 916 through 919. That makes it a four-page document.
THE WITNESS: Thank you.
(Whereupon the document referred to is marked by the reporter as EXHIBIT 46 for identification.)
THE WITNESS: Yes, I recognize the document.
MR. KRUM:
Q. And what do you recognize Exhibit 46 to be?
A. I had sent the previous note, Exhibit Number 45, and I received a lengthy qualifying note back from counsel.
Q. Counsel being Craig Tompkins?
A. Counsel being Craig Tompkins.
Q. And the qualifying note is --
A. Which went on for some pages, obviously.
Q. The redacted portion of this; correct?

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A. Indeed.
Q. And was Mr. Tompkins party to your discussions with McEachern and/or Adams?
A. No.
Q. And his response, did it address legal issues or deal points, or both?
A. It certainly dealt with commercial matters, but I guess it could have dealt with both. I suppose that's why it's redacted.
Q. And Exhibit 45, the prior exhibit --
A. Thank you.
Q. -- followed discussions you had with McEachern and/or Adams regarding the terms of your retirement after one or both of them told you that you would not be renominated to stand for election as a director; correct?
A. I'm sorry. Can you rephrase that or restate it?
Q. At the beginning of Exhibit 45, it says, "Following our discussion your Wednesday." Do you see that?
A. Yes.
Q. And the discussion referenced there was a discussion you had with, you believe, McEachern; correct?

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A. Yes.
Q. And in that discussion, he informed you that you were not going to be renominated to stand for election as a director at the 2015 annual shareholders meeting; correct?
A. Correct.
Q. And what did he tell you, if anything, about why that was?
A. My recollection is that he commented that members of the -- I guess it must have been a nominations committee that had recently been appointed had come to that conclusion following discussions, I assume, with Margaret and Ellen.
MR. KRUM: I'm going to leave that. So let's go off the record.
THE VIDEOGRAPHER: We're going off the video record at 4:29 p.m.
(A recess is taken.)
THE VIDEOGRAPHER: We're back on the video record at 4:46 p.m.
MR. KRUM: What's our next in order?
THE REPORTER: 47.
MR. KRUM: I'll ask the court reporter to mark as Exhibit 47, a one-page document bearing production number TS 697.

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(Whereupon the document referred to is marked by the reporter as EXHIBIT 47 for identification.)
MR. KRUM:
Q. Mr. Storey, do you recognize Exhibit 47?
A. I do.
Q. What do you recognize it to be?
A. It's an e-mail, dated the 4th of February, from me to Bill Gould.
Q. And so it says that Jim called you and indicated that Ellen had said something to him about an interim CEO; is that correct?
A. I don't recollect the specific discussion, but I do recollect that early in the piece that around this stage, there was some talk about looking to change the CEO.
Q. And what talk was that?
A. Just simply that that was one option available to the company.
Q. And who's -- And who were the persons who made that statement or those statements?
MR. SEARCY: Objection. Vague. Lacks foundation.
THE WITNESS: Clearly, Ellen talking to Jim.
MR. KRUM: Okay.
I'll ask the court reporter to mark as Exhibit 48, a two-page document bearing production number TS 115 and

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116.
(Whereupon the document referred to is marked by the reporter as EXHIBIT 48 for identification.)
MR. KRUM:
Q. I'm only going to ask you about the first e-mail on the first page.
A. I'm sorry?
Q. So whenever you're ready, the question is, do you recognize Exhibit 48?
A. Yes, I recognize the document.
Q. And what is it?
A. It is a series of e-mails between, essentially, between Ed Kane and me.
Q. And did you receive and transmit these e-mails on or about the dates they reflect?
A. I did.
Q. Directing your attention to the e-mail at the top of the first page from Ed Kane to you, dated April 3, 2015, did you see that in the middle of that paragraph there's a description to the effect that Ellen had called Ed Kane and was coming down to San Diego, La Jolla Saturday to have lunch with him, and so forth and so on?
A. Uh-huh.
Q. Yes?

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A. Yes, I do see that.
Q. Had Ed Kane ever shared with you what was discussed at lunch?
MR. SEARCY: Objection. Vague. Lacks foundation.
THE WITNESS: I don't recollect.
MR. KRUM:
Q. Did you ever hear or learn or otherwise come to have any understanding as to whether that lunch occurred and if so, what was discussed, if anything, with regard to Reading or Jim Cotter, Jr.?
MR. SEARCY: Objection. Lacks foundation.
THE WITNESS: I recollect -- I recollect that I did hear that lunch proceeded, and they had a walk on the beach and all sorts of things, but I don't recollect anything further.
MR. KRUM:
Q. In particular, you don't recollect Mr. Kane telling you whether they discussed anything about RDI and/or Jim Cotter, Jr., and if so, what that was?
MR. SEARCY: Objection. Lacks foundation.
THE WITNESS: Yes, as I said, I recollect that they had a discussion, but I don't remember the detail of that.
MR. KRUM:
Q. Do you remember any part of it, the sum and

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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ERRATA SHEET

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Signature of Witness

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Name Typed or Printed

EXHIBIT 4

DEPOSITIONS TAKEN BETWEEN FEBRUARY AND AUGUST 2016

Deponent	Date Taken	Counsel taking deposition
Timothy Storey	2/12/2016	Mark Krum
Guy Adams	4/28-29/2016	Mark Krum
Edward Kane	5/2-3/2016	Mark Krum
Douglas McEachern	5/6/2016 7/7/2016	Mark Krum
Brett Harriss	5/6/2016	Laura Laiolo
John Virant	5/9/2016	Laura Laiolo
Margaret Cotter	5/12-13/2016 6/15/2016	Mark Krum
James Cotter	5/16-17/2016 7/06/2016	Christopher Tayback
Ellen Cotter	5/18-19/2016 6/16/2016	Mark Krum
Whitney Tilson–T2	5/25/2016	Marshall Searcy
Jonathan Glaser-T2	6/6/2016	Noah Helpern
Andrew Shapiro–T2	6/6/2016	Marshall Searcy
William Gould	6/8/2016 6/29/2016	Mark Krum
Edward Kane	6/9/2016	Mark Krum
William D Ellis	6/28/2016	Mark Krum

EXHIBIT 5

DEPOSITIONS TAKEN BY QUINN EMANUEL

Deponent	Date Taken	Counsel taking deposition
Brett Harriss	05/06/2016	Laura Laiolo
John Virant	05/09/2016	Laura Laiolo
James Cotter	05/16-17/2016 07/07/2016	Christopher Tayback
Whitney Tilson–T2	05/25/2016	Marshall Searcy
Jonathan Glaser-T2	06/01/2016	Noah Helpern
Andrew Shapiro–T2	06/06/2016	Marshall Searcy
Tiago Duarte-Silva	10/18/2016	Christopher Tayback
Myron Steele	10/19/2016	Marshall Searcy
Richard Roll	10/26/2016	Noah Helpern
Albert Nagy	11/29/2016	Noah Helpern
Richard Spitz	12/07/2016	Noah Halpern