

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

DOUGLAS MCEACHERN, EDWARD
KANE, JUDY CODDING, WILLIAM
GOULD, MICHAEL WROTONIAK, and
nominal defendant READING
INTERNATIONAL, INC., A NEVADA
CORPORATION

Respondents.

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Case Nos. 76981, 77648 & 77733

District Court Case
No. A-15-719860-B

Coordinated with:
Case No. P-14-0824-42-E

Appeal (77648 & 76981)

Eighth Judicial District Court, Dept. XI
The Honorable Elizabeth G. Gonzalez

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981
Volume XXI
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Steve Morris, Esq. (NSB #1543)
Akke Levin, Esq. (NSB #9102)
Morris Law Group
411 E. Bonneville Ave., Ste. 360
Las Vegas, NV 89101
Telephone: (702) 474-9400

Attorneys for Appellant
James J. Cotter, Jr.

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CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 28th day of August, 2019, a true and correct copy of the foregoing **JOINT APPENDIX TO OPENING BRIEFS FOR CASE NOS. 77648 & 76981**, was served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System:

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

Christopher Tayback
Marshall Searcy
Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA

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

Mark Ferrario
Kara Hendricks
Tami Cowden
Greenberg Traurig, LLP
10845 Griffith Peak Drive Suite 600
Las Vegas, Nevada 89135

Attorneys for Nominal Defendant
Reading International, Inc.

Donald A. Lattin
Carolyn K. Renner
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, Nevada 89519

Ekwan E. Rhow
Shoshana E. Bannett
Bird, Marella, Boxer, Wolpert,
Nessim, Drooks, Lincenberg &
Rhow, P.C.
1875 Century Park East, 23rd Fl.
Los Angeles, CA 90067-2561

Attorneys for Respondent
William Gould

Judge Elizabeth Gonzalez
Eighth Judicial District
court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

By: /s/ Gabriela Mercado

1 77. Defendants admit that the RDI Board did not vote on the termination of Plaintiff at
2 the RDI Board meeting on May 21, 2015. Defendants deny the allegations of paragraph 77 of the
3 Complaint in all other respects.

4 78. Defendants admit that Harry Susman transmitted a settlement offer to Adam
5 Streisand. Defendants deny the allegations of paragraph 78 of the Complaint in all other respects.

6 79. To the extent that the allegations of paragraph 79 of the Complaint are purportedly
7 based on written documents, the documents speak for themselves. Defendants deny the allegations
8 of paragraph 79 of the Complaint in all other respects.

9 80. Defendants deny the allegations of paragraph 80 of the Complaint.

10 81. The allegations of paragraph 81 of the Complaint are purportedly based on written
11 documents, which speak for themselves. Defendants deny the remaining allegations of paragraph
12 81 of the Complaint.

13 82. Defendants deny the allegations of paragraph 82 of the Complaint.

14 83. Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the allegations of paragraph 83 of the Complaint, and therefore deny them.

16 84. Defendants admit that Plaintiff was present at the RDI Board meeting on May 29,
17 2015. Defendants admit that Guy Adams made a motion to remove Plaintiff from his position as
18 President and CEO of RDI. Defendants admit that Plaintiff questioned the independence of Guy
19 Adams. Defendants deny the allegations of paragraph 84 of the Complaint in all other respects.

20 85. Defendants are without knowledge or information sufficient to form a belief as to
21 the truth of the allegations of paragraph 85 of the Complaint, and therefore deny them.

22 86. Defendants deny the allegations of paragraph 86 of the Complaint.

23 87. Defendants admit that James Cotter, Jr. was advised that the RDI Board meeting
24 would be adjourned until about 6:00 p.m. that evening. Defendants deny the allegations of
25 paragraph 87 of the Complaint in all other respects.

26 88. Defendants admit that the RDI Board meeting reconvened at approximately 6:00
27 p.m. Defendants admit that Ellen Cotter reported that she, Margaret Cotter, and Plaintiff had
28 reached an "agreement-in-principle." Defendants admit that Ellen Cotter read some of the

1 “agreement-in-principle” to the RDI Board. Defendants admit that the RDI Board did not vote on
2 the termination of Plaintiff at the RDI Board meeting on May 29, 2015. Defendants admit that the
3 RDI Board meeting was adjourned. Defendants deny the allegations of paragraph 88 of the
4 Complaint in all other respects.

5 89. Defendants admit that on or about June 3, 2015, Harry Susman transmitted a
6 document to counsel for James Cotter, Jr., Adam Streisand. Defendants deny the allegations of
7 paragraph 89 of the Complaint in all other respects.

8 90. Defendants deny the allegations of paragraph 90 of the Complaint.

9 91. Defendants deny the allegations of paragraph 91 of the Complaint.

10 92. To the extent that the allegations of paragraph 92 of the Complaint are purportedly
11 based on written documents, the documents speak for themselves. Defendants deny the allegations
12 of paragraph 92 of the Complaint in all other respects.

13 93. To the extent that the allegations of paragraph 93 of the Complaint are purportedly
14 based on written documents, the documents speak for themselves. Defendants deny the remaining
15 allegations of paragraph 93 of the Complaint.

16 94. Defendants admit an RDI Board meeting was held on June 12, 2015. Defendants
17 admit that Guy Adams, Edward Kane, and Douglas McEachern voted to terminate Plaintiff.
18 Defendants admit that Timothy Storey and William Gould voted against terminating Plaintiff.
19 Defendants admit that Ellen Cotter was elected interim CEO. Defendants deny the allegations of
20 paragraph 94 of the Complaint in all other respects.

21 95. Defendants admit that no candidate was offered the position of Director of Real
22 Estate. Defendants admit that the Company decided to put the search for a Director of Real Estate
23 on hold. Defendants deny the allegations of paragraph 95 of the Complaint in all other respects.

24 96. Defendants deny the allegations of paragraph 96 of the Complaint.

25 97. Defendants deny the allegations of paragraph 97 of the Complaint.

26 98. Defendants deny the allegations of paragraph 98 of the Complaint.

27 99. Defendants deny the allegations of paragraph 99 of the Complaint.

28 100. Defendants deny the allegations of paragraph 100 of the Complaint.

1 101. To the extent that the allegations of paragraph 101 of the Complaint are purportedly
2 based on written documents, the documents speak for themselves. Defendants deny the allegations
3 of paragraph 101 of the Complaint in all other respects.

4 102. Defendants admit that at least forty one percent (41%) of RDI's Class B voting
5 stock is held in the name of the James J. Cotter Living Trust. Defendants admit that the James J.
6 Cotter Living Trust became irrevocable upon James J. Cotter, Sr.'s death in September 2014.
7 Defendants admit that who has authority to vote the RDI Class B voting stock held in the name of
8 the James J. Cotter Living Trust is a subject of dispute in the California trust and estate litigation
9 between Ellen Cotter and Margaret Cotter, on one hand, and Plaintiff, on the other hand. The
10 allegations of paragraph 102 of the Complaint related to Section 15620 of the California Probate
11 Code constitute conclusions of law to which no responsive pleading is required. To the extent a
12 response is deemed required, the allegations of paragraph 102 of the Complaint related to Section
13 15620 of the California Probate Code are denied. Defendants deny the allegations of paragraph
14 102 of the Complaint in all other respects.

15 103. Defendants deny the allegations of paragraph 103 of the Complaint.

16 104. Defendants admit that in April 2015, Ellen Cotter and Margaret Cotter exercised
17 options to acquire 50,000 and 35,100 shares of RDI Class B stock, respectively. Defendants admit
18 that in September 2015, Ellen Cotter and Margaret Cotter, acting in the capacities as the Co-
19 Executors of the Cotter Estate, exercised on behalf of the Cotter Estate an option held by the Cotter
20 Estate to acquire 100,000 shares of RDI Class B voting stock. Defendants admit that Class A
21 shares were used to pay for the exercise of the Cotter Estate's option. Defendants deny the
22 allegations of paragraph 104 of the Complaint in all other respects.

23 105. Defendants deny the allegations of paragraph 105 of the Complaint.

24 106. Defendants deny the allegations of paragraph 106 of the Complaint.

25 107. Defendants admit that Edward Kane is and Guy Adams was a member of the
26 Compensation Committee. Defendants admit that the Compensation Committee authorized the
27 use of Class A shares to pay for the exercise the Cotter Estate's option to acquire 100,000 shares
28 of Class B stock. Defendants admit that Edward Kane and Guy Adams have acknowledged

1 receiving advice from legal counsel, including in-house counsel Craig Tompkins, regarding
2 Compensation Committee decision-making. Defendants admit that Timothy Storey was a member
3 of the Compensation Committee. Defendants admit that Timothy Storey did not attend a meeting
4 of the Compensation Committee. Defendants deny the allegations of paragraph 107 of the
5 Complaint in all other respects.

6 108. Defendants deny the allegations of paragraph 108 of the Complaint.

7 109. To the extent that the allegations of paragraph 109 of the Complaint are purportedly
8 based on written documents, the documents speak for themselves. Defendants deny the remaining
9 allegations of paragraph 109 of the Complaint.

10 110. Defendants admit that in December 2014, the District Court of Clark County,
11 Nevada, appointed Ellen Cotter and Margaret Cotter as co-executors of the Cotter
12 Estate. Defendants deny the allegations of paragraph 110 of the Complaint in all other respects.

13 111. To the extent that the allegations of paragraph 111 of the Complaint are purportedly
14 based on written documents, the documents speak for themselves. Defendants deny the remaining
15 allegations of paragraph 111 of the Complaint.

16 112. Defendants admit that in April 2015, Ellen Cotter exercised an option to acquire
17 50,000 shares of RDI Class B stock. Defendants admit that Class A shares were used to pay for
18 the exercise. To the extent that the allegations of paragraph 112 of the Complaint are purportedly
19 based on written documents, the documents speak for themselves. Defendants deny the allegations
20 of paragraph 112 of the Complaint in all other respects.

21 113. Defendants admit that in April 2015, Margaret Cotter exercised options to acquire
22 35,100 shares of RDI Class B stock. Defendants admit that Class A shares were used to pay for
23 the exercise. To the extent that the allegations of paragraph 113 of the Complaint are purportedly
24 based on written documents, the documents speak for themselves. Defendants deny the allegations
25 of paragraph 113 of the Complaint in all other respects.

26 114. Defendants deny the allegations of paragraph 114 of the Complaint.
27
28

1 115. To the extent that the allegations of paragraph 115 of the Complaint are purportedly
2 based on written documents, the documents speak for themselves. Defendants deny the allegations
3 of paragraph 115 of the Complaint in all other respects.

4 116. To the extent that the allegations of paragraph 116 of the Complaint are purportedly
5 based on written documents, the documents speak for themselves. Defendants deny the remaining
6 allegations of paragraph 116 of the Complaint.

7 117. To the extent that the allegations of paragraph 117 of the Complaint are purportedly
8 based on written documents, the documents speak for themselves. Defendants deny the remaining
9 allegations of paragraph 117 of the Complaint.

10 118. Defendants deny the allegations of paragraph 118 of the Complaint.

11 119. Defendants deny the allegations of paragraph 119 of the Complaint.

12 120. Defendants deny the allegations of paragraph 120 of the Complaint.

13 121. Defendants deny the allegations of paragraph 121 of the Complaint.

14 122. Defendants admit that a candidate for RDI's Board withdrew from consideration.
15 Defendants admit that Ellen Cotter also knows the candidate's wife and child. Defendants admit
16 that the candidate had done business with RDI and that Ellen Cotter had known the candidate for
17 years. To the extent that the allegations of paragraph 122 of the Complaint are purportedly based
18 on written documents, the documents speak for themselves. Defendants deny the allegations of
19 paragraph 122 of the Complaint in all other respects.

20 123. Defendants admit that Ellen Cotter proposed Judy Coddington as a candidate for RDI's
21 Board of Directors. Defendants admit that Judy Coddington had not previously served as a director
22 of a public company. Defendants deny the allegations of paragraph 123 of the Complaint in all
23 other respects.

24 124. Defendants admit that Mary Cotter knows Judy Coddington. Defendants admit that
25 Mary Cotter is the mother of Plaintiff, Ellen Cotter, and Margaret Cotter. Defendants deny the
26 allegations of paragraph 124 of the Complaint in all other respects.

1 125. Defendants admit that, with the exception of James Cotter, Jr. and Timothy Storey,
2 RDI's directors voted to add Ms. Coddington to RDI's Board of Directors on October 5, 2015.
3 Defendants deny the allegations of paragraph 125 of the Complaint in all other respects.

4 126. Defendants admit that Edward Kane, Guy Adams, Douglas McEachern, and
5 William Gould had not personally performed a background check regarding Judy Coddington.
6 Defendants admit that Edward Kane, Guy Adams, and Douglas McEachern were initially not
7 aware of the alleged violations by Judy Coddington's employer. Defendants admit that Ellen Cotter
8 was generally aware of certain of the alleged violations by Judy Coddington's employer. Defendants
9 are without knowledge or information sufficient to form a belief as to the truth of the allegations
10 in paragraph 126 of the Complaint related to one of RDI's shareholder representatives, and
11 therefore deny them. Defendants deny the allegations of paragraph 126 of the Complaint in all
12 other respects.

13 127. Defendants deny the allegations of paragraph 127 of the Complaint.

14 128. Defendants deny the allegations of paragraph 128 of the Complaint.

15 129. Defendants deny the allegations of paragraph 129 of the Complaint.

16 130. Defendants deny the allegations of paragraph 130 of the Complaint.

17 131. Defendants admit that RDI's Board of Directors voted to elect Michael Wrotniak
18 to fill the vacancy on the Board of Directors. Defendants deny the allegations of paragraph 131 of
19 the Complaint in all other respects.

20 132. Defendants admit that Michael Wrotniak is not an expert in cinema operations and
21 real estate development. Defendants admit that Michael Wrotniak had not previously been a
22 director of a public company. Defendants admit that Michael Wrotniak's wife is a friend of
23 Margaret Cotter. Defendants deny the allegations of paragraph 132 of the Complaint in all other
24 respects.

25 133. Defendants admit that the Special Nominating Committee voted to nominate
26 Michael Wrotniak to the RDI Board for nomination. Defendants are without knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations of paragraph 133
28 of the Complaint, and therefore deny them.

1 134. Defendants deny the allegations of paragraph 134 of the Complaint.

2 135. To the extent that the allegations of paragraph 135 of the Complaint are purportedly
3 based on written documents, the documents speak for themselves. Defendants deny the allegations
4 of paragraph 135 of the Complaint in all other respects.

5 136. To the extent that the allegations of paragraph 136 of the Complaint are purportedly
6 based on written documents, the documents speak for themselves. Defendants deny the allegations
7 of paragraph 136 of the Complaint in all other respects.

8 137. Defendants admit that the selection of the search firm was delegated by the RDI
9 Board to Ellen Cotter. Defendants admit that the Search Committee consisted of William Gould,
10 Douglas McEachern, Margaret Cotter, and Ellen Cotter. Defendants admit that Ellen Cotter
11 functioned as the chair of the Search Committee until she resigned from the Search Committee.
12 Defendants deny the allegations of paragraph 137 of the Complaint in all other respects.

13 138. Defendants admit that on August 4, 2015, Ellen Cotter advised that the Company
14 had retained Korn Ferry to assist the Company in the CEO search. Defendants deny the allegations
15 of paragraph 138 of the Complaint in all other respects.

16 139. Defendants admit that Korn Ferry interviewed each of the members of the Search
17 Committee. Defendants admit that Korn Ferry spoke with Craig Tompkins. Defendants admit
18 that Korn Ferry created a “position specification.” To the extent that the allegations of paragraph
19 139 of the Complaint are purportedly based on written documents, the documents speak for
20 themselves. Defendants deny the allegations of paragraph 139 of the Complaint in all other
21 respects.

22 140. Defendants admit that an initial set of interviews of candidates was set to occur on
23 November 13, 2015. Defendants admit that before the interviews commenced, Ellen Cotter
24 informed the Search Committee that she wanted to be a candidate and resigned from the Search
25 Committee. Defendants deny the allegations of paragraph 140 of the Complaint in all other
26 respects.

27 141. Defendants admit that when Ellen Cotter informed the Search Committee that she
28 wanted to be a candidate, the other Search Committee members did not discuss whether Margaret

1 Cotter should continue to serve on the Search Committee. Defendants admit that the Search
2 Committee did not seek the advice of counsel in connection with Ellen Cotter's announcement.
3 Defendants deny the allegations of paragraph 141 of the Complaint in all other respects.

4 142. Defendants deny the allegations of paragraph 142 of the Complaint.

5 143. Defendants admit that in November and December, the Search Committee
6 interviewed several candidates, including Ellen Cotter. Defendants admit that after the candidates
7 were interviewed, the Search Committee reached a consensus that Ellen Cotter would likely be the
8 Search Committee's recommended candidate. Defendants deny the allegations of paragraph 143
9 of the Complaint in all other respects.

10 144. Defendants admit that the Search Committee held a meeting on December 29, 2015.
11 Defendants admit that after discussion, the Search Committee resolved to recommend to the RDI
12 Board Ellen Cotter as CEO and President. Defendants admit that Craig Tompkins was directed to
13 prepare a draft report of the Search Committee's actions and determinations for review and
14 approval by the Search Committee and submission to the RDI Board. To the extent that the
15 allegations of paragraph 144 of the Complaint are purportedly based on written documents, the
16 documents speak for themselves. Defendants deny the allegations of paragraph 144 of the
17 Complaint in all other respects.

18 145. Defendants admit the allegations of paragraph 145 of the Complaint.

19 146. Defendants admit that William Gould reviewed with the RDI Board the Search
20 Committee's recommendation that the RDI Board appoint Ellen Cotter as President and CEO.
21 Defendants admit that seven of the nine RDI directors voted to appoint Ellen Cotter as President
22 and CEO. Defendants admit that Plaintiff voted against the motion and Ellen Cotter did not
23 participate. Defendants deny the allegations of paragraph 146 of the Complaint in all other
24 respects.

25 147. To the extent that the allegations of paragraph 147 of the Complaint are purportedly
26 based on written documents, the documents speak for themselves. Defendants deny the remaining
27 allegations of paragraph 147 of the Complaint.

28 148. Defendants deny the allegations of paragraph 148 of the Complaint.

1 149. Defendants admit that on March 10, 2016, the RDI Board appointed Margaret
2 Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants
3 admit that Margaret Cotter is responsible for the development of RDI's properties in New York
4 City. Defendants deny the allegations of paragraph 149 of the Complaint in all other respects.

5 150. Defendants admit that Margaret Cotter was awarded a compensation package that
6 included a base salary of \$350,000, and a short term incentive target bonus opportunity of \$105,000
7 (30% of her base salary). Defendants admit that Margaret Cotter was granted a long term incentive
8 of a stock option for 19,921 shares of Class A common stock and 4,184 restricted stock units under
9 the Company's 2010 Stock Incentive Plan, as amended, which long term incentives vest over a
10 four year period. Defendants deny the allegations of paragraph 150 of the Complaint in all other
11 respects.

12 151. Defendants admit that the Compensation Committee, comprised of Edward Kane,
13 Judy Coddington, and Guy Adams, and the Audit and Conflicts Committee, comprised of Douglas
14 McEachern, Edward Kane, and Michael Wrotniak, each approved an additional one-time payment
15 to Margaret Cotter totaling \$200,000 for services rendered by her to the Company in recent years
16 outside of the scope of the Theater Management Agreement, including, but not limited to: (i)
17 predevelopment work on the Company's Union Square and Cinemas 1,2 & 3 properties, (ii)
18 management of the New York properties, and (iii) management of Union Square tenant matters.
19 Defendants deny the remaining allegations of paragraph 151 of the Complaint in all other respects.

20 152. Defendants admit that the Compensation Committee evaluated the Company's
21 compensation policy for executive officers and outside directors and established a plan that
22 encompasses sound corporate practices consistent with the best interests of the Company.
23 Defendants deny the allegations of paragraph 152 of the Complaint in all other respects.

24 153. Defendants admit that the RDI Board adopted a resolution providing that Guy
25 Adams be compensated \$50,000 in recognition of extraordinary services to the Board of Directors.
26 Defendants deny the allegations of paragraph 153 of the Complaint in all other respects.

27 154. To the extent that the allegations of paragraph 154 of the Complaint are purportedly
28 based on written documents, the documents speak for themselves. Defendants admit that the price

1 proposed in the non-binding indication of interest was approximately 34% and 33% greater than
2 the prices at which RDI's Class A and Class B stock opened on May 31, 2016. Defendants deny
3 the allegations of paragraph 154 of the Complaint in all other respects.

4 155. To the extent that the allegations of paragraph 155 of the Complaint are purportedly
5 based on written documents, the documents speak for themselves. Defendants deny the remaining
6 allegations of paragraph 155 of the Complaint.

7 156. Defendants admit that two days after Ellen Cotter received the unsolicited letter,
8 the RDI Board discussed the non-binding indication of interest at a duly noticed regular meeting
9 of the Board held on June 2, 2016. Defendants admit that copies of the unsolicited letter were
10 distributed to the RDI Board prior to the RDI Board meeting. Defendants deny the allegations of
11 paragraph 156 of the Complaint in all other respects.

12 157. Defendants admit that on June 23, 2016, a duly noticed telephonic meeting of the
13 RDI Board was held for the sole purpose of discussing the unsolicited letter. Defendants admit
14 that Ellen Cotter presented management's view that \$17 per share was an inadequate price for the
15 Company. Defendants admit that Ellen Cotter advised that adding together the existing value of
16 the Company's cinemas and the appraised value of the Company's real estate, and subtracting
17 RDI's debt, suggested an net asset value greater than the total equity value indicated in the
18 unsolicited letter. Defendants admit that Ellen Cotter concluded that, in management's view, the
19 interests of the Company and its stockholders would best be served by continuing with the
20 implementation of the Company's business plan and long-term strategic objectives. Defendants
21 admit that, with the exception of Plaintiff, who abstained, each of the other eight directors voted
22 in favor of a resolution that stated that the value proposed for the Company in the indication of
23 interest was inadequate. Defendants deny the allegations of paragraph 157 of the Complaint in all
24 other respects.

25 158. Defendants deny the allegations of paragraph 158 of the Complaint.

26 159. Defendants admit that they did not consult with outside independent financial
27 advisors in connection with the non-binding indication of interest. Defendants deny the allegations
28 of paragraph 159 of the Complaint in all other respects.

- 1 160. Defendants deny the allegations of paragraph 160 of the Complaint.
- 2 161. Defendants admit that Ellen Cotter and Margaret Cotter did not consult with outside
3 independent financial advisors in connection with the non-binding indication of interest.
4 Defendants deny the allegations of paragraph 161 of the Complaint in all other respects.
- 5 162. Defendants deny the allegations of paragraph 162 of the Complaint.
- 6 163. Defendants deny the allegations of paragraph 163 of the Complaint.
- 7 164. Defendants deny the allegations of paragraph 164 of the Complaint.
- 8 165. Defendants deny the allegations of paragraph 165 of the Complaint.
- 9 166. To the extent the allegations of paragraph 166 of the Complaint constitute
10 conclusions of law, no responsive pleading is required. To the extent a response is deemed
11 required, such allegations of paragraph 166 of the Complaint are denied. Defendants deny the
12 allegations of paragraph 166 of the Complaint in all other respects.
- 13 167. To the extent the allegations of paragraph 167 of the Complaint constitute
14 conclusions of law, no responsive pleading is required. To the extent a response is deemed
15 required, such allegations of paragraph 167 of the Complaint are denied. Defendants deny the
16 allegations of paragraph 167 of the Complaint in all other respects.
- 17 168. Defendants deny the allegations of paragraph 168 of the Complaint.
- 18 169. Defendants deny the allegations of paragraph 169 of the Complaint.
- 19 170. Defendants deny the allegations of paragraph 170 of the Complaint.
- 20 171. Defendants deny the allegations of paragraph 171 of the Complaint.
- 21 172. Defendants deny the allegations of paragraph 172 of the Complaint.

22 **RESPONSE TO “FIRST CAUSE OF ACTION**

23 **(For Breach of Fiduciary Duty – Against All Defendants)”**

- 24 173. Defendants reassert and incorporate their responses to paragraphs 1 through 172 of
25 the Complaint.
- 26 174. Defendants admit that they are directors of RDI. To the extent the allegations of
27 paragraph 174 of the Complaint constitute conclusions of law, no responsive pleading is required.
28

1 To the extent a response is deemed required, the allegations of paragraph 174 of the Complaint are
2 denied. Defendants deny the allegations of paragraph 174 of the Complaint in all other respects.

3 175. The allegations of paragraph 175 of the Complaint constitute conclusions of law to
4 which no responsive pleading is required. To the extent a response is deemed required, the
5 allegations of paragraph 175 of the Complaint are denied. Defendants deny the allegations of
6 paragraph 175 of the Complaint in all other respects.

7 176. The allegations of paragraph 176 of the Complaint constitute conclusions of law to
8 which no responsive pleading is required. To the extent a response is deemed required, the
9 allegations of paragraph 176 of the Complaint are denied. Defendants deny the allegations of
10 paragraph 176 of the Complaint in all other respects.

11 177. Defendants deny the allegations of paragraph 177 of the Complaint.

12 178. Defendants deny the allegations of paragraph 178 of the Complaint.

13 179. Defendants deny that Plaintiff, RDI, or its stockholders have suffered any damages
14 by virtue of Defendants' conduct.

15 **RESPONSE TO "SECOND CAUSE OF ACTION**

16 **(Breach of Fiduciary Duty – Against All Defendants)"**

17 180. Defendants reassert and incorporate their responses to paragraphs 1 through 179 of
18 the Complaint.

19 181. Defendants admit that they are directors of RDI. To the extent the allegations of
20 paragraph 181 of the Complaint constitute conclusions of law, no responsive pleading is required.
21 To the extent a response is deemed required, the allegations of paragraph 181 of the Complaint are
22 denied. Defendants deny the allegations of paragraph 181 of the Complaint in all other respects.

23 182. The allegations of paragraph 182 of the Complaint constitute conclusions of law to
24 which no responsive pleading is required. To the extent a response is deemed required, the
25 allegations of paragraph 182 of the Complaint are denied. Defendants deny the allegations of
26 paragraph 182 of the Complaint in all other respects.

27 183. Defendants deny the allegations of paragraph 183 of the Complaint.

28 184. Defendants deny the allegations of paragraph 184 of the Complaint.

185. Defendants deny the allegations of paragraph 185 of the Complaint.

186. Defendants deny the allegations of paragraph 186 of the Complaint.

RESPONSE TO “THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)”

187. Defendants reassert and incorporate their responses to paragraphs 1 through 186 of the Complaint.

188. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 188 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 188 of the Complaint are denied. Defendants deny the allegations of paragraph 188 of the Complaint in all other respects.

189. The allegations of paragraph 189 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 189 of the Complaint are denied. Defendants deny the allegations of paragraph 189 of the Complaint in all other respects.

190. Defendants deny the allegations of paragraph 190 of the Complaint.

191. Defendants deny the allegations of paragraph 191 of the Complaint.

192. Defendants deny the allegations of paragraph 192 of the Complaint.

RESPONSE TO “FOURTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty – Against MC and EC)”

193. Defendants reassert and incorporate their responses to paragraphs 1 through 192 of the Complaint.

194. Defendants deny the allegations of paragraph 194 of the Complaint.

195. Defendants deny the allegations of paragraph 195 of the Complaint.

196. Defendants deny the allegations of paragraph 196 of the Complaint.

197. Defendants deny the allegations of paragraph 197 of the Complaint.

198. To the extent the allegations of paragraph 198 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed

1 required, the allegations of paragraph 198 of the Complaint are denied. Defendants deny the
2 allegations of paragraph 198 of the Complaint in all other respects.

3 199. Defendants deny the allegations of paragraph 199 of the Complaint.

4 200. Defendants deny the allegations of paragraph 200 of the Complaint.

5 **RESPONSE TO “IRREPARABLE HARM”**

6 201. Defendants deny the allegations of paragraph 201 of the Complaint.

7 202. Defendants deny the allegations of paragraph 202 of the Complaint.

8 **RESPONSE TO “PRAYER FOR RELIEF”**

9 203. Responding to the unnumbered WHEREFORE paragraph following paragraph 202
10 of the Complaint, Defendants admit that Plaintiff demands and prays for judgment as set forth
11 therein, but deny that Defendants caused or contributed to Plaintiff’s or RDI’s alleged injuries and
12 further deny that Defendants are liable for damages or any other relief sought in the Complaint.

13 **AFFIRMATIVE DEFENSES**

14 204. Subject to the responses above, Defendants allege and assert the following defenses
15 in response to the allegations, undertaking the burden of proof only as to those defenses deemed
16 affirmative defenses by law, regardless of how such defenses are denominated herein. In addition
17 to the affirmative defenses described below, subject to their responses above, Defendants
18 specifically reserve all rights to allege additional affirmative defenses that become known through
19 the course of discovery.

20 **FIRST DEFENSE – FAILURE TO STATE A CAUSE OF ACTION**

21 205. The Complaint, and each purported cause of action therein, is barred, in whole or
22 in part, for failure to state a cause of action against Defendants under any legal theory.

23 **SECOND DEFENSE – STATUTES OF LIMITATIONS AND REPOSE**

24 206. The Complaint, and each purported cause of action therein, is barred, in whole or
25 in part, by the applicable statutes of limitations and/or statutes of repose.

1 **THIRD DEFENSE – LACHES**

2 207. The Complaint, and each purported cause of action therein, is barred, in whole or
3 in part, by the doctrine of laches, in that Plaintiff waited an unreasonable period of time to file this
4 action and this prejudicial delay has worked to the detriment of Defendants.

5 **FOURTH DEFENSE – UNCLEAN HANDS**

6 208. The Complaint, and each purported cause of action therein, is barred, in whole or
7 in part, by the doctrine of unclean hands.

8 **FIFTH DEFENSE – SPOILIATION**

9 209. The Complaint, and each purported cause of action therein, is barred, in whole or
10 in part, by Plaintiff's spoliation of evidence and obstruction of justice.

11 **SIXTH DEFENSE – ILLEGAL CONDUCT AND FRAUD**

12 210. The Complaint, and each purported cause of action therein, is barred, in whole or
13 in part, by Plaintiff's own illegal conduct and/or fraud.

14 **SEVENTH DEFENSE – WAIVER, ESTOPPEL, AND ACQUIESCENCE**

15 211. The Complaint, and each purported cause of action therein, is barred, in whole or
16 in part, by the doctrines of waiver, estoppel, and acquiescence because Plaintiff's acts, conduct,
17 and/or omissions are inconsistent with his requests for relief.

18 **EIGHTH DEFENSE – RATIFICATION AND CONSENT**

19 212. The Complaint, and each purported cause of action therein, is barred, in whole or
20 in part, because any purportedly improper acts by Defendants, if any, were ratified by Plaintiff and
21 his agents, and/or because Plaintiff consented to the same.

22 **NINTH DEFENSE – NO UNLAWFUL ACTIVITY**

23 213. The Complaint, and each purported cause of action therein, is barred, in whole or
24 in part, because, to the extent any of the activities alleged in the Complaint actually occurred, those
25 activities were not unlawful.

26 **TENTH DEFENSE – NO RELIANCE**

27 214. The Complaint, and each purported cause of action therein, is barred, in whole or
28 in part, because Plaintiff did not justifiably rely on any alleged misrepresentation of Defendants.

1 **ELEVENTH DEFENSE – FAILURE TO PLEAD FRAUD WITH PARTICULARITY**

2 215. The Complaint, and each purported cause of action therein, is barred, in whole or
3 in part, because Plaintiff failed to plead the alleged fraud with particularity, including but not
4 limited to identification of the alleged misrepresentations.

5 **TWELFTH DEFENSE – UNCERTAIN AND AMBIGUOUS**

6 216. The Complaint, and each purported cause of action therein, is barred, in whole or
7 in part, because it is uncertain and ambiguous as it relates to Defendants.

8 **THIRTEENTH DEFENSE – PRIVILEGE AND JUSTIFICATION**

9 217. The Complaint, and each purported cause of action therein, is barred, in whole or
10 in part, because the actions complained of, if taken, were at all times reasonable, privileged, and
11 justified.

12 **FOURTEENTH DEFENSE – GOOD FAITH AND LACK OF FAULT**

13 218. The Complaint, and each purported cause of action therein, is barred, in whole or
14 in part, because, at all times material to the Complaint, Defendants acted in good faith and with
15 innocent intent.

16 **FIFTEENTH DEFENSE – NO ENTITLEMENT TO INJUNCTIVE RELIEF**

17 219. Plaintiff is not entitled to injunctive relief because, among other things, he has not
18 suffered irreparable harm, he has an adequate remedy at law, and injunctive relief is not supported
19 by any purported cause of action alleged in the Complaint and is not warranted by the balance of
20 the hardships and/or any other equitable factors.

21 **SIXTEENTH DEFENSE – DAMAGES TOO SPECULATIVE**

22 220. Plaintiff is not entitled to damages of any kind or in any sum or amount whatsoever
23 as a result of Defendants' acts or omissions alleged in the Complaint because any damages sought
24 are speculative, uncertain, and not recoverable.

25 **SEVENTEENTH DEFENSE – NO ENTITLEMENT TO PUNITIVE DAMAGES**

26 221. The Complaint, and each purported cause of action alleged therein, fails to support
27 the recovery of punitive, exemplary, or enhanced damages from Defendants, including because
28 such damages are not recoverable under applicable Nevada statutory and common law

1 requirements and are barred by the constitutional limitations, including the Due Process Clause of
2 the Fourteenth Amendment and the Eighth Amendment to the United States Constitution.

3 **EIGHTEENTH DEFENSE – MITIGATION OF DAMAGES**

4 222. Plaintiff has failed to properly mitigate the damages, if any, he has sustained, and
5 by virtue thereof, Plaintiff is barred, in whole or in part, from maintaining the causes of action
6 asserted in the Complaint against Defendant.

7 **NINETEENTH DEFENSE – COMPARATIVE FAULT**

8 223. Plaintiff's recovery against Defendants is barred, in whole or in part, based on
9 principles of comparative fault, including Plaintiff's own comparative fault.

10 **TWENTIETH DEFENSE – BUSINESS JUDGMENT RULE**

11 224. The Complaint, and each purported cause of action alleged therein, is barred, in
12 whole or part, by the business judgment rule.

13 **TWENTY-FIRST DEFENSE – EQUITABLE ESTOPPEL**

14 225. The Complaint, and each purported cause of action alleged therein, is barred, in
15 whole or part, by the doctrine of equitable estoppel.

16 **TWENTY-SECOND DEFENSE – ELECTION OF REMEDIES**

17 226. Plaintiff is barred, in whole or in part, from obtaining relief under the Complaint,
18 or any of the causes of action or claims therein, that are based on inconsistent positions and/or
19 remedies, including but not limited to inconsistent and duplicative claims for equitable and legal
20 relief.

21 **TWENTY-THIRD DEFENSE – NEVADA REVISED STATUTE 78.138**

22 227. The Complaint, and each purported cause of action alleged therein, is barred, in
23 whole or part, by Nevada Revised Statute 78.138, which provides that a director or officer is not
24 individually liable to the corporation or its stockholders or creditors for any damages as a result of
25 any act or failure to act in his or her capacity as a director or officer unless it is proven that: (a)
26 the director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as
27 a director or officer; and (b) the breach of those duties involved intentional misconduct, fraud or
28 a knowing violation of law.

1 **TWENTY-FOURTH DEFENSE – FAILURE TO MAKE APPROPRIATE DEMAND**

2 228. The Complaint, and each purported cause of action alleged therein, is barred, in
3 whole or part, for failure to make a demand on RDI's Board of Directors.

4 **TWENTY-FIFTH DEFENSE – CONFLICT OF INTEREST AND**
5 **UNSUITABILITY TO SERVE AS DERIVATIVE REPRESENTATIVE**

6 229. The Complaint, and each purported cause of action alleged therein, is barred, in
7 whole or part, because Plaintiff has conflicts of interest and is unsuitable to serve as a derivative
8 representative.

9 **WHEREFORE**, Defendants request that Plaintiff's Second Amended Complaint be
10 dismissed in its entirety with prejudice, that judgment be entered in favor of Defendants, that
11 Defendants be awarded costs and, to the extent provided by law, attorneys' fees, and any such
12 other relief as the Court may deem proper.

13 Dated this 28th day of November, 2017.

14 **COHEN|JOHNSON|PARKER|EDWARDS**

15
16 By /s/ H. Stan Johnson

17 H. Stan Johnson, Esq.

18 Christopher Tayback

19 Marshall M. Searcy

20 QUINN EMANUEL URQUHART &

21 SULLIVAN, LLP

22 Attorneys for Defendants Margaret Cotter, Ellen

23 Cotter, Douglas McEachern, Guy Adams,

24 Edward Kane, Judy Coddling, and Michael

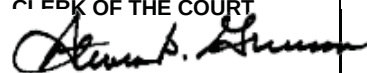
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CERTIFICATE OF SERVICE

I hereby certify that, on November 28, 2017, I caused a true and correct copy of the foregoing **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK’S ANSWER TO PLAINTIFF’S SECOND AMENDED COMPLAINT** to be served on all interested parties, as registered with the Court’s E-Filing and E-Service System.

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



1 **DOC**

2 Donald A. Lattin (NV SBN. 693)
3 dlattin@mclrenolaw.com
4 Carolyn K. Renner (NV SBN. 9164)
5 crenner@mclrenolaw.com
6 MAUPIN, COX & LEGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Telephone: (775) 827-2000
10 Facsimile: (775) 827-2185

11 Ekwan E. Rhow (*admitted pro hac vice*)
12 eer@birdmarella.com
13 Shoshana E. Bennett (*admitted pro hac vice*)
14 sbannett@birdmarella.com
15 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
16 DROOKS, LINCENBERG & RHOW, P.C.
17 1875 Century Park East, 23rd Floor
18 Los Angeles, California 90067-2561
19 Telephone: (310) 201-2100
20 Facsimile: (310) 201-2110

21 Attorneys for Defendant William Gould

22 **EIGHTH JUDICIAL DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 JAMES J. COTTER, JR.,

25 Plaintiff,

26 vs.

27 MARGARET COTTER, et al.,

28 Defendant.

READING INTERNATIONAL, INC.,

Nominal Defendant.

CASE NO. A-15-719860-B

**REQUEST FOR HEARING ON
DEFENDANT WILLIAM GOULD'S
PREVIOUSLY FILED MOTION FOR
SUMMARY JUDGMENT**

Assigned to Hon. Elizabeth Gonzalez,
Dept. XI

Trial Date: January 2, 2018

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

2 Pursuant to Nevada Rule of Civil Procedure 56, Defendant William Gould, by and through
3 his counsel of record, hereby submits this Request for Hearing Date on his previously-filed
4 Motion for Summary Judgment. In particular, Gould requests that the hearing on the previously-
5 filed Motion for Summary Judgment (filed on September 23, 2016) be set for **December 11, 2017**,
6 when the Court is hearing motions for summary judgment filed by the other defendants in this
7 matter.

8 This Request is based upon the following Memorandum of Points and Authorities, the
9 accompanying Declaration of Shoshana E. Barnett and exhibits thereto, the previously filed
10 Motion for Summary Judgment and Reply, the pleadings and papers on file, and any oral
11 argument at the time of the hearing on Gould's Motion for Summary Judgment.

12
13 December 1, 2017

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

16
17 By



18 Ekwan E. Rhow (*admitted pro hac vice*)
19 Shoshana E. Barnett (*admitted pro hac vice*)
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561

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

24 *Attorneys for Defendant William Gould*
25
26
27
28

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PLEASE TAKE NOTICE that Gould's Previously-filed Motion for Summary Judgment will be heard the **08** day of **January**, 2018, at **8:30 AM** in Department XI of the above-designated Court, or as soon thereafter as counsel can be heard.

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

Eh Rhau

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

Attorneys for Defendant William Gould

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2017, I caused a true and correct copy of the forgoing *Request for Hearing on Defendant William Gould's Previously Filed Motion for Summary Judgment* to be served on all interest parties, as registered with the Court's E-Filing and E-Service System:

Kaitlin Aull
An Employee of Maupin, Cox & LeGoy

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant William Gould filed a Motion for Summary Judgment (“Motion”) on
4 September 23, 2016. The Court never heard argument on Mr. Gould’s Motion and never issued
5 a decision on Mr. Gould’s Motion. *See* Ex. 1 at 151:20-152:6 (10.26.16 Hrg. Tr.) . Mr. Gould
6 hereby requests that the Court set a hearing on his Motion on **December 11, 2017**, which is the
7 same day that the motions for summary judgment filed by the other individual defendants will be
8 heard.

9 Since Mr. Gould’s Motion and reply brief were filed last year, the parties have taken
10 additional depositions—including another session of Cotter, Jr.’s deposition. There has also been
11 a change to the statute that governs director conduct in Nevada. Also, and importantly, the parties
12 received final deposition transcripts from depositions taken just days before reply briefs were
13 filed, including from the deposition of the Plaintiff’s own expert—where he differentiated
14 Mr. Gould from the other defendants, and testified that Gould was entitled to the protections of the
15 business judgment rule and therefore there should be no further inquiry as to Gould’s conduct.
16 Given this additional evidence and change in law, Mr. Gould briefly summarizes below how his
17 Motion is impacted by these events.

18 **II. ARGUMENT**

19 **A. Under Nevada Law, The Court Does Not Undertake A Substantive Evaluation**
20 **Of The Decisions Of An Independent And Disinterested Director.**

21 Nevada recently amended the statute that governs the conduct and liability of individual
22 directors. Among other changes, the law now makes clear that out-of-state authority cannot
23 supplant or modify the plain meaning of the fiduciary duties and liability of directors under
24 Nevada law. Nev. Rev. Stat. § 78.138(2). Moreover, the law specifies that the failure or refusal of
25 a director to conform to the laws or judicial decisions of another jurisdiction does not indicate
26 a breach of fiduciary duty. *Id.*

27 Under current Nevada law, individual directors are given broad protections when facing
28 breach of fiduciary duty claims. First, directors, “in deciding upon matters of business, are

1 presumed to act in good faith, on an informed basis and with a view to the interests of the
2 corporation.” Nev. Rev. Stat. § 78.138(4)(3). This is known as the business judgment rule
3 presumption. *Wynn Resorts, Ltd v. The Eighth Judicial Dist. Ct. in and for Cty of Clark*, 399 P.3d
4 334, 341-42 (2017). As a threshold matter, a plaintiff cannot hold an individual director liable for
5 damages unless he first rebuts the business judgment rule presumption. Nev. Rev. Stat.
6 § 78.138(4)(7). In particular, the way that “the business judgment rule presumption operates” is
7 that “only disinterested directors can claim its protections. Then, if that threshold is met, the
8 business judgment rule presumes that the directors have complied with their duties to reasonably
9 inform themselves of all relevant material information and have acted with the requisite, care in
10 making the business decision.” *Shoen*, 122 Nev. at 636. “[E]ven a bad decision is generally
11 protected by the business judgment rule’s presumption that the directors acted in good faith, with
12 knowledge of the pertinent information.” *Shoen*, 122 Nev. at 636. Nevada, unlike some other
13 states, has rejected a substantive evaluation of director conduct. *Wynn*, 399 P.3d at 343.

14 As a practical matter, as Plaintiff’s own expert explained, application of the business
15 judgment rule presumption is a two-step inquiry. “In the first step, if there are no facts sufficiently
16 pleaded to suggest a lack of independence and [] interestedness, then you get—don’t go to the
17 next inquiry and reach any decision about whether there was a breach of fiduciary duty because
18 they get the benefit of the business judgment rule.” Ex. 2 at 150:22-151:5 (Steele Dep.).

19 And even if Cotter, Jr. were somehow able to rebut this presumption with respect to Gould
20 (and, as discussed below, he cannot), he must overcome two additional hurdles. Under Nevada
21 law, the burden remains on Cotter, Jr. to prove both (1) the director’s act or failure to act
22 constituted a breach of fiduciary duty; and (2) the breach of fiduciary duty involved intentional
23 misconduct, fraud, or a knowing violation of law. *Shoen*, 122 Nev. at 640; Nev. Rev. Stat.
24 § 78.138(7)(b)

25 Here, as discussed below, all the relevant evidence proves that Gould was an independent
26 and disinterested director entitled to the protections of the business judgment rule, who merely
27 attempted to make the best decisions for Reading under extremely difficult circumstances—
28 nothing more and nothing less. Moreover, there is no admissible evidence from which

1 a fact-finder could infer that Gould breached his fiduciary duty, much less acted with intentional
2 misconduct, fraud, or a knowing violation of the law.

3 **B. Plaintiff's Own Expert Agrees That Mr. Gould is Entitled To The Protection**
4 **Of The Business Judgment Rule.**

5 Mr. Gould is entitled to the protections of the business judgment rule because there is no
6 evidence whatsoever that Mr. Gould is interested in any of the matters at issue or that he lacks
7 independence. Mr. Gould is only *interested* in a matter if he will receive a specific financial
8 benefit from his action or lack of action on the matter (or stands on both sides of a transaction) and
9 he lacks *independence* only if his decision resulted from him being controlled by another. *See*
10 *Shoen*, 122 Nev. at 637-38; *See also* Ex. 8 at 23 (Steele Rep.) (citing *Orman v. Cullman*, 794 A.2d
11 5, 24, 25 n.50 (Del. Ch. 2002). If the director makes his decision on the merits of the matter at
12 hand, rather than extraneous influences, he is independent. Ex. 8 at 24 (Steele Rep.) (citing *Frank*
13 *v. Elgamal*, 2014 WL 957550, at *22 (Del. Ch. March 10, 2014)).

14 The facts simply do not show that Mr. Gould received any material benefit from his Board
15 votes, that he is controlled by anyone else or that he made his decisions based on any extraneous
16 influences. This is not merely some partisan view of the evidence. To the contrary, after reading
17 the fact depositions and reviewing the pleadings in this matter, *Cotter, Jr's own paid expert*
18 *witness* in this case, conceded that "*there are insufficient facts to suggest to me that there was a*
19 *reasonable doubt about [Gould's] independence or his disinterestedness.*" Ex. 2 at 148:25-149:4
20 (Steele Dep.) And the Plaintiff himself admitted that he is not aware of any financial relationship
21 that Mr. Gould had with Ellen or Margaret Cotter or any other member of the Reading Board. Ex.
22 3 at 1021:12-1025:18 (Cotter, Jr. Dep. Vol IV).¹ Cotter, Jr. has also failed to identify any personal
23

24 ¹ Cotter, Jr. speculates that on the occasions when Gould's votes aligned with the votes of Ellen
25 and Margaret Cotter, it "curried favor with Ellen and Margaret" and would allow Gould to
26 "continue his service on the board of RDI." Ex. 3 at 1026:7-1027:12 (Cotter, Jr. Dep. Vol IV).
27 This speculation is not evidence that Gould was not independent and was appropriately rejected as
28 such by Cotter, Jr.'s expert. *First*, the same could be said of any director voting in line with
a controlling shareholder, which means that it would be impossible to have any independent
directors. *Second*, there is no evidence that Gould—an expert in corporate governance and
fiduciary duties of directors, who has been cited by the Nevada Supreme Court—had such a strong
interest in staying on Reading's board that he would abandon his fiduciary duties. Gould is

1 relationship between Mr. Gould and the Cotter sisters, for the obvious reason that none exists.
2 Finally, each of the independent stockholders who were deposed in connection with this action
3 differentiated Mr. Gould from the other directors and testified that they had no reason to believe
4 that Mr. Gould was not independent or disinterested. Ex. 5 at 194:2-194:8 (Glaser Dep.)
5 (testifying he believed Gould was independent); Ex. 6 at 160:11-161:4 (Tilson Dep.) (testifying
6 that he would not seek to have Gould removed from the Board); Ex. 7 at 292:14-292:18 (Shapiro
7 Dep.) (testifying that Gould was socially independent and that he had no problem with Gould).

8 Here, as Plaintiff's expert noted, because "there are no facts sufficiently pleaded to suggest
9 a lack of independence and [] interestedness, than you [] don't go to the next inquiry and reach
10 any decision about whether there as a breach of fiduciary duty because they get the benefit of the
11 business judgment rule." Ex. 2 at 150:22-151:3 (Steele Dep.). Steele explained, "there's no
12 reason for me to carry the analysis of Mr. Gould any farther than that." *Id.* at 151:4-5. The facts
13 just "don't support the second step" in Mr. Gould's case. *Id.* at 151:7-8.²

14 In sum, because there is no evidence that Mr. Gould lacked independence or was
15 interested, he is entitled to the benefit of the business judgment rule and the case against him must
16 be summarily adjudicated in Mr. Gould's favor.

17 **C. There Is No Evidence Of That Mr. Gould Breached His Fiduciary Duties, Let**
18 **Alone With The Required Mindset Of Intentional Misconduct, Fraud Or**
19 **A Knowing Violation Of Law.**

20 Given that Plaintiff's own expert and all of the independent shareholders agree that there is
21 no case against Mr. Gould, there is no reason to go any further. But even if Mr. Gould were not
22 the beneficiary of the business judgment rule, the case against him should still be summarily
23 adjudicated in his favor. That is because, as discussed in Gould's Motion, Plaintiff has adduced
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26 a successful lawyer who is a partner in an eponymous 34-lawyer firm in Los Angeles, and he has
27 stepped down from the Reading board on previous occasions. Ex. 4 at 15:1-15 (Gould Dep.).
28 Finally, Cotter, Jr. himself admitted that Mr. Gould could vote in line with the Cotter sisters and
29 still be voting for what he believed was in the best interests of Reading. Ex. 3 at 1029:11-18
(Cotter, Jr. Dep. Vol. IV)

30 ² Justice Steele further explained that his opinions about the other director-defendants do not
31 apply to Mr. Gould. Ex. 2. at 149:22-150:1 (Steele Dep.).

1 no evidence to meet his burden of proof to establish that (1) Mr. Gould breached his fiduciary
2 duty; and (2) the breach involved intentional misconduct fraud or a knowing violation of law.
3 Because Gould has extensively addressed this matter in his Motion and Reply, Gould only briefly
4 points out new information with respect to each of Plaintiffs' separate claims.

5 **1. There is no evidence to support a separate claim against Mr. Gould for**
6 **breach of fiduciary duty relating to Cotter, Jr.'s termination.**

7 Plaintiff cannot maintain a separate claim against Mr. Gould for breach of fiduciary duty
8 relating to Cotter, Jr.'s termination. As discussed in Mr. Gould's prior briefs, Mr. Gould voted
9 against Cotter, Jr.'s termination. Cotter, Jr. admits that Mr. Gould's vote against his termination
10 was done with the best interests of Reading in mind and he is not aware of any director that had
11 any financial influence over Mr. Gould's vote. (Ex. 3 at 1017:14-24; 1026:21-1027:12 (Cotter, Jr.
12 Dep. Vol IV)). Given that Mr. Gould voted against Mr. Cotter's termination, the claim against
13 him for breach of fiduciary duty based on Mr. Cotter's termination must be summarily adjudicated
14 in Mr. Gould's favor. *See, e.g., In re Tri-Star Pictures, Inc., Litig.*, No. CIV. A. 9477, 1995 WL
15 106520, at *2 (Del. Ch. Mar. 9, 1995)) (refusing to hold director liable for board decision where
16 director abstained from vote); *In Re Wheelabrator Technologies, Inc. Shareholders Litigation*,
17 C.A. No. 11495, 1992 WL 212595, at *10 (Del. Ch. Sept. 1, 1992) (same); *Citron v. E.I. du Pont*
18 *de Nemours & Co.*, 584 A.2d 490, 499 (Del. Ch. 1990) (same).

19 Cotter, Jr. is apparently pursuing this absurd claim against one of his only supporters
20 because he is upset that Mr. Gould did not launch an investigation into whether Guy Adams had
21 a conflict of interest when Cotter, Jr. raised it at the meeting when he was terminated. Not only is
22 this a completely separate issue than the vote on his termination (and therefore irrelevant to
23 a claim of breach of fiduciary duty based on Cotter, Jr.'s termination), there is simply no evidence
24 that Mr. Gould breached his fiduciary duty by not immediately investigating Mr. Adams' finances.
25 As discussed in detail in Mr. Gould's Motion, Cotter, Jr. claimed to have known about
26 Mr. Adams' alleged conflict for eight months, but said nothing when Mr. Adams voted in Cotter,
27 Jr.'s favor. He raised the issue only when Mr. Adams was prepared to vote against him, which
28 thoroughly undermined Cotter, Jr.'s credibility. Mot. at 28. Moreover, Mr. Gould testified that he

1 relied on company counsel to vet financial independence. *Id.* Nevada law makes clear that
2 directors are entitled to rely on counsel on issues within the attorney’s professional competence.
3 Nev. Rev. Stat. § 78.138(4)(2)(b). As such, Mr. Gould acted appropriately and did not breach his
4 fiduciary duty with respect to allowing Mr. Adams to participate in the vote.³

5 In short, there is simply no basis to hold Mr. Gould liable for breach of fiduciary duty
6 relating to the Plaintiff’s termination where he voted *against* that termination. This claim must be
7 summarily adjudicated in Mr. Gould’s favor.

8 **2. There is no evidence to support a separate claim against Mr. Gould for**
9 **breach of the duty of candor with respect to SEC filings and press**
10 **releases.**

11 Cotter, Jr. contends that Mr. Gould breached the duty of candor with respect to certain
12 SEC filings and press releases issued by Reading. In particular, Cotter, Jr. contends that Mr.
13 Gould breached the duty of candor when Reading attached a press release to its 8-K with a quote
14 from Mr. Gould describing the CEO search process as thorough. He also contends that Mr. Gould
15 breached the duty of candor by failing to prevent Reading from issuing several others 8-Ks that
16 Cotter, Jr. contends are misleading (and which are described in Gould’s motion for summary
17 judgment). *See* Mot. at 28-30.

18 The problem with Cotter, Jr.’s breach of duty of candor claims is that Nevada does not
19 recognize the duty of candor as one of a director’s fiduciary duties (outside of the merger context).
20 Indeed, the Nevada Supreme Court has explicitly laid out the extent of a director’s ordinary
21 fiduciary duties: “[T]he directors’ fiduciary relationship with the corporation and its shareholders
22 [] imparts upon the directors duties of care and loyalty.” *Shoen*, 122 Nev. at 632. The Nevada
23 Supreme Court has further explained that it is only in the limited context of the merger process,
24 that the duty of candor and disclosure is imposed upon directors—and it results in an application
25 of higher scrutiny in such situations. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 18 (2003). And
26 while Delaware law may provide a duty of candor under broader circumstances, the Nevada

27
28 ³ Moreover, in any event, Cotter, Jr. has pointed to no evidence whatsoever that Mr. Gould
acted with the requisite mental state of intentional misconduct, fraud or a knowing violation of law

1 legislature has made clear that out-of-state authority cannot supplant the fiduciary duties of
2 directors under Nevada law and that the failure to conform to the laws of another jurisdiction, such
3 as Delaware, does not indicate a breach of fiduciary duty. Nev. Rev. Stat. § 78.138(2). In other
4 words, Mr. Gould cannot be liable for breach of the duty of candor relating to non-merger
5 disclosures because Nevada law does not recognize such a duty.⁴ As such, Cotter, Jr.'s claims for
6 breach of the duty of candor must be summarily adjudicated in Mr. Gould's favor.

7 **3. There is no evidence to support a separate claim against Mr. Gould for**
8 **breach of fiduciary duty relating to the appointment of Coddington and**
9 **Wrotniak to Reading's Board of Directors.**

10 In his Motion, Mr. Gould explained that there are no requirements to serve on a board of
11 directors in Nevada other than that the director is over 18 and a natural person, that under
12 NASDAQ listing rules, a controlling shareholder has the right to select directors, and that there
13 were legitimate reasons to select including their business experience and Board harmony, and that
14 Coddington and Wrotniak's personal "relationships" with the Cotter sisters were tangential at best.
15 Mot. at 16-20. Cotter, Jr. has since conceded that Board harmony is a legitimate consideration.
16 Ex. 3 at 1055:6-14 (Cotter, Jr. Dep.). And his expert witness agreed that it was appropriate to take
17 into account. Ex. 2 at 154:21-155:1 (Steele Dep.) Given that that Gould took into account
18 appropriate considerations and that both Coddington and Wrotniak are qualified to be directors under
19 Nevada law, there is no evidence that Mr. Gould breached his fiduciary duty in voting in favor of
20

21 ⁴ Mr. Gould addressed additional problems with the claims against him pertaining to the
22 SEC filings and press releases in his motion for summary judgment, namely that: (1) alleging the
23 public filings do not contain enough information does not demonstrate that a defendant engaged in
24 fraud and (2) the evidence shows that Gould provided comments on the parts of the filings he had
25 knowledge of and relied on Reading's counsel and executives as to matters he was not involved
26 with, which is consistent with a director's fiduciary duties. Mot. at 28-30. Since that time, Cotter,
27 Jr. also conceded Gould did not have unilateral authority to correct SEC disclosures. Ex. 3 at
28 1080:4-10. He also admitted that Cotter, Jr. has no evidence that Mr. Gould did not believe
"[a]fter conducting a thorough search process, it is clear that Ellen is best suited to lead Reading
moving forward" and that Cotter, Jr. is solely relying on naked belief that Mr. Gould could not
believe his sister to be the best person to lead Reading. Ex. 3 at 1069:11-25; 1070:1;
1071:11-1073:9 (Cotter, Jr. Dep. Vol. IV). As detailed in Gould's motion, Ellen Cotter (who had
been acting CEO) was selected after interviewing seven candidates, and based on her performance
in that role and her other experience at Reading, Gould thought Ellen Cotter was intelligent and
had the right personality to lead the company forward during a difficult time. Mot. at 9-10; 20-25.

1 their appointments, let alone that he acted with the requisite mindset of fraud, intentional
2 misconduct or a knowing violation of law when he accepted the recommendation of the Special
3 Nominating Committee and voted to appoint two experienced business people to the Reading
4 Board.

5 **4. There is no evidence to support a separate claim against Mr. Gould**
6 **relating to the appointment of Ellen Cotter as permanent CEO.**

7 Mr. Gould's Motion explained in detail the steps undertaken by the CEO search committee
8 to find a CEO, including engaging an executive search firm and interviewing seven candidates.
9 Mot. at 21-22. The Motion explained that the Search Committee moved away from the initial
10 search criteria after determining that there was too great a focus on real estate experience and that
11 even Cotter, Jr. believed the position specification was initially too focused on real estate
12 experience. Mot. at 22-23. And the Motion also explained why Mr. Gould decided to recommend
13 Ellen Cotter once she threw her hat in the ring—noting that the Board knew Ellen Cotter well,
14 believed her to be intelligent, with an extensive knowledge of Reading and the right personality to
15 lead the company through a difficult transition, and that she had performed well as interim CEO
16 (among other factors). Mot. at 23-24. Cotter, Jr.'s complaints about the CEO search process
17 amount to nothing more than nitpicking a process that lead to a conclusion he did not like—the
18 appointment of his rival and sister, Ellen Cotter to the role of CEO. Indeed, Cotter, Jr.'s recent
19 deposition makes clear that he was able to voice all of his concerns regarding process to the other
20 Board members before the vote, and that Mr. Gould did not refuse to answer any of Cotter, Jr.'s
21 questions. Ex. 3 at 1083:21-1084:3 (Cotter, Jr. Dep. Vol IV). Moreover, Cotter, Jr. conceded that
22 directors could have different views and vote differently and still both be fulfilling their fiduciary
23 duty. Ex. 3 at 1055:21-1056:3 (Cotter, Jr. Dep. Vol IV). That is precisely the case here. All of
24 the evidence demonstrates that Mr. Gould conducted a CEO search that was completely open
25 about its process, that he interviewed numerous candidates, and that he ultimately recommended
26 the serving interim CEO, who had also been a successful executive at Reading for many years, for
27 the permanent position, because he believed she was the best candidate for the job under the
28 particular circumstances facing Reading. Under these circumstances, the claims against

1 Mr. Gould for breach of fiduciary duty relating to the CEO search must be summarily adjudicated
2 in his favor.

3 **5. There is no evidence to support a separate claim against Mr. Gould**
4 **relating to the approval of compensation and other pay.**

5 As discussed in Mr. Gould's Motion, Mr. Gould voted in favor of a salary raise for Ellen
6 Cotter, a \$50,000 payment to Guy Adams and a one-time payment to Margaret Cotter upon the
7 windup of her consulting agreement because these payments all served legitimate business
8 purposes and Mr. Gould appropriately relied on the work of committees and experts to determine
9 whether and in what amount to make the payments. Mot. at 25-27. Cotter, Jr. now concedes that
10 he has no evidence that Mr. Gould breached his fiduciary duty in voting in favor of these
11 payments and is relying solely on the fact that Mr. Gould voted "yes". Ex. 3 at 1090:22-25
12 (Cotter, Jr. Dep. Vol IV). Given the legitimate business reasons for these payments, Mr. Gould's
13 "yes" vote does not show that he breached his fiduciary duty, let alone that he acted with
14 intentional misconduct, fraud or a knowing violation of law. This claim, too, must be summarily
15 adjudicated in Gould's favor.

16 **III. CONCLUSION**

17 Mr. Gould requests that the Court set a December 11, 2017 hearing date for the Motion for
18 Summary Judgment he filed on September 23, 2016. For the foregoing reasons, and the reasons
19 stated in Gould's Motion for Summary Judgment, and the Reply in Support of Gould's Motion for
20 Summary Judgment, and the Individual Defendants' Motion for Partial Summary Judgment No. 3
21 on Plaintiff's Claims Related to the Purported Unsolicited Offer, Mr. Gould further requests that
22 all of Plaintiff's claims against Mr. Gould be summarily adjudicated in his favor.

1 December 1, 2017

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

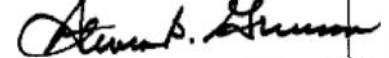
4 By



5 Ekwon E. Rhow (*admitted pro hac vice*)
6 Shoshana E. Barnett (*admitted pro hac vice*)
7 1875 Century Park East, 23rd Floor
8 Los Angeles, California 90067-2561

9 MAUPIN, COX & LeGOY
10 Donald A. Lattin (SBN 693)
11 Carolyn K. Renner (SBN 9164)
12 4785 Caughlin Parkway
13 Reno, NV 89519
14 Telephone: (775) 827-2000
15 Facsimile: (775) 827-2185

16 Attorneys for Defendant William Gould
17
18
19
20
21
22
23
24
25
26
27
28



MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

1 **OMSJ**

2 **MORRIS LAW GROUP**

3 Steve Morris, Bar No. 1543

4 Akke Levin, Bar No. 9102

5 411 E. Bonneville Ave., Ste. 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 474-9400

8 Facsimile: (702) 474-9422

9 Email: sm@morrislawgroup.com

10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913

12 Yurko, Salvesen & Remz, P.C.

13 1 Washington Mall, 11th Floor

14 Boston, MA 02108

15 Telephone: (617) 723-6900

16 Facsimile: (617) 723-6905

17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

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

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

25 Plaintiff,

26 v.

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

Defendants.

And

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

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **SUPPLEMENTAL OPPOSITION**
) **TO MOTION FOR SUMMARY**
) **JUDGMENT NOS. 1 AND 2 AND**
) **GOULD MOTION FOR**
) **SUMMARY JUDGMENT**

) **Hearing date: December 11, 2017**

) **Hearing time: 8:30 a.m.**

1 I. INTRODUCTION¹

2 The "Supplement to Motions for Partial Summary Judgment
3 Nos. 1, 2, 3, 5 and 6" (the "Supplement") asserts with respect to MSJ No. 1,
4 which the Court denied, that new issues of law merit reconsideration and
5 granting that motion, and with respect to MSJ No. 2 that Plaintiff has failed
6 to proffer evidence raising any disputed questions of fact regarding director
7 independence or disinterestedness. Both arguments are predicated upon
8 misstatements of the law and the argument with respect to MSJ No. 2 simply
9 ignores the wealth of compelling evidence that shows a lack of
10 independence and/or disinterestedness on the part of almost all if not all of
11 the director defendants, in many instances generally and in all instances
12 with respect to the matters at hand which were of interest to EC and MC.

13 With respect to MSJ No. 1, contrary to what the Supplement
14 contends, no changes to the law warrant reconsideration, much less a
15 different outcome. However, recent additional testimony by defendant
16 Adams clarifies and confirms his financial dependence on EC and MC and,
17 if reconsideration is warranted, supports granting Plaintiff's summary
18 judgment motion.

19 With respect to MSJ No.2, the Supplement ignores what
20 constitutes independence and disinterestedness and, more critically, the lack
21 thereof, which Plaintiff again explains in this brief. Also with respect to MSJ
22 No. 2, the Supplement ignores the evidence and ignores the fact that the
23 Court is required to look at it both collectively and particularly with respect
24

25
26 ¹ Plaintiff concurrently is submitting four supplemental oppositions, one
27 with respect to each of so-called Summary Judgment Motion Nos. 1, 3 5 and
28 6. Because each addresses issues relating to Summary Judgment Motion No.
2 and to Gould's separate summary judgment motion, each is submitted as a
supplemental brief with respect to those motions as well.

1 to particular matters that Plaintiff claims in and of themselves, not just
2 together with other matters, entail or constitute breaches of fiduciary duty.

3 **II. SUPPLEMENTAL STATEMENT OF FACTS**

4 The only recently discovered fact is recent deposition testimony
5 by Adams that clarifies and confirms that most and in some years almost all
6 of his income is from companies controlled by EC and MC. *See* Ex. 1 to
7 Declaration of Akke Levin ("Levin Decl.")(Adams October 17, 2017 Dep. Tr.
8 at 554:18–562:8).

9 **III. ARGUMENT**

10 The Supplement asserts that "recent clarification to Nevada law
11 makes clear that suggestions of a purported lack of independence cannot
12 rebut [the] statutory presumption..." Supplement at 11:9–13. Insofar as this
13 argument is based upon a recent amendment, it misapprehends that
14 amendment and is unavailing. Insofar as it is based on mischaracterization
15 of the evidence Plaintiff has proffered, it is mistaken and unavailing.

16 **A. The Recent Statutory Modifications do not Change the** 17 **Analysis or Outcome Here**

18 As demonstrated in Plaintiff's opposition to the renewed motion
19 directed at the expert testimony of Chief Justice Myron Steele ("Renewed
20 Steele MIL"), defendants' characterization of a recent amendment to NRS
21 78.138 is inaccurate and their reliance on it unavailing. Plaintiff respectfully
22 incorporates that opposition herein. Briefly, as explained in Plaintiff's
23 opposition to the Renewed Steele MIL, those amendments do not change the
24 analysis or the result here. Contrary to what the Supplement argues
25 regarding subsection 4 of S.B. 203, that subsection merely provides that
26 directors of a Nevada corporation are not liable for breach of fiduciary duty
27 for failing to abide by foreign laws, judicial decisions or practices. That of
28 course says nothing about whether a Nevada Court, in determining whether

1 a director of a Nevada corporation breached his or her fiduciary duties
2 under Nevada law, may look to Delaware statutes and/or judicial decisions
3 to assist in interpreting a Nevada statute if doing so would not entail
4 supplanting or modifying the law of Nevada. Finally, insofar as subsection
5 4 of S.B. 203 amends NRS 78.148 (7) to include language that a director of a
6 Nevada corporation cannot be liable to the corporation for money damages
7 "unless...[t]he trier of fact determines that the presumption established by
8 subsection 3 has been rebutted[.]" this provision merely clarifies the pre-
9 existing evidentiary burden, which is that the plaintiff bears the initial
10 burden of rebutting the statutory presumption. The Motion admits as much,
11 stating that the business judgment rule presumptions apply "if the directors
12 of a corporation acted on an informed basis, in good faith and in the honest
13 belief that the action taken was in the best interest of the company." Motion
14 at 3:25–4:2 (citing *Wynn Resorts*) (emphasis supplied).

15 **B. The Supplement Misapprehends the Law and Ignores the**
16 **Evidence**

17 The Supplement in addressing the question of director
18 independence cites to comments the Court made at the October 27, 2016
19 summary judgment hearing, which the Supplement characterizes as
20 requiring "Plaintiff [to] provide additional information so that each director
21 could be evaluated on an 'action-by-action basis.'" Supplement at 7:25–27.
22 What the Court actually said was that "the independence issue needs to be
23 evaluated on a transaction or action-by-action basis, because you have to
24 separately evaluate the independence as related to each. And while there
25 maybe facts that overlap between different actions that apply to others, I
26 can't evaluate it in a vacuum." Ex. A to Declaration of Noah Helpert in
27 support of Defendants' Supplemental Motions for Summary Judgment,
28 (October 7, 2016 Hearing Tr. at 84:21-85:1). Plaintiff understood those

1 comments to reflect that the Court agreed with Plaintiff that independence
2 does not exist outside of a factual context, and that it needed to be assessed
3 not only generally but also with respect to specific transactions and/or
4 actions, if any, that Plaintiff contended in and of themselves gave rise to or
5 constituted breaches of fiduciary duty. Plaintiff further understood the
6 Court to direct counsel for Plaintiff to indicate which if any of the
7 complained of actions or transactions were matters which Plaintiff contends
8 in and of themselves, not just together with others, give rise to or constitute
9 breaches of fiduciary duty. The answer to that question is that Plaintiff for
10 the purposes of the pending motions is of the view following matters may
11 be viewed as also independently entailing or constituting breaches of
12 fiduciary duty:

- 13 • The threat by Adams, Kane and McEachern to terminate Plaintiff if
14 he did not resolve trust disputes with his sisters on terms
15 satisfactory to them (which included giving EC and MC control of
16 RDI).
- 17 • Termination of Plaintiff by them when he failed to acquiesce (after
18 choosing not to terminate him when they understood that he had
19 acquiesced).
- 20 • Adams and Kane authorizing exercise of the 100,000 share option to
21 protect EC and MC's control of RDI from a possible proxy contest
22 by non-Cotter shareholders.
- 23 • MC, McEachern and Gould aborting the CEO search and selecting
24 EC, who lacked the most critical qualifications sought in a CEO of
25 RDI, to which the other director defendants agreed in order to
26 accommodate EC and MC as controlling shareholders.
- 27 • Hiring MC as EVP RED NY, even though she had no prior
28 experience for that position, which is of vital importance to the

1 Company and its prospects, and providing MC a pre-employment
2 \$200,000 bonus, to accommodate EC and MC as controlling
3 shareholders.

- 4 • Responding to the Patton Vision offer(s) in a manner intended to
5 satisfy the wishes and protect the interests of EC and MC
6 controlling shareholders.

7 Because each of the foregoing matters other than the termination
8 of Plaintiff is addressed in other briefs (three filed contemporaneously
9 herewith), only the termination topic is addressed herein at any length.
10 However, the legal notion of independence and disinterest and the lack of
11 either and/or both is discussed herein, as is an overview of each of the
12 director defendants.

13 Because the business judgment rule presumes that directors
14 have no conflict of interest, the business judgment rule does not apply
15 where "directors have an interest other than as directors of the corporation."
16 *Lewis v. S.L. & E., Inc.*, 629 F.2d 764, 769 (2d Cir. 1980). This is because
17 "[d]irectorial interest exists whenever divided loyalties are present." *Rales v.*
18 *Blasband*, 634 A. 2d 927, 933 (Del. 1993) (citations and quotations omitted).
19 Thus, a director must be disinterested in the challenged conduct in
20 particular and, as a general matter, otherwise independent. *Beam*, 845 A.2d
21 at 1049.

22 A director is independent "only when the director's decision is
23 based *entirely* on the corporate merits of the transaction and is not
24 influenced by personal or extraneous considerations." *Cede & Co. v.*
25 *Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) *modified in part on other grounds*,
26 636 A.2d 956 (Del. 1994) (emphasis supplied). "Directors must not only be
27 independent, [they also] must act independently." *Telxon Corp. v. Meyerson*,
28 802 A.2d 257, 264 (Del. 2003). Independence is lacking in situations in

1 which a corporate fiduciary "derives a benefit *from the transaction* that is not
2 generally shared with the other shareholders." in situations in which the
3 benefit is derived by another (*e.g.*, by EC and MC), the issue is whether the
4 [corporate fiduciary]'s decision resulted from that director being *controlled*
5 by another." *Orman v. Cullman*, 794 A.2d 5, 25 n.50 (Del. Ch. 2002)
6 (explaining the distinction between interest and independence). Control
7 may exist where a corporate fiduciary has close personal or financial ties to
8 or is beholden to another. *Id.*

9 "Independence is a fact-specific determination made in the
10 context of a particular case. The Court must make that determination by
11 answering the inquiries: independent from whom and independent for
12 what purpose?" *Beam*, 845 A.2d at 1049–50.

13 The rule that a director must be independent *and* act
14 independently means that, although independence is to be assessed with
15 respect to particular challenged decisions that are claimed to have given rise
16 to or constitute fiduciary breaches (*i.e.*, did the director act independently),
17 independence must be assessed in view of all of the facts and circumstances
18 that bear upon the director's independence (*i.e.*, is the director independent),
19 including most fundamentally whether the director otherwise has acted or
20 failed to act independently.

21 To illustrate the point, McEachern's independence in the context
22 of his actions as a member of the CEO search committee to abort the search
23 process and select EC to be CEO, like his reflexive rejection of the Offer,
24 must be assessed in view of his prior conduct in the context of other matters
25 of personal importance to EC and/or MC, including most notably
26 McEachern's participation in the threat to terminate Plaintiff if he did not
27 resolve trust disputes with his sisters on terms satisfactory to them (which
28

1 entailed giving them control of RDI) and his action to terminate Plaintiff
2 when he did not do so.

3 Here, EC and MC are acknowledged by Defendants for the
4 purpose of summary judgment motions to not be independent and/or
5 disinterested generally.

6 Adams, Kane and McEachern's stunning misuse of their
7 positions as directors to attempt to extort Plaintiff into resolving trust and
8 estate disputes on terms dictated by EC and MC are squarely and
9 unequivocally efforts to obtain personal benefits for EC and MC not shared
10 with other RDI shareholders. More fundamentally, those efforts constitute
11 compelling evidence not merely of divided loyalties on the part of each of
12 Adams, Kane and McEachern, but rather of undivided loyalties, to EC and
13 MC rather than the Company and all of its shareholders.

14 Also as to Adams, his own sworn testimony in his Los Angeles
15 Superior Court divorce proceeding and in this case shows that he is
16 financially dependent upon income he receives from companies that EC and
17 MC control and therefore is personally interested in any and all matters of
18 even potential personal interest to EC and/or MC, as his actions with
19 respect to such matters (*e.g.*, as a Compensation Committee and Board
20 member acting on employment and compensation of EC and MC) also
21 evidence. Any question about his dependence on EC and MC (through
22 companies they control, including RDI) for his income was put to rest by his
23 recent deposition testimony which, among other things, confirmed the
24 accuracy of the declarations he signed and filed in his divorce case. Ex. 1 to
25 Levin Decl. (Adams October 17, 2017 Dep. Tr. at 554:18–562:8).

26 Kane's personal relationship with JJC, Sr., Kane's view that JJC,
27 Sr. intended MC control the Voting Trust and his actions to make that
28 happen, his actions to provide EC and MC with lucrative senior executive

1 jobs at RDI for which each was and is demonstrably unqualified and his
2 reflexive rejection of the Offer(s), among other things, demonstrate his lack
3 of independence, both generally from and with respect to EC and MC, and
4 with respect to each of these particular matters.

5 As discussed in the contemporaneously filed supplemental
6 opposition to the so-called summary judgment motion directed at the CEO
7 search, defendants Gould and McEachern were the ostensibly independent
8 directors on the CEO search committee, but did not act as such. Instead, they
9 allowed MC to participate and, together with her, undermined and actually
10 aborted the CEO search process.

11 For Gould, that was chronologically in the middle of a series of
12 actions and intentional failures to act in the face of a known duty, all of
13 which were to accommodate EC and MC as controlling shareholders. Those
14 acts and omissions include the following:

- 15 • When Plaintiff raised the issue of Adams' lack of independence due
16 to his financial dependence on EC and MC, Gould chose to let
17 Adams get away with refusing to address the issue, and failed to
18 take any action to fulfill his fiduciary obligations and learn the
19 (publicly available) facts. As a result, Adams cast the deciding vote
20 to terminate Mr. Cotter as President and CEO. When Gould learned
21 those facts during this litigation, he took the position that Adams
22 was conflicted at least with respect to matters regarding the
23 compensation of members of the Cotter family. Ex. 2 to Levin Decl.
24 (William Gould 6/8/16 Dep. Tr. at 39:2-25).
- 25 • Gould told EC that the position she had caused the Company to
26 take and publicly disclose in a SEC filing and press release, namely,
27 that Mr. Cotter was required to resign as a director upon the
28 termination of his executive employment agreement, was

erroneous. When EC ignored him and proceeded to pursue that position (failing to correct the erroneous public disclosure and causing the Company to commence an arbitration against Mr. Cotter), Gould was required to take the issue to the highest decision-maker at the Company, the Board. Again, Gould chose not to act.

- Gould approved the repopulation of the executive committee knowing full well that it would be used as a means to limit the participation of Plaintiff and Storey as directors. In fact, his testimony was that he chose not to be on it because he knew it would take too much time. Ex. 2 (Gould Dep. Tr. at 25:3–23).
- When faced with the offer(s) by Patton Vision and others to acquire all of the outstanding stock of the Company, Gould redirected the conversation from matters bearing upon the best interests of the Company and all of its shareholders to the intentions and wishes of EC and MC as controlling shareholders. When EC and MC indicated they would not support pursuing the offer, Gould and the other directors promptly acquiesced to their wishes as controlling shareholders and determined not to proceed.

As to each of Coddington and Wrotniak, they do not constitute a majority of directors or committee members voting with respect to a single matter, which means that their independence and/or disinterest is of little or no import. Even if they did, questions about their independence and/or disinterest exist, at a minimum. Coddington and Wrotniak, both of whom have personal relationships with a Coddington family member and neither of whom have any background in RDI's businesses or public company boards, had been on the RDI board a mere two months when, without having participated in the CEO search, they were asked to make EC the new CEO.

1 Without so much as going behind the presentation made at the board
2 meeting, they dutifully did so. As to Coddington, that may have been because
3 her view was that a Cotter as a controlling shareholder should be the CEO of
4 the company. See October 13, 2016 Declaration of James J. Cotter, Jr., Ex. 7 to
5 Plaintiff's Supplemental Opposition to MSJ Nos. 2 and 3 (filed concurrently),
6 ¶ 24. Likewise, both Coddington and Wrotniak promptly and dutifully
7 acquiesced to the wishes of EC and MC as controlling shareholders in voting
8 to take no action in response to the Patton Vision offer(s).

9 As the foregoing illustrates, particularly when viewed in context,
10 at a minimum disputed issues of fact exist regarding the independence and
11 disinterestedness of most if not all of the director defendants, both generally
12 and with respect to particular complained of conduct, including the threat of
13 termination, termination, the aborted CEO search that resulted in EC being
14 made CEO notwithstanding the fact that she lacked the qualifications and
15 experience that were the *sine qua non* for the position, the hiring of MC for a
16 critical, highly paid senior executive position for which she had no prior
17 experience and the payment to her of a stunning \$200,000 pre-employment
18 signing bonus so she would take the very job for which she had been
19 angling for a year and a half.

20 As if from a movie, all of these acts and omissions that can be
21 summarized as entrenchment and self-dealing must be viewed in the
22 context of the reflexive decision of all Board members to summarily reject
23 even independently analyzing what should be done in response to the
24 Offers, because they immediately asked what the controlling shareholders
25 wanted to do and promptly did that, which of course was to tell the Offerors
26 that the Company was not for sale and would not be for sale.

27 As if from a movie sequel, they doubled down on that conduct
28 by taking defensive measures to make the acquisition of control of the

1 Company more expensive (by providing in effect that Company monies
2 would be paid to EC and MC upon a change of control).

3 As the foregoing demonstrates, the record is rich with evidence
4 that each of the individual director defendants lacked independence and/or
5 disinterestedness generally and with respect to particular complained of acts
6 and omissions with respect to matters of personal interest to EC and MC.
7 This evidence serves to rebut the presumptions of the business judgment
8 rule and shift the burden to the individual director defendants to prove the
9 entire fairness of their challenged conduct and the results.

10 "If the shareholder succeeds in rebutting the presumption of the
11 business judgment rule, the burden shifts to the defendant directors to prove
12 the 'entire fairness' of the transaction." *McMullin v. Brand*, 765 A.2d 910, 917
13 (Del. 2000). "[I]f the presumption is rebutted, the board's decision is
14 reviewed through the lens of entire fairness, pursuant to which the directors
15 lose the presumption of [the] business judgment [rule]." *Solomon v.*
16 *Armstrong*, 747 A.2d 1098, 1112 (Del.Ch. 1999); *Horwitz v. SW. Forest Indus.,*
17 *Inc.*, 604 F. Supp. 1130, 1134 (D. Nev. 1985).

18 Under the entire fairness test, "[d]irector defendants therefore
19 are required to establish to the court's satisfaction that the transaction was
20 the product of both fair dealing and fair price." *Cinerama, Inc. v. Technicolor*,
21 663 A.2d 1156, 1163 (Del. 1995) (quoting *Cede & Co. v. Technicolor*, 634 A.2d
22 345, 361 (Del. 1993)). Thus, a test of entire fairness is a two-part inquiry into
23 the fair-dealing, meaning the process leading to the challenged action and,
24 separately, the end result. *In re Tele-Comm's Inc. Shareholders Litig.*, 2005
25 Del. Ch. LEXIS 206, at *235, 2005 WL 3642727, at *9 (Del. Ch. Sept. 29, 2005).
26 Under the entire fairness standard, the challenged action itself must be
27 objectively fair, independent of the beliefs of the director defendants. *Geoff*
28 *v. II Cindus, Inc.*, 902 A.2d 1130, 1145 (Del. Ch. 2006) *subsequent proceedings*,

1 2006 (Del. Ch. LEXIS 161, 2000 WL 2521441 (Del. Ch. Aug. 22, 2006); *see also*
2 *Venhill Ltd. P'ship v. Hilman*, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008)
3 ("The fairness test therefore is "an inquiry designed to access whether a self-
4 dealing transaction should be respected or set aside in equity").

5 **IV. CONCLUSION**

6 For the foregoing reasons, among others, Plaintiff respectfully
7 submits that MSJ Nos. 1 and 2 and Gould's motion for summary judgment
8 each should be denied, and that Plaintiff's motion for summary should be
9 granted.

10 MORRIS LAW GROUP

11 By: /s/ STEVE MORRIS

12 Steve Morris, Bar No. 1543
13 Akke Levin, Bar No. 9102
14 411 E. Bonneville Ave., Ste. 360
15 Las Vegas, Nevada 89101

16 Mark G. Krum, Bar No. 10913
17 YURKO, SALVESEN & REMZ, P.C.
18 1 Washington Mall, 11th Floor
19 Boston, MA 02108

20 Attorneys for Plaintiff
21 James J. Cotter, Jr.
22
23
24
25
26
27
28

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: **SUPPLEMENTAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT NOS. 1 AND 2 AND GOULD MOTION FOR SUMMARY JUDGMENT** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 1st day of December, 2017.

By: /s/ PATRICIA FERRUGIA

Steven D. Grierson

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

DECL

MORRIS LAW GROUP

Steve Morris, Bar No. 1543

Akke Levin, Bar No. 9102

411 E. Bonneville Ave., Ste. 360

Las Vegas, Nevada 89101

Telephone: (702) 474-9400

Facsimile: (702) 474-9422

Email: sm@morrislawgroup.com

Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913

Yurko, Salvesen & Remz, P.C.

1 Washington Mall, 11th Floor

Boston, MA 02108

Telephone: (617) 723-6900

Facsimile: (617) 723-6905

Email: mkrum@bizlit.com

Attorneys for Plaintiff

James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

)

) Coordinated with:

)

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

) Dept. No. XI

)

) Jointly Administered

)

) **DECLARATION OF AKKE**

) **LEVIN IN SUPPORT OF**

) **SUPPLEMENTAL OPPOSITION**

) **TO MOTIONS FOR SUMMARY**

) **JUDGMENT NOS. 1 AND 2 AND**

) **GOULD SUMMARY**

) **JUDGMENT MOTION**

)

)

)

1 I, Akke Levin, state and declare as follows:

2 1. I am an attorney with Morris Law Group, counsel for
3 Plaintiff James J. Cotter, Jr. I make this declaration based upon personal
4 knowledge, except where stated upon information and belief, and as to that
5 information, I believe it to be true. If called upon to testify as the contents of
6 this declaration, I am legally competent to testify to its contents in a court of
7 law.

8 2. Attached hereto as Exhibit 1 is a true and correct copy of
9 excerpts from Vol. III of the deposition of Guy Adams, taken on October 17,
10 2017.

11 3. Attached hereto as Exhibit 2 is a true and correct copy of
12 excerpts from the deposition of William Gould, taken on June 8, 2016.

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

15 Executed this 1st day of December, 2017.

16
17
18 /s/ AKKE LEVIN
19 Akke Levin
20
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Exhibit 1

1 UNITED STATES DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 JAMES COTTER, JR.,)
5 individually and)
6 derivatively on behalf of) No. A-15-719860-B
7 Reading International,)
8 Inc.,)
9 Plaintiff,)
10 vs.)
11 MARGARET COTTER, ELLEN)
12 COTTER, GUY ADAMS, EDWARD)
13 KANE, DOUGLAS MCEACHERN,)
14 TIMOTHY STOREY, WILLIAM)
15 GOULD, and DOES 1-100,)
16 inclusive,)
17 Defendants.)
18 _____)
19 AND RELATED)
20 CROSS-ACTIONS.)
21 _____)

22 VOLUME III
23 VIDEOTAPED DEPOSITION OF GUY ADAMS
24 Los Angeles, California
25 Tuesday, October 17, 2017

GUY ADAMS, VOLUME III - 10/17/2017

Page 551 1 2 Exhibit 503 Document Bates stamped 8413 568 3 to 8418 4 5 Exhibit 504 Document Bates stamped 580 6 GA00008410 7 8 Exhibit 505 Document Bates numbered RD 584 9 I0054650 through 57 10 11 Exhibit 506 JCOTTER018289 to 18291 624 12 13 14 15 16 17 INSTRUCTION NOT TO ANSWER 18 19 Page Line 20 594 3 21 22 23 24 25	Page 552 1 LOS ANGELES, CALIFORNIA; 2 TUESDAY, OCTOBER 17, 2017; 2:57 p.m. 3 4 THE VIDEO OPERATOR: We are on the record. 5 The time is 2:57 p.m. The date is October 17th, 2017. 6 This is the beginning of Media Number 1 in the 7 deposition of Guy Adams, Volume III, taken by the 8 plaintiff in the matter of Cotter versus Carter, 9 et al. The case number is A-15-719860-B. 10 This deposition is being held at 1901 Avenue 11 of the Stars, Century City, California. The court 12 reporter is Sherry Case. I am Brian Murphy, the 13 videographer, an employee of Litigation Services 14 located at 3770 Howard Hughes Parkway, Las Vegas, 15 Nevada. 16 This deposition is being videotaped at all 17 times unless specified to go off the video record. 18 Would all present identify themselves, 19 beginning with the witness. 20 THE WITNESS: Guy Adams. 21 MR. TAYBACK: Christopher Tayback on behalf 22 of the witness and certain individual director 23 defendants. 24 MS. BANNETT: Shoshana Barnett on behalf of 25 Defendant William Gould.
Page 553 1 MR. FERRARIO: Mark Ferrario on behalf of 2 Reading. 3 MR. COTTER: Jim Cotter, plaintiff. 4 MR. KRUM: Mark Krum for plaintiff. 5 THE VIDEO OPERATOR: And would the court 6 reporter please swear in the witness. 7 THE REPORTER: Please raise your right hand. 8 You do solemnly swear that the testimony you 9 are about to give in the cause now pending to be the 10 truth, the whole truth, and nothing but the truth? 11 THE WITNESS: I do. 12 13 GUY ADAMS, 14 15 having been first duly re-sworn by the certified 16 shorthand reporter, was examined and testified further 17 as follows: 18 19 CONTINUED EXAMINATION 20 21 BY MR. KRUM: 22 Q Good afternoon, Mr. Adams. 23 A Good afternoon, Counselor. 24 Q Are you well today such that you can give your 25 best testimony?	Page 554 1 A Yes, sir. 2 Q Okay. Good. 3 As a preparatory remark, I want to assure you 4 that I've worked diligently since we last met so as 5 to ensure that I cover what I need to cover and don't 6 waste your time or my time covering matters I do not 7 need to cover or going over matters again. 8 However, there are a few items where I'm going 9 to have follow-on or clean up questions that may 10 require me to ask a preparatory foundational question 11 so you know to what I'm referring, and that may ask 12 you to repeat an answer you've given before. 13 But except for that, Mr. Adams, I assure you 14 I'm going to try to do what I need to do without 15 asking repeat questions. 16 And Mr. Tayback has politely encouraged me to 17 be efficient, and he knows that I can be and will be. 18 So with that, I'm going to show you what 19 previously was marked as Exhibit 53. 20 (Exhibit 53 was previously marked for 21 identification by the court 22 reporter and is attached hereto.) 23 BY MR. KRUM: 24 Q And I have only a couple questions about it, 25 Mr. Adams. You've authenticated it in a prior session

Page 555 1 of your deposition; but, nonetheless, take such time 2 as you need to review it and let me know when you've 3 reviewed it to your satisfaction. 4 A I remember the document. 5 Q This is a document that was filed on your 6 behalf in your Los Angeles Superior Court divorce 7 proceeding, correct? 8 A Yes. 9 Q And at the time it was filed, was the 10 information set out in the document, including the 11 exhibits thereto, true and correct, to the best of 12 your knowledge? 13 A To the best -- 14 MR. TAYBACK: Objection. Asked and answered. 15 Best evidence. 16 You can answer. 17 THE WITNESS: To the best of my knowledge. 18 BY MR. KRUM: 19 Q And I direct your attention in particular, 20 Mr. Adams, to your declaration that is the last three 21 pages of Exhibit 53. 22 A I just turned to it. 23 Q Okay. If you'd like to review it, please be 24 my guest. My question is: The information set out 25 there, was it, at the time you signed it, true and	Page 556 1 correct, to the best of your knowledge? 2 MR. TAYBACK: Objection. Asked and answered. 3 You can answer again. 4 THE WITNESS: To the best of my knowledge. 5 BY MR. KRUM: 6 Q And as you sit here today, Mr. Adams, at any 7 time subsequent to the filing of Exhibit 53 on or 8 about October 9, 2013, have you ever come to possess 9 any information that leads you to believe that any of 10 the information in Exhibit 53, including in particular 11 your declaration, was inaccurate? 12 A No. 13 Q Okay. So even though there were a couple 14 questions that were repeated, that was pretty quick, 15 right? 16 Mr. Adams, I hand you Exhibit 54. This is 17 another document you authenticated in your prior 18 session of your deposition. 19 (Exhibit 54 was previously marked for 20 identification by the court 21 reporter and is attached hereto.) 22 BY MR. KRUM: 23 Q Let me know when you've reviewed it to your 24 satisfaction. 25 A Yes, I remember this document.
Page 557 1 Q Exhibit 54 is another document filed on your 2 behalf in your Los Angeles Superior Court divorce 3 case, right? 4 A Yes. 5 Q And the first five pages following the face 6 page are a declaration that bears your signature. 7 Was the information set out in the declaration, 8 as well as the attachments to it -- meaning the 9 balance of Exhibit 54 -- true and correct, to the best 10 of your knowledge, at the time you signed the 11 declaration and the document was filed in March of 12 2014? 13 MR. TAYBACK: Objection. Asked and answered. 14 You can answer again. 15 THE WITNESS: To the best of my knowledge. 16 BY MR. KRUM: 17 Q Okay. And as you sit here today, have you 18 learned anything that leads you to believe now, with 19 the benefit of hindsight, that any information set out 20 in Exhibit 54 was not accurate? 21 A Not to my knowledge. 22 Q We covered some detail about your income 23 and expenses in 2014 and 2015 in the prior sessions, 24 including, by way of example, your receipt of proceeds 25 from the sale of the Santa Barbara condominium. I	Page 558 1 don't want to go over all that again. I don't want to 2 ask you to repeat what you've already testified about 3 the receipt of proceeds from the Santa Barbara 4 condominium. But what I do want to do is ask you a 5 few questions to, in effect, finish that line of 6 examination. 7 So with that by way of context, what was your 8 gross income in 2014, excluding any non-recurring 9 items, such as receipt of proceeds from the sale of 10 the Santa Barbara condominium? 11 MR. TAYBACK: Objection. Asked and answered. 12 You can answer. 13 THE WITNESS: In 2014 -- off the top of my 14 head, I don't have that number. 15 BY MR. KRUM: 16 Q Can you give me an approximation? 17 MR. TAYBACK: Same objection. Asked and 18 answered. 19 You can answer again. 20 THE WITNESS: 2014, I believe in my previous 21 testimony I've given a breakdown. When it was fresh 22 on my mind, I gave a breakdown what my earnings were 23 in 2014. 24 BY MR. KRUM: 25 Q In 2014 you received \$52,000 pursuant to

Page 559 1 an agreement previously entered into with 2 Jim Cotter, Sr., right? 3 A Yes. 4 Q And approximately what percentage of your gross 5 income in 2014, excluding any non-recurring items, was 6 that \$52,000? 7 MR. TAYBACK: Objection. Asked and answered. 8 You can answer as best you recall. 9 THE WITNESS: I think in 2014 my income from 10 the 52,000 represented a large portion, if not the 11 majority, of my income. 12 BY MR. KRUM: 13 Q Directing your attention to 2015, I'm going to 14 ask the same question. 15 In 2015 -- same questions. 16 In 2015 you received \$52,000 pursuant to 17 an agreement you previously entered into with 18 Jim Cotter, Sr., correct? 19 A Correct. 20 MR. TAYBACK: Just to make it clear, are you 21 excluding the condominium from these questions or are 22 you including it? 23 MR. KRUM: I will exclude it. The next 24 question -- 25 MR. TAYBACK: Okay. Because you made it a	Page 560 1 preface previously but -- 2 MR. KRUM: It is excluded from all such 3 questions, yeah. And, by the way, so is any other 4 one-off non-recurring income. 5 MR. TAYBACK: Okay. 6 MR. KRUM: And if that results in any 7 confusion, please clarify. 8 BY MR. KRUM: 9 Q So here's the next question: In 2015, 10 Mr. Adams, excluding any non-recurring income, such as 11 receipt of sale proceeds from the Santa Barbara condo, 12 approximately what percentage of your income was the 13 \$52,000? 14 A I'm not clear on all the dates, but I'd say 15 maybe less than half. 16 Q And what income -- what other income and 17 sources of income did you have in 2015? 18 A Yes. Again, I thought I made this clear in 19 my previous depositions -- and the dates aren't 20 exactly clear in my mind, but I sold some Reading 21 stock options, and I don't remember the amounts. 22 Q Right. 23 A But I think it was an amount greater than 24 the 52,000. So when I think of those two numbers 25 together, it would have been -- the 52 would have been
Page 561 1 less than half. 2 Q Okay. Thank you. 3 In 2015 -- excuse me. 4 In 2016 you received \$52,000 pursuant to 5 the agreement you previously entered into with 6 Jim Cotter, Sr., right? 7 A Yes. 8 Q In 2016, what percent of your income, excluding 9 non-recurring income, did that \$52,000 comprise? 10 MR. TAYBACK: Objection. Asked and answered. 11 You can answer. 12 THE WITNESS: Again, my recollection is that 13 would be about less than half. 14 BY MR. KRUM: 15 Q And same question: What were your other 16 sources of income in 2016? 17 A Board fees for Reading, and my recollection, 18 again, is there was some stock grants given to me that 19 year. 20 Q Reading stock grants? 21 A Reading stock grants. 22 Q Anything else? 23 A In 2016? 24 Q Right. 25 A I -- none that I can remember.	Page 562 1 Q Okay. We're now in October of 2017. 2 Have you received the pro rata portion through 3 October of 2017 of the \$52,000 this year? 4 A Yes, sir. 5 Q And what in 2017 had been your other sources of 6 income? 7 A The Reading board fees and the commensurate 8 stock grant that went with it. 9 Q So the last time we met and didn't proceed is a 10 date I cannot recall, but for your point of reference, 11 Mr. Adams, the last session of your deposition was 12 April 28th -- no, April 29, 2016. 13 A Okay. 14 MR. TAYBACK: Correct. 15 BY MR. KRUM: 16 Q Have you received any other monies -- strike 17 that. 18 Have you received any monies since April 29, 19 2016, the last session of your deposition, from any 20 of the real estate deals you identified in your prior 21 testimony? And the names, if I have them correct, 22 are Shadow View, Sorrento, Panorama Holdings, and 23 Leander Holdings? 24 A No. 25 Q Since the last session of your deposition in

Exhibit 2

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DISTRICT COURT
CLARK COUNTY, NEVADA

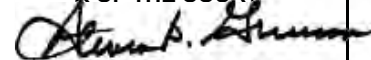
JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of	)	
Reading International,	)	
Inc.,	)	
	)	Case No. A-15-719860-B
Plaintiff,	)	
	)	Coordinated with:
vs.	)	
	)	Case No. P-14-082942-E
MARGARET COTTER, et al.,	)	
	)	
Defendants.	)	
and	)	
	)	
READING INTERNATIONAL,	)	
INC., a Nevada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

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

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

Page 22 1 Q. But -- and I think we'll avoid it. 2 MR. SWANIS: That's fairly consistent 3 with what I was trying to say, as well, but also to 4 the extent that there was any advice provided not 5 only to yourself but other members of the board or 6 that are a part of the company. 7 THE WITNESS: Okay. 8 MR. SWANIS: Thanks. 9 THE WITNESS: Well, the process worked 10 in this way. Korn Ferry had an interview with each 11 of us that was very lengthy -- I'd say my interview 12 was an hour and a half -- talking about what I 13 thought was important in a C.E.O. 14 So I'm really going to speak for what 15 they did with me. 16 And then what happened is based upon 17 these interviews with the members of the committee, 18 Korn Ferry presented a list of things that -- 19 qualities and characteristics that they felt that 20 the committee as a whole was looking for. 21 What we would do -- what I did was I 22 would then mark up their -- what they sent me. And 23 I think Craig Tompkins then coordinated the comments 24 of all the people and helped and put it into one 25 statement -- helped Korn Ferry put it into one	Page 23 1 statement. 2 BY MR. KRUM: 3 Q. So the comments you made, Mr. Gould, 4 were those provided -- well, strike that. 5 So the first thing that -- that you and, 6 to your knowledge, the other three members of the 7 committee did is that you sat for an interview with 8 Korn Ferry; is that right? 9 A. No. They were individual -- they were 10 individual interviews. They were -- they were 11 telephonic. 12 Q. Okay. 13 A. Excuse me. And -- 14 Q. Do you know or were you told that each 15 of Margaret Cotter, Ellen Cotter and Doug McEachern 16 had telephonic interviews with Korn Ferry? 17 A. I was told that. 18 Q. Did Craig Tompkins have a telephonic 19 interview with Korn Ferry? 20 A. I don't know. 21 Q. And directing your attention, Mr. Gould, 22 to your testimony regarding having received a list 23 from Korn Ferry that I believe you testified you 24 marked up, did you actually interlineate a document 25 from Korn Ferry?
Page 24 1 A. I don't recall. I can't recall exactly 2 how that process actually worked. 3 Q. Did you provide feedback or comments 4 with respect to the initial Korn Ferry list? 5 A. Yes, I did. 6 Q. And how did you do that? 7 A. I believe it was by telephone call with 8 the Korn Ferry representative that was handling our 9 matter. 10 Q. Okay. And I've skipped over a few 11 things. 12 First of all, in your telephonic 13 interview that you estimated lasted an hour and a 14 half, who participated other than you? 15 A. It was myself and two representatives of 16 Korn Ferry. 17 Q. Who were they? 18 A. I can't recall their names right now. 19 Q. Was Mr. Mayes one of them? 20 A. Yes, he was. 21 Q. Did you understand him to be the senior 22 person of the two? 23 A. Yes. 24 Q. Do you have any understanding whether 25 Mr. Mayes participated in interviews of the other	Page 25 1 three members of the C.E.O. search committee? 2 A. No. 3 Q. Okay. So let me backfill a little bit. 4 So the first step in the C.E.O. search 5 process was formation of the committee; is that 6 right? 7 A. Yes. 8 Q. And how did that come to pass? 9 A. Early on when -- there were two 10 committees that were being formed. One committee 11 was a committee -- was an executive committee, one 12 committee was a search committee. 13 This happened, oh, I would say, in June 14 of 2015, around that time, June or July. 15 Ellen asked me if I would like to be a 16 member of the executive committee. 17 And I said "No, I don't have time for 18 it." I knew that would be an extensive job. But I 19 did tell her at that time that I would be willing to 20 serve on the search committee. 21 So, when the board approved it, she 22 basically included my name as one of the four 23 persons who would be on that committee. 24 Q. Did Ellen select the four members of the 25 committee?

Page 38 1 that okay? 2 A. Yes. 3 Q. And by the five, I mean the directors 4 prior to the addition of Ms. Coddington and 5 Mr. Wrotniak. 6 A. Uh-huh. 7 Q. Okay? 8 A. Yes. 9 Q. And what statements do you recall 10 Mr. Adams making in support of terminating Jim 11 Cotter, Jr., as president and C.E.O. of RDI? 12 A. I don't recall the exact statements 13 themselves, but the essence of the statements was 14 that the company was not functioning properly under 15 Mr. Cotter and that a change had to be made right 16 away. 17 Q. Directing your attention, Mr. Gould, 18 back to the C.E.O. search process and to your 19 testimony regarding providing comments about a list 20 that Korn Ferry had provided following initial 21 interviews of the four members of the search 22 committee, do you recall that testimony? 23 A. Yes. 24 Q. Describe the list, if you would, please. 25 What was the nature of that document?	Page 39 1 A. The document set forth a profile of the 2 ideal candidate and the characteristics that the 3 board should be looking for as they interviewed 4 candidates for the position and included such things 5 as public company experience, experience in real 6 estate, developing projects, maybe raising capital, 7 things of that nature that these people had some 8 experience in. 9 Q. Was there more than one version of this 10 list of characteristics? 11 A. There was an earlier draft, and I think 12 it was then superseded, my recollection, with 13 comments -- as a result of the comments that each of 14 the people made. 15 But I'm not certain of that, but that's 16 my belief as I -- my memory serves me. 17 Q. And your recollection is that you made 18 comments on the initial draft? 19 A. I made comments either by telephone 20 or -- or writing on the initial draft, yes. 21 Q. To whom did you communicate those 22 comments? 23 A. My recollection is I communicated them 24 to the Korn Ferry representative. 25 Q. Is that Mr. Mayes?
Page 40 1 A. Yes. 2 Q. You testified earlier something to the 3 effect that Mr. Tompkins had collected some 4 information or comments from board members. 5 Do you recall the testimony -- 6 A. Yes, I do. 7 Q. -- to that effect? 8 A. I do. 9 Q. What exactly was -- did you provide him 10 and did you understand him to do in that respect? 11 A. Well, he mentioned to me that one of the 12 things that I had not focused on as much as I should 13 have -- and he's right -- was the fact that this is 14 a -- basically a motion picture exhibitor company, 15 as well as a real estate company. We know both 16 entertainment and that. 17 And in my earlier comments I focused 18 most -- mostly on the real estate aspect of it. And 19 I agreed with him. 20 Q. How did he know what your earlier 21 comments had been? 22 A. I'm not sure. 23 Q. Were the earlier comments communicated 24 orally or in writing? 25 A. Again I'm not sure which way they were	Page 41 1 communicated, but I -- my recollection is that he 2 probably saw the first draft compiled by Korn Ferry. 3 Q. And your earlier comments had focused on 4 real estate development; is that correct? 5 A. Yes. I had been focusing almost -- 6 because at that point in time it was very important 7 in my mind the real estate development, and I was 8 making sure that whoever became a C.E.O. would have 9 some good familiarity with that aspect of the 10 business. 11 Q. At the time was there anybody employed 12 as an executive at RDI who had, to your knowledge, 13 experience with real estate development? 14 MR. SWANIS: Objection. Form, 15 foundation. 16 MR. HELPERN: Join. 17 THE WITNESS: The person primarily 18 handling real estate development at that time was 19 Margaret Cotter. 20 BY MR. KRUM: 21 Q. What real estate development experience, 22 if any, did she have? 23 MR. SWANIS: Objection, form. 24 MR. HELPERN: Vague. 25 MR. SWANIS: Join.



1 OMSJ

2 MORRIS LAW GROUP

3 Steve Morris, Bar No. 1543

4 Akke Levin, Bar No. 9102

5 411 E. Bonneville Ave., Ste. 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 474-9400

8 Facsimile: (702) 474-9422

9 Email: sm@morrislawgroup.com

10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913

12 Yurko, Salvesen & Remz, P.C.

13 1 Washington Mall, 11th Floor

14 Boston, MA 02108

15 Telephone: (617) 723-6900

16 Facsimile: (617) 723-6905

17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 JAMES J. COTTER, JR.,) Case No. A-15-719860-B

23 derivatively on behalf of Reading) Dept. No. XI

24 International, Inc.,)

25) Coordinated with:

26 Plaintiff,)

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

28) Dept. No. XI

29 MARGARET COTTER, ELLEN)

30 COTTER, GUY ADAMS,) Jointly Administered

31 EDWARD KANE, DOUGLAS)

32 McEACHERN, WILLIAM)

33 GOULD, JUDY CODDING,)

34 MICHAEL WROTNIAK,)

35) PLAINTIFF'S SUPPLEMENTAL

36) OPPOSITION TO MOTION

37) SUMMARY JUDGMENT NOS. 2

38) AND 5 AND GOULD

39) SUMMARY JUDGMENT

40) MOTION

41) Hearing date: December 11, 2017

42) Hearing time: 8:30 a.m.

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MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

1 Plaintiff James J. Cotter, Jr. ("Plaintiff" or Mr. Cotter")
2 respectfully submits this supplemental opposition to the so-called summary
3 judgment motion nos. 2 and 5, as well as to the separate summary judgment
4 motion filed by defendant Gould, and in response to the "Supplement to
5 Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6" (the
6 "Supplement") filed by the other individual director defendants.

7 **I. INTRODUCTION¹**

8 Insofar as directed at Summary Judgment No. 5 in particular, the
9 Supplement merely misapprehends or misstates a recent statutory
10 amendment and otherwise begs the question with respect to what the
11 evidence shows regarding the aborted CEO search. For the reasons
12 discussed hereinafter, that so-called summary judgment motion should be
13 denied.

14 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

15 The CEO search process was set up and directed by EC until, at
16 the eleventh hour, she announced that she was a "serious" candidate. That
17 precipitated the CEO search process being aborted, Korn Ferry (the outside
18 search firm hired to assist in the search) being told to stand down and the
19 CEO search committee pre-empting the process, including by not presenting
20 the three final candidates to the Board and by having by Korn Ferry not
21 perform its independent, proprietary assessment of any candidate. Instead,
22 the CEO search committee simply selected EC and presented her to the
23 Board as the search committee's choice to be permanent CEO,

24
25 _____
26 ¹Plaintiff concurrently is submitting four supplemental oppositions, one
27 with respect to each of so-called Summary Judgment Motion Nos. 1, 3 5 and
28 6. Because each addresses issues relating to Summary Judgment Motion No.
2 and to Gould's separate summary judgment motion, each also is submitted
as a supplemental brief with respect to those motions, as well.

1 notwithstanding the fact that she lacked the experience that was identified
2 by the CEO search committee to be sine qua non to be RDI's CEO and used
3 by Korn Ferry to source and identify CEO candidates.

4 **A. EC Directs the CEO Search Process**

5 EC suggested a CEO search committee and "suggested" the four
6 members, EC, MC, Gould and McEachern, which the Board approved
7 without "much discussion." *See* Ex. 1 to Declaration of Akke Levin ("Levin
8 Decl.") (Gould 6/8/16 Dep. Tr. at 25:24–27:1). There was no discussion of
9 whether EC, who had just been appointed interim CEO, should or should
10 not be on the CEO search committee. *See* Ex. 2 to Levin Decl. (Gould
11 6/29/16 Dep. Tr. at 280:4–10).

12 EC hired Korn Ferry as the search firm to be used in the search
13 for a permanent CEO. After receiving the finalized Korn Ferry engagement
14 letter in July 2015, EC waited approximately a month to announce that RDI
15 would be retaining a search firm and return the letter to Korn Ferry. Ex. 12
16 to Levin Decl. (July 9, 2015 Letter from Korn Ferry to Ellen Cotter) ("Korn
17 Ferry Engagement Letter"); Ex. 5 (Margaret Cotter 6/15/16 Dep. Tr. 89:7–
18 13); and Ex. 9 (Email dated August 5, 2015 attaching Memo from Ellen
19 Cotter to Board of Directors dated August 2, 2015 ("Aug. 2, 2015 Memo")).

20 Korn Ferry had advised the CEO search committee "that it
21 would be a big mistake for [RDI] to just anoint [an] internal candidate[] as
22 the next CEO in the interest of expediency." Ex. 14 to Levin Decl. (Email
23 from Robert Wagner to Craig Tompkins, dated June 21, 2015).

24 Part of the Korn Ferry's engagement with RDI for the CEO
25 search was to perform a proprietary Korn Ferry assessment of the final
26 candidates. Ex. 9 (Aug. 2, 2015 Memo); Ex. 12 (Korn Ferry Engagement
27 Letter); *see also* Ex. 3 (Mayes Dep. Tr. at 18:15–21). As part of its engagement,
28

1 Korn Ferry was paid for the proprietary assessment of the final candidates.
2 *See Ex. 3* (Mayes dep. Tr. at 50: 23–51:7; 19:19–20:5). However, none was
3 performed, as described below. *Id.*

4 The CEO search committee was to conclude their work by
5 providing the three final candidates to the full board for interviews. (Ex. 9,
6 Aug. 2, 2015 Memo; *see also* Ex. 1 (Gould 6/8/16 Dep. Tr. at 49:2–11; Ex. 11
7 (Reading International, Inc. Meeting of the Board of Directors Telephonic
8 Meeting June 30, 2015) at p. 2.)) As described below, that too did not
9 happen.

10 During the Korn Ferry engagement for the RDI CEO search,
11 Korn Ferry communicated with the entire search committee, but "most of
12 the communication was with Ellen [Cotter]." *See Ex. 3* (Mayes Dep. Tr. at
13 30:12–21). With respect to Committee Member and director defendant
14 William Gould, who claims to have assumed the role of chairman of the
15 CEO search committee after EC announced her candidacy and withdrew,
16 Gould communicated with Korn Ferry representatives on two or three
17 occasions when the communication was with the entire CEO search
18 committee and once in developing the position specification or success
19 profile. *See id.* (Mayes Dep. Tr. at 70:14–71:1).

20 **B. EC's Undeclared Candidacy**

21 Robert Mayes, the senior partner at Korn Ferry responsible for
22 the RDI CEO search engagement, testified that it is not uncommon for
23 interim CEOs to be considered for the permanent CEO role (Ex. 3, Mayes
24 Dep. Tr. at 29:21–30:5), but that it is not common for an interim CEO to chair
25 a CEO search committee. *Id.* (at 49:17–50:1). He also testified that ninety
26 percent (90%) of the time a company or board hires a search firm, an
27 external candidate is selected to be the new CEO. *Id.* (at 32:8–15.)
28

1 Director Tim Storey asked EC if she was going to be a candidate
2 and she provided him an equivocal response which he shared with Gould,
3 together with his inference that EC may well be a candidate, but Gould and
4 McEachern nevertheless did not discuss whether EC should be on the CEO
5 search committee. Ex. 6 to Levin Decl. (Storey 8/3/16 Dep. Tr. 72:5–15; Ex. 8
6 (Email from Storey to William Gould dated June 29, 2015); *see also* Ex. 2
7 (Gould 6/29/16 Dep. Tr. at 280:15–281:10).

8 Search committee and Board member Gould acknowledged that
9 it occurred to him early on, well prior to EC announcing her candidacy, that
10 she might be a candidate. *See* Ex. 1 (Gould 6/8/16 Dep. Tr. at 56:20–57:8).
11 Nevertheless, Gould testified that he never discussed with EC that she
12 might or would be a candidate prior to her announcing it in November 2015.
13 *See* Ex. 1 (Gould 6/8/16 Dep. Tr. at 57:9–11). However, EC testified to the
14 contrary, stating that after the CEO search committee had been formed and
15 Korn Ferry hired, both Gould and McEachern solicited her to become a
16 candidate for permanent CEO. Ex. 4 (Ellen Cotter 6/16/16 Dep. Tr. 93:12–
17 94:21, 120:17–121:15).

18 **C. Real Estate Development Experience is Agreed to be the *Sine***
19 ***Qua Non* to be the Permanent CEO of RDI.**

20 The four members of the CEO search committee were
21 interviewed by Korn Ferry to prepare a list of qualifications and experience,
22 which were memorialized in a so-called position specification, which was
23 used to source and identify CEO candidates and select those who would be
24 interviewed. *See* Ex. 1 (Gould 6/8/16 Dep. Tr. at 22:9–23:11; 38:17–40:1); Ex.
25 3 (Mayes Dep. Tr. at 37:18–38:24; 54:11–17); Ex. 15 (Email from Robert Mayes
26 dated September 3, 2015). The four CEO search committee members agreed
27 and concluded, and the position specification reflected, that it was critically
28 important that the new CEO have substantial, firsthand experience in

1 commercial real estate development, which no senior executive at the
2 Company possessed. *See* Ex. 1 (Gould 6/8/16 Dep. Tr. at 38:17–39:8; 41:3–
3 42:5; 44:21–45:6). All four members of the CEO search committee
4 emphasized real estate experience as the most important factor. *See* Ex. 3
5 (Mayes dep. Tr. at 42:6–16); *see also* Ex. 3 (Mayes Dep. Tr. at 71:4–16)
6 ("[W]hat I can tell you is that all four members of the committee were
7 consistent at the outset. This company really needs real estate expertise, we
8 have this land in Manhattan, we need to figure out what to do with it to
9 optimize value. They were very consistent").

10 The Korn Ferry senior executive working with the CEO search
11 committee, Robert Mayes, was a senior partner in Korn Ferry's real estate
12 practice. *See* Ex. 2 (Gould 6/29/16 Dep. Tr. at 298:3–299:15); Ex. 13 (Email
13 from Robert Wagner to Craig Tompkins dated June 18, 2015).

14 **D. EC Formally Declares Her Candidacy**

15 On or about November 13, 2015, months after the search process
16 had been commenced and just before the CEO search committee was to
17 interview four candidates, EC declared her candidacy. Ex. 10 to Levin Decl.
18 (Memo from Craig Tompkins to Board of Directors dated January 5, 2016);
19 Ex. 2 (Gould 6/29/16 Dep. Tr. at 356:1–25). EC at that time withdrew as a
20 member of the CEO search committee. *Id.*

21 After EC formally declared her candidacy to be permanent CEO
22 and withdrew as chairperson of the CEO search committee, the remaining
23 committee members (Gould, McEachern and MC) had no discussions about
24 whether MC should be replaced as a member of the CEO search committee,
25 whether any actions of the committee needed to be reviewed or redone or
26 whether they should seek the advice of independent counsel *See* Ex. 1
27
28

1 (Gould 6/8/16 Dep. Tr. at 52:4–53:19; Ex. 2 (Gould 6/29/16 Dep. Tr. at
2 358:25–360:7).

3 **E. The CEO Search Process Is Aborted**

4 After Ellen Cotter announced her candidacy and the CEO search
5 committee on November 13, 2015 conducted interviews of four candidates
6 and immediately spoke to Mayes (Ex. 10), communication between Korn
7 Ferry and the search committee became "spotty," because the search
8 committee was not responsive to Korn Ferry. Ex. 3 (Mayes Dep. Tr. at 11:2–
9 12:21) ("There we're probably a few weeks there where there was radio
10 silence").

11 Korn Ferry on December 17, 2015 recommended that three
12 candidates, including EC, undergo the proprietary assessment by Korn
13 Ferry. Ex. 10; *see* Ex. 3 (Mayes Dep. Tr. at 63:7–11). Neither William Gould
14 nor any of the two other two members of the CEO search committee had
15 any communications with Korn Ferry representatives about Ellen Cotter as a
16 candidate for the permanent CEO position. *See* Ex. 3 (Mayes Dep. Tr. at
17 48:10–19).

18 Also on December 17, 2015 the CEO search committee met and
19 directed Craig Tompkins to direct Korn Ferry to stand down, and perform
20 no further services. Ex. 10; *see* Ex. 2 (Gould 6/29/16 Dep. Tr. at 411:8–14).

21 On December 23, 2015 the CEO search committee "interviewed"
22 EC and had a Skype communication with a candidate Korn Ferry had
23 identified after the November interviews. Ex. 10 (Dep. Ex. 313.) Six days
24 later, on December 29, the CEO search committee had a conference call and
25 formally selected EC to be the next CEO, subject to Board approval. *Id.*

26 *That EC and MC would be controlling shareholders was a*
27 *consideration to which the CEO search committee ascribed significance in selecting*
28

1 *EC to be permanent CEO. Exs. 10, 16 (Minutes of the Board of Directors of*
2 *Reading International CEO Search Committee December 29, 2015). Gould*
3 *personally recognized the control EC and MC as controlling shareholders could*
4 *exercise, stating that "if [board members] displease[d] the controlling shareholders,*
5 *the board members could be dismissed" and that the same would be true for the*
6 *C.E.O. See Ex. 2 (Gould 6/29/16 Dep. Tr. at 414:21–415:11).*

7 The CEO search committee did not provide the three final
8 candidates to the full RDI Board. *See Ex. 2 (Gould 6/29/16 Dep. Tr. at 291:3–*
9 *12). Nor did the CEO search committee allow Korn Ferry perform the*
10 *proprietary assessment of any of the finalists, including EC. See Ex. 3*
11 *(Mayes Dep. Tr. at 50:23–51:7; 19:19–20:5).*

12 **F. EC Was Unqualified by the Measure Set by the CEO Search**
13 **Committee, and Was Selected Because She Controlled the**
14 **Supposedly Independent Decisionmakers.**

15 According to Robert Mayes, the Korn Ferry senior partner
16 responsible for the RDI CEO search engagement, typically the successful
17 candidate in a CEO search will fit 80% or greater of the position
18 specification. "It's rare for a candidate to be hired without... that threshold."
19 Ex. 3 (Mayes Dep. Tr. at 59:12–16). When asked by counsel for RDI if he had
20 any reason to believe that Ellen Cotter was not a qualified candidate for the
21 RDI CEO position, Mayes answered affirmatively, stating that "I thought
22 relative to the [position] spec[ification] she lacked real estate experience." *See*
23 *id.* (at 68:14–20.)

24 After the CEO search committee formally selected EC on
25 December 29, 2015, Craig Tompkins at the beginning of 2016 asked Korn
26 Ferry to prepare a (fake) candidate report for Ellen Cotter, which was done.
27 *See id.* (at 63:21–64:17); Ex. 17 (Confidential Candidate Report on Ellen M.
28

1 Cotter for the Position of Chief Executive Officer Reading International Inc.
2 January 2016).

3 As noted above, the CEO search committee did not provide the
4 three final candidates to the full RDI Board. Nor did Korn Ferry perform the
5 proprietary assessment of any of the finalists, including EC. *See* Ex. 2
6 (Gould 6/29/16 Dep. Tr. at 284:3–12; 306:5–17).

7 At the Board meeting at which the CEO search committee
8 presented EC as their choice for permanent CEO, McEachern made
9 comments to the effect that he thought it important to take into
10 consideration that EC was or might become the controlling shareholder. *See*
11 Ex. 2 (Gould 6/29/16 Dep. Tr. at 437:21–438:8). Coddington had told Plaintiff
12 that her view was that a Cotter should be CEO. Ex. 18 (Declaration of James
13 J. Cotter Jr. In Opposition to All Individual Defendants' Motions for Partial
14 Summary Judgment ¶ 24).

15 Board members who were not on the CEO search committee,
16 Adams and Kane, as well as Coddington and Wrotniak who had been added to
17 the Board approximately two months earlier, had little or no involvement in
18 the activities of the search committee and/or Korn Ferry, and simply
19 accepted the recommendation of the CEO search committee and acquiesced
20 to the wishes of EC and MC as controlling shareholders. After a brief
21 meeting, the full Board (except for Plaintiff) approved the CEO search
22 committee's selection of EC to be permanent CEO. Ex. 7 (Minutes of the
23 Board of Directors of Reading International, Inc. dated January 8, 2016).

1 **III. ARGUMENT**

2 **A. The Amendments to the Nevada Statute Do Not Change the**
3 **Analysis or Outcome Here.²**

4 As demonstrated in Plaintiff's opposition to the renewed motion
5 to exclude the expert testimony of Chief Justice Myron Steele ("Renewed
6 Steele MIL"), defendants' characterization of a recent amendment to NRS
7 78.138 is inaccurate and their reliance on it unavailing. Plaintiff respectfully
8 incorporates that opposition herein. Briefly, as explained in Plaintiff's
9 opposition to the Renewed Steele MIL, those amendments do not change the
10 analysis or the result here. Contrary to what the Supplement argues
11 regarding subsection 4 of S.B. 203, that subsection merely provides that
12 directors of a Nevada corporation are not liable for breach of fiduciary duty
13 for failing to abide by foreign laws, judicial decisions or practices. That of
14 course says nothing about whether a Nevada Court in determining whether
15 a director of a Nevada corporation breached his or her fiduciary duties
16 under Nevada law may look to Delaware statutes and/or judicial decisions
17 to assist in interpreting a Nevada statute if doing so would not entail
18 supplanting or modifying the law of Nevada. Finally, insofar as subsection 4
19 of S.B. 203 amends NRS 78.148 (7) to include language that a director of a
20 Nevada corporation cannot be liable to the corporation for money damages
21 "unless...[t]he trier of fact determines that the presumption established by
22 subsection 3 has been rebutted[.]" this provision merely clarifies the pre-
23 existing evidentiary burden, which is that the plaintiff bears the initial
24 burden of rebutting the statutory presumption. The Motion admits as

25 ² For the convenience of the Court, the discussion in this section is include
26 here, although it is substantially the same as in Plaintiff's other
27 supplemental oppositions filed concurrently herewith.
28

1 much, stating that the business judgment rule presumptions apply "if the
2 directors of a corporation acted on an informed basis, in good faith and in
3 the honest belief that the action taken was in the best interest of the
4 company." Motion at 3:25–4:2 (citing *Wynn Resorts*) (emphasis supplied).

5 Likewise, the discussion in the Supplement of the portions of the
6 amendment concerning change of control issues (Supplement at 5:10–6:15) is
7 a classic exercise in question begging. They simply invoke the business
8 judgment rule and ignore the facts of this case, which raise the questions of
9 why the director defendants acted as they did, which of course must be
10 viewed in the context of their historical conduct, which evidences a
11 recurring practice of acting as they understand the controlling
12 shareholder(s) desire, in derogation of their fiduciary duties to the Company
13 and its other shareholders. As the facts of this case make clear, including
14 those described herein, the non-Cotter director defendants, led by defendant
15 Gould, appear to have based their decision on how to respond to the Patton
16 Vision Offer(s) based upon their understanding of the wishes of the
17 controlling shareholder(s). In other words, instead of independently taking
18 actions to ascertain what was in the best interests of the Company and all of
19 its shareholders, they intentionally did not do so and instead acted to
20 accommodate the wishes of the controlling shareholder(s). Such conduct
21 constitutes intentional misconduct, as described below, and rebuts the
22 presumptions of the business judgment rule. At a minimum, the finder of
23 fact should resolve such disputed issues of material fact.

24 **B. Material Questions of Fact Exist Regarding the Conduct of the**
25 **CEO Search**

26 "Intentional misconduct" is one of three ways in which a
27 fiduciary can fail to act in good faith. *In re Walt Disney Co. Derivative Litig.*,
28 906 A.2d 27, 67 (Del. 2006). The first occurs "where the fiduciary

1 intentionally acts with a purpose other than that of advancing the best
2 interests of the corporation." *Id.* The second occurs "where the fiduciary
3 acts with the intent to violate applicable positive law." *Id.* The third occurs
4 "where the fiduciary intentionally fails to act in the face of a known duty to
5 act, demonstrating a conscious disregard for his duties." *Id.*

6 Here, the acts and omissions of each of the director defendants
7 in connection with the aborted CEO search, and particularly those of CEO
8 search committee members Gould and McEachern, at a minimum raise
9 disputed questions of material fact about whether they (i) acted to
10 accommodate and further the wishes and interests of the controlling
11 shareholders rather than to protect and further the interests of the Company
12 and all of its shareholders and/or (ii) intentionally failed act in the face of a
13 known duty to do so, thereby demonstrating a conscious or willful
14 disregard of their fiduciary duties.

15 Why did each of Gould and McEachern abort the search process,
16 effectively fire Korn Ferry and prevent the full Board from even speaking
17 with, much less seeing Korn Ferry proprietary evaluations of, other finalists?
18 Why if not because EC was a controlling shareholder? Why would Gould
19 and McEachern allow obviously interested and conflicted MC to have any
20 involvement in the process? And why would they ignore the fact that EC
21 lacked the experience and qualifications they had agreed were the *sine qua*
22 *non* for the CEO position. They can proffer many and varied explanations,
23 but one explanation answers all such questions: they breached their duty of
24 loyalty by acting to further the wishes of the controlling shareholder.

25 In sum, the evidence raises a triable question of fact, at a
26 minimum, about whether the director defendants acted with a purpose
27 other than that of advancing the interests of the Company and Company
28 shareholders other than EC and MC, which is what happened if they even

1 considered, much less acquiesced to or accommodated, the wishes of the
2 controlling shareholders. Moreover, if, as the evidence suggests, they
3 acquiesced to or accommodated the wishes of the controlling shareholders,
4 by doing so they engaged in intentional misconduct, which would rebut the
5 business judgment rule presumptions and shift the burden to the individual
6 director defendants to prove the entire fairness of their actions.

7 The evidence raises a triable question of fact about whether the
8 director defendants, by what they did not do, intentionally or purposefully
9 failed to act in the face of a known duty to act, thereby demonstrating a
10 conscious disregard for their fiduciary duties. The Supplement does not
11 address this issue. Instead, it begs the question—and highlights the disputed
12 material facts—by asking the Court to accept the factual contention that the
13 CEO search committee acted as it did for "rational business purposes."
14 (Supplement at 9:2–10:9.) (For good measure, the Supplement includes a
15 gross mischaracterization of Plaintiff's deposition testimony in bold
16 typeface. *Id.*)

17 Although the facts and evidence described herein concern only
18 the aborted CEO search, well-developed law (consistent with simple logic)
19 provides that all of the matters upon which Plaintiff's claims are based must
20 be viewed and assessed collectively, not separately and in isolation. *See, e.g.,*
21 *In re Ebix, Inc. Stockholder Litig.*, 2016 Del. Ch. LEXIS 5 at *66-67 n.137, 2016
22 WL 208402 (Del. Ch. Jan. 15, 2016) (rejecting director defendants' contention
23 that bylaw amendments should be viewed individually rather than
24 collectively); *Carmody v. Toll Brothers, Inc.*, 723 A.2d 1180, 1189 (Del. Ch.
25 1998) (finding that particularized allegations that directors acted for
26 entrenchment purposes sufficient to excuse demand); *Chrysogelos v. London*,
27 1992 WL 58516, at *8 (Del. Ch. 1992) ("None of these circumstances, if
28 considered individually and in isolation from the rest, would be sufficient to

1 create a reasonable doubt as to the propriety of the director's motives.
2 However, when viewed as a whole, they do create such a reasonable doubt
3 . . ."); *Cal. Pub. Employees' Ret. Sys. v. Coulter*, 2002 Del. Ch. LEXIS 144 at *29-
4 30, 2002 WL 31888343 (Del. Ch. Dec. 18, 2002) (concluding that allegations
5 that individually would be insufficient to show a lack of disinterestedness or
6 independence were, taken together, sufficient to do so).

7 When viewed against the factual backdrop of prior and
8 subsequent complained of conduct, including by way of example only
9 McEachern (with Adams and Kane) threatening Mr. Cotter with termination
10 as President and CEO of the Company if he did not settle trust disputes with
11 EC and MC on terms satisfactory to them, and Gould effectively directing all
12 board members to determine how to respond to the Patton Vision offer(s)
13 based upon how EC and MC as controlling shareholders would respond, the
14 facially dubious conduct of the director defendants in connection with the
15 aborted CEO search becomes even more clearly actionable. For such reasons.
16 Plaintiff respectfully submits that he has made more than a *prima facie*
17 showing sufficient for the matters to be resolved by the finder of fact at trial.
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1 IV. CONCLUSION

2 For the foregoing reasons and others previously briefed and
3 argued, Plaintiff respectfully submits the MSJ Nos. 2 and 5 and Gould's
4 summary judgment motion both should be denied.

5 MORRIS LAW GROUP

6
7 By: /s/ STEVE MORRIS

8 Steve Morris, Bar No. 1543
9 Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
10 Las Vegas, Nevada 89101

11 Mark G. Krum, Bar No. 10913
12 YURKO, SALVESEN & REMZ, P.C.
13 1 Washington Mall, 11th Floor
Boston, MA 02108

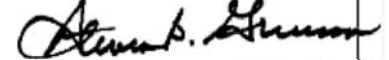
14 Attorneys for Plaintiff
15 James J. Cotter, Jr.

CERTIFICATE OF SERVICE

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

DATED this 1st day of December, 2017.

By: /s/ PATRICIA FERRUGIA



MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 - LAS VEGAS, NEVADA 89101
702/474-9400 - FAX 702/474-9422

DECL

MORRIS LAW GROUP

Steve Morris, Bar No. 1543

Akke Levin, Bar No. 9102

411 E. Bonneville Ave., Ste. 360

Las Vegas, Nevada 89101

Telephone: (702) 474-9400

Facsimile: (702) 474-9422

Email: sm@morrislawgroup.com

Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913

Yurko, Salvesen & Remz, P.C.

1 Washington Mall, 11th Floor

Boston, MA 02108

Telephone: (617) 723-6900

Facsimile: (617) 723-6905

Email: mkrum@bizlit.com

Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

)

) Coordinated with:

)

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

) Dept. No. XI

)

) Jointly Administered

)

) **DECLARATION OF AKKE**

) **LEVIN IN SUPPORT OF**

) **PLAINTIFF'S SUPPLEMENTAL**

) **OPPOSITION TO MOTION**

) **SUMMARY JUDGMENT NOS. 2**

) **AND 5 AND GOULD**

) **SUMMARY JUDGMENT**

) **MOTION**

)

)

)

1 I, Akke Levin, state and declare as follows:

2 1. I am an attorney with Morris Law Group, counsel for
3 Plaintiff James J. Cotter, Jr. I make this declaration based upon personal
4 knowledge, except where stated upon information and belief, and as to that
5 information, I believe it to be true. If called upon to testify as the contents of
6 this declaration, I am legally competent to testify to its contents in a court of
7 law.

8 2. Attached hereto as Exhibit 1 is a true and correct copy of
9 excerpts from the deposition of William Gould, taken on June 8, 2016.

10 3. Attached hereto as Exhibit 2 is a true and correct copy of
11 excerpts from the deposition transcript of William Gould, taken on June 29,
12 2016.

13 4. Attached hereto as Exhibit 3 is a true and correct copy of
14 excerpts the deposition transcript of Robert Mayes, taken on August 16,
15 2016.

16 5. Attached hereto as Exhibit 4 is a true and correct copy of
17 excerpts from the deposition of Ellen Cotter, taken on June 16, 2016.

18 6. Attached hereto as Exhibit 5 is a true and correct copy of
19 excerpts from the deposition transcript of Margaret Cotter, taken on June 15,
20 2016.

21 7. Attached hereto as Exhibit 6 is a true and correct copy of
22 excerpts from the deposition of Timothy Storey, taken on August 3, 2016.

23 8. Attached hereto as Exhibit 7 is a true and correct copy of
24 Draft Minutes of the Board of Directors of Reading International, Inc. dated
25 January 8, 2016, Bates labeled EK00001371-1374.

26 9. Attached hereto as Exhibit 8 is a true and correct copy of
27 Email from Storey to William Gould dated June 29, 2015, which was marked
28 as Deposition Exhibit 33 in this action.

1 10. Attached hereto as Exhibit 9 a true and correct copy of an
2 email chain attaching a Memo from Ellen Cotter to the Board of Directors
3 dated August 2, 2015, which was marked as Deposition Exhibit 311 in this
4 action.

5 11. Attached hereto as Exhibit 10 is a true and correct copy of
6 Memo from Craig Tompkins to Board of Directors dated January 5, 2016,
7 which was marked as deposition Exhibit 313 in this action.

8 12. Attached hereto as Exhibit 11 is a true and correct copy of
9 Reading International, Inc. Meeting of the Board of Directors Telephonic
10 Meeting June 30, 2015, which was marked as Deposition Exhibit 372 in this
11 action.

12 13. Attached hereto as Exhibit 12 is a true and correct copy of a
13 letter from Korn Ferry to Ellen Cotter dated July 9, 2015, which was marked
14 as Deposition Exhibit 373 in this action.

15 14. Attached hereto as Exhibit 13 is a true and correct copy of
16 an email from Robert Wagner to Craig Tompkins dated June 18, 2015, which
17 was marked as Deposition Exhibit 374 in this action.

18 15. Attached hereto as Exhibit 14 is a true and correct copy of
19 an email from Robert Wagner to Craig Tompkins dated June 21, 2015, which
20 was marked as Deposition Exhibit 375 in this action.

21 16. Attached hereto as Exhibit 15 is a true and correct copy of
22 an email from Robert Mayes to Douglas McEachern, et al. dated September
23 3, 2015, which was marked as Deposition Exhibit 378 in this action.

24 17. Attached hereto as Exhibit 16 is a true and correct copy of
25 Minutes of the Board of Directors of Reading International CEO Search
26 Committee December 29, 2015, which was marked as Deposition Exhibit 389
27 in this action.
28

19. Attached hereto as Exhibit 18 is a true and accurate copy of the Declaration of James J. Cotter Jr. In Opposition to All Individual Defendants' Motions for Partial Summary Judgment dated October 13, 2016 and filed in this matter.

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

/s/ AKKE LEVIN
Akke Levin

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **DECLARATION OF AKKE LEVIN IN SUPPORT OF PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO MOTION SUMMARY JUDGMENT NOS. 2 AND 5 AND GOULD SUMMARY JUDGMENT MOTION** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 1st day of December, 2017.

By: /s/ PATRICIA FERRUGIA

Exhibit 1

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 WILLIAM GOULD

TAKEN ON JUNE 8, 2016

VOLUME 1

JOB NUMBER 315485

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

WILLIAM GOULD, VOLUME I - 06/08/2016

[illegible]

Page 22 1 Q. But -- and I think we'll avoid it. 2 MR. SWANIS: That's fairly consistent 3 with what I was trying to say, as well, but also to 4 the extent that there was any advice provided not 5 only to yourself but other members of the board or 6 that are a part of the company. 7 THE WITNESS: Okay. 8 MR. SWANIS: Thanks. 9 THE WITNESS: Well, the process worked 10 in this way. Korn Ferry had an interview with each 11 of us that was very lengthy -- I'd say my interview 12 was an hour and a half -- talking about what I 13 thought was important in a C.E.O. 14 So I'm really going to speak for what 15 they did with me. 16 And then what happened is based upon 17 these interviews with the members of the committee, 18 Korn Ferry presented a list of things that -- 19 qualities and characteristics that they felt that 20 the committee as a whole was looking for. 21 What we would do -- what I did was I 22 would then mark up their -- what they sent me. And 23 I think Craig Tompkins then coordinated the comments 24 of all the people and helped and put it into one 25 statement -- helped Korn Ferry put it into one	Page 23 1 statement. 2 BY MR. KRUM: 3 Q. So the comments you made, Mr. Gould, 4 were those provided -- well, strike that. 5 So the first thing that -- that you and, 6 to your knowledge, the other three members of the 7 committee did is that you sat for an interview with 8 Korn Ferry; is that right? 9 A. No. They were individual -- they were 10 individual interviews. They were -- they were 11 telephonic. 12 Q. Okay. 13 A. Excuse me. And -- 14 Q. Do you know or were you told that each 15 of Margaret Cotter, Ellen Cotter and Doug McEachern 16 had telephonic interviews with Korn Ferry? 17 A. I was told that. 18 Q. Did Craig Tompkins have a telephonic 19 interview with Korn Ferry? 20 A. I don't know. 21 Q. And directing your attention, Mr. Gould, 22 to your testimony regarding having received a list 23 from Korn Ferry that I believe you testified you 24 marked up, did you actually interlineate a document 25 from Korn Ferry?
Page 24 1 A. I don't recall. I can't recall exactly 2 how that process actually worked. 3 Q. Did you provide feedback or comments 4 with respect to the initial Korn Ferry list? 5 A. Yes, I did. 6 Q. And how did you do that? 7 A. I believe it was by telephone call with 8 the Korn Ferry representative that was handling our 9 matter. 10 Q. Okay. And I've skipped over a few 11 things. 12 First of all, in your telephonic 13 interview that you estimated lasted an hour and a 14 half, who participated other than you? 15 A. It was myself and two representatives of 16 Korn Ferry. 17 Q. Who were they? 18 A. I can't recall their names right now. 19 Q. Was Mr. Mayes one of them? 20 A. Yes, he was. 21 Q. Did you understand him to be the senior 22 person of the two? 23 A. Yes. 24 Q. Do you have any understanding whether 25 Mr. Mayes participated in interviews of the other	Page 25 1 three members of the C.E.O. search committee? 2 A. No. 3 Q. Okay. So let me backfill a little bit. 4 So the first step in the C.E.O. search 5 process was formation of the committee; is that 6 right? 7 A. Yes. 8 Q. And how did that come to pass? 9 A. Early on when -- there were two 10 committees that were being formed. One committee 11 was a committee -- was an executive committee, one 12 committee was a search committee. 13 This happened, oh, I would say, in June 14 of 2015, around that time, June or July. 15 Ellen asked me if I would like to be a 16 member of the executive committee. 17 And I said "No, I don't have time for 18 it." I knew that would be an extensive job. But I 19 did tell her at that time that I would be willing to 20 serve on the search committee. 21 So, when the board approved it, she 22 basically included my name as one of the four 23 persons who would be on that committee. 24 Q. Did Ellen select the four members of the 25 committee?

Page 26 1 MR. SWANIS: Objection. Form. 2 MR. RHOW: Speculation. 3 MR. HELPERN: Join. 4 MR. RHOW: If you know. 5 THE WITNESS: I think that Ellen 6 suggested the four persons. She was then acting as 7 the chairman. The board actually approved the 8 committee. 9 BY MR. KRUM: 10 Q. Was there any discussion of who -- of 11 the composition of the C.E.O. search committee? 12 MR. SWANIS: Objection. Form. 13 MR. HELPERN: Join. 14 THE WITNESS: Not much. 15 BY MR. KRUM: 16 Q. Okay. So the -- so the record is clear, 17 at the board meeting to which you just referred, was 18 there any discussion of the composition of the 19 C.E.O. search committee beyond Ellen identifying the 20 persons to be on the committee and the board 21 approving? 22 A. There wasn't very much discussion. 23 Q. Do you recall any discussion beyond 24 Ellen identifying the four members and the board 25 approving it?	Page 27 1 A. No. 2 Q. Was there any discussion of the 3 composition of the executive committee? 4 MR. SWANIS: Objection. Form. 5 MR. HELPERN: Join. 6 THE WITNESS: Yes, there was. 7 BY MR. KRUM: 8 Q. And you understood I'm referring to the 9 same board meeting? 10 A. Yes. 11 Q. Okay. What was -- at this board meeting 12 where the executive committee was repopulated, as 13 best you can recall, Mr. Gould, who said what? 14 A. I said what? 15 Q. No. Who said what about the -- 16 A. Well, at this meeting it was proposed 17 that we have this executive committee, which I 18 was -- myself was wondering why we needed an 19 executive committee. We had been functioning 20 without one. 21 And at that meeting Tim Storey was very 22 concerned about the executive committee. He felt 23 that -- that it was a way to shuttle board decisions 24 over to a smaller group. 25 Q. Did he say that in words or substance?
Page 28 1 A. Yes. 2 Q. Did anybody respond? 3 A. There was responses, and I think, you 4 know -- I think the general feeling was that as long 5 as -- my feeling was -- I should just say it that 6 way -- my feeling was I didn't feel as strongly 7 about it as he did, because any major decisions of 8 the executive committee would have to be reported to 9 the board. 10 And I felt that a lot of corporations do 11 have executive committees, and it didn't bother me 12 as it bothered Tim. 13 Q. When you say, Mr. Gould, any major 14 decisions would have to be reported to the board, 15 are you saying that the executive committee would 16 make the decision but that the board would learn to 17 it? 18 MR. SWANIS: Object to form. 19 MR. HELPERN: Join. 20 MR. RHOW: I think it's vague, but you 21 can answer. 22 THE WITNESS: Well, I think that, you 23 know, the problem -- I think both reported, and I 24 think -- I think the executive committee using its 25 judgment would not make important decisions without	Page 29 1 having them vetted out by the board. It's like the 2 chief executive of the company would not make major 3 decisions without clearing it with the board. 4 And so I -- I wasn't concerned until I 5 saw the executive committee -- unless I saw that the 6 executive committee was doing things outside their 7 scope of what I thought their authority should be. 8 BY MR. KRUM: 9 Q. You understand that the executive 10 committee set the date for the 2015 annual 11 shareholders meeting, right? 12 MR. HELPERN: Objection to form. 13 MR. SWANIS: Join. 14 THE WITNESS: I wasn't aware of that. I 15 mean I may have been aware of it at the time but 16 I've forgotten it. 17 BY MR. KRUM: 18 Q. Do you recall that the executive 19 committee set the date for the -- the record date 20 with respect to the 2015 annual shareholders 21 meeting? 22 MR. RHOW: Foundation. 23 MR. SWANIS: Object to form. 24 MR. RHOW: Foundation. 25 MR. HELPERN: Join.

Page 38 1 that okay? 2 A. Yes. 3 Q. And by the five, I mean the directors 4 prior to the addition of Ms. Coddington and 5 Mr. Wrotniak. 6 A. Uh-huh. 7 Q. Okay? 8 A. Yes. 9 Q. And what statements do you recall 10 Mr. Adams making in support of terminating Jim 11 Cotter, Jr., as president and C.E.O. of RDI? 12 A. I don't recall the exact statements 13 themselves, but the essence of the statements was 14 that the company was not functioning properly under 15 Mr. Cotter and that a change had to be made right 16 away. 17 Q. Directing your attention, Mr. Gould, 18 back to the C.E.O. search process and to your 19 testimony regarding providing comments about a list 20 that Korn Ferry had provided following initial 21 interviews of the four members of the search 22 committee, do you recall that testimony? 23 A. Yes. 24 Q. Describe the list, if you would, please. 25 What was the nature of that document?	Page 39 1 A. The document set forth a profile of the 2 ideal candidate and the characteristics that the 3 board should be looking for as they interviewed 4 candidates for the position and included such things 5 as public company experience, experience in real 6 estate, developing projects, maybe raising capital, 7 things of that nature that these people had some 8 experience in. 9 Q. Was there more than one version of this 10 list of characteristics? 11 A. There was an earlier draft, and I think 12 it was then superseded, my recollection, with 13 comments -- as a result of the comments that each of 14 the people made. 15 But I'm not certain of that, but that's 16 my belief as I -- my memory serves me. 17 Q. And your recollection is that you made 18 comments on the initial draft? 19 A. I made comments either by telephone 20 or -- or writing on the initial draft, yes. 21 Q. To whom did you communicate those 22 comments? 23 A. My recollection is I communicated them 24 to the Korn Ferry representative. 25 Q. Is that Mr. Mayes?
Page 40 1 A. Yes. 2 Q. You testified earlier something to the 3 effect that Mr. Tompkins had collected some 4 information or comments from board members. 5 Do you recall the testimony -- 6 A. Yes, I do. 7 Q. -- to that effect? 8 A. I do. 9 Q. What exactly was -- did you provide him 10 and did you understand him to do in that respect? 11 A. Well, he mentioned to me that one of the 12 things that I had not focused on as much as I should 13 have -- and he's right -- was the fact that this is 14 a -- basically a motion picture exhibitor company, 15 as well as a real estate company. We know both 16 entertainment and that. 17 And in my earlier comments I focused 18 most -- mostly on the real estate aspect of it. And 19 I agreed with him. 20 Q. How did he know what your earlier 21 comments had been? 22 A. I'm not sure. 23 Q. Were the earlier comments communicated 24 orally or in writing? 25 A. Again I'm not sure which way they were	Page 41 1 communicated, but I -- my recollection is that he 2 probably saw the first draft compiled by Korn Ferry. 3 Q. And your earlier comments had focused on 4 real estate development; is that correct? 5 A. Yes. I had been focusing almost -- 6 because at that point in time it was very important 7 in my mind the real estate development, and I was 8 making sure that whoever became a C.E.O. would have 9 some good familiarity with that aspect of the 10 business. 11 Q. At the time was there anybody employed 12 as an executive at RDI who had, to your knowledge, 13 experience with real estate development? 14 MR. SWANIS: Objection. Form, 15 foundation. 16 MR. HELPERN: Join. 17 THE WITNESS: The person primarily 18 handling real estate development at that time was 19 Margaret Cotter. 20 BY MR. KRUM: 21 Q. What real estate development experience, 22 if any, did she have? 23 MR. SWANIS: Objection, form. 24 MR. HELPERN: Vague. 25 MR. SWANIS: Join.

Page 42 1 THE WITNESS: Well, Margaret had been 2 helping putting together the -- working on these 3 projects. And she did not have, to my knowledge, 4 any prior experience in developing a major real 5 estate project. 6 BY MR. KRUM: 7 Q. Do you recall, Mr. Gould, that during 8 his tenure as C.E.O., Jim Cotter, Jr., had 9 articulated the view that the company needed to hire 10 a senior executive with real estate development 11 experience? 12 A. I do. 13 Q. The company, in fact, had hired Korn 14 Ferry to conduct a search for such a person, 15 correct? 16 A. Yes. 17 Q. Do you recall what happened with that 18 search? 19 A. I think a few people were -- were 20 proposed, and I don't think any -- I don't think it 21 went anywhere. I think one or two candidates who 22 were identified met with -- were met with criticism. 23 And I think it just stalled. 24 Q. So, as of today has the company hired a 25 senior executive with real estate experience?	Page 43 1 MR. HELPERN: Objection. Form. 2 MR. SWANIS: Join. 3 BY MR. KRUM: 4 Q. When you say it stalled, do you recall 5 exactly what happened? 6 A. Well, this was all happening during the 7 period of the transition in management. So at that 8 point when the -- when Mr. Cotter left, it just -- 9 there was no more continuation of that -- of that 10 search. 11 Q. Did you ever hear or learn or were you 12 ever told that Ellen Cotter as interim C.E.O. 13 determined to suspend the search for a senior 14 executive with real estate development experience? 15 MR. HELPERN: Objection. Form. 16 MR. SWANIS: Join. 17 THE WITNESS: I don't recall that. I 18 can't remember it. 19 BY MR. KRUM: 20 Q. Do you recall at some point RDI entered 21 into some sort of agreement with a third-party to 22 provide some services related to development of one 23 or more New York City properties opened by RDI? 24 A. Yes. 25 Q. What do you recall in that regard?
Page 44 1 A. At board meetings there were 2 presentations made to the board from consultants in 3 New York who were assisting on these -- this 4 project, the Sutton Place project. 5 Q. What is your understanding as to what 6 the role of the consultants is? 7 A. To provide the real estate know-how to 8 budget the -- the -- whether or not the -- how much 9 the project would cost, what kind of revenues could 10 be expected, what the worth of the property would be 11 before and after and whether this would be a good 12 expenditure of the company's capital or whether the 13 company should consider selling the project as it is 14 now. 15 Q. And who at the company is responsible 16 for supervising or managing these consultants? 17 A. It appears to me just judging from the 18 way it comes out at the board meeting that both 19 Ellen and Margaret are primarily involved in 20 supervising these consultants. 21 Q. To your knowledge, does Ellen Cotter 22 have any prior experience in real estate development 23 of the type these consultants are providing services 24 with respect to? 25 MR. SWANIS: Objection. Foundation.	Page 45 1 MR. HELPERN: Join. 2 THE WITNESS: I don't believe she had 3 prior experience on major real estate development 4 projects. 5 She has done these projects, though, 6 with respect to individual theaters. 7 BY MR. KRUM: 8 Q. And did I -- did I understand you to say 9 correctly that one of the options presently being 10 considered is to sell the project? 11 A. One of the options would be is if the 12 project isn't going to -- if the company put its 13 money and risk into the project and it wasn't worth 14 that much more, then why would the company do it. 15 So that's one of the options, is should 16 we just bring in a joint venture partner, sell the 17 project, sort of unload the risk at this juncture or 18 keep it and take our chances. 19 Q. Who at the company is responsible for 20 making those decisions? 21 MR. HELPERN: Objection. Form. 22 MR. SWANIS: Join. 23 THE WITNESS: The board would be. 24 BY MR. KRUM: 25 Q. Who's going to advise the board about

Page 46 1 those considerations? 2 A. Well, to date we've been advised by the 3 management and by presentations from these 4 consultants. 5 Q. And so we can put a name to it, are the 6 consultants the Edifice people? 7 A. I'm not sure. 8 Q. Do you recall any of the names of the 9 consultants -- 10 A. If I heard the name, I would remember 11 it. 12 Q. Is one of the individuals a person by 13 the name of Michael Buckley? 14 A. Yes. 15 Q. He's made one or more presentations to 16 the board, right? 17 A. Yes, he has. 18 Q. And when you referred to management a 19 moment ago, you were referring to Ellen Cotter and 20 Margaret Cotter? 21 A. No. I'm also referring to Dev Ghose and 22 other people who participated in a very voluminous 23 report on this subject. 24 Q. So, directing your attention, Mr. Gould, 25 back to the C.E.O. search process, in terms of your	Page 47 1 understanding or knowledge of what happened, what 2 happened next after you provided feedback on the 3 initial list that Korn Ferry generated? 4 A. Well, my understanding is that they then 5 came back and modified the initial list or initial 6 things we talked about. 7 And then they identified five 8 candidates -- I believe there were five -- from 9 their list who they felt the committee should 10 interview. 11 Q. How long did it take to finalize this 12 list of criteria? 13 A. I would say a couple of months. 14 Q. What is your understanding as to why it 15 took that period of time? 16 MR. HELPERN: Objection to form. 17 MR. SWANIS: Join. 18 THE WITNESS: I have no understanding as 19 to why. 20 BY MR. KRUM: 21 Q. Did you ever hear or learn or were you 22 ever told that Craig Tompkins provided his own 23 comments to Korn Ferry regarding the search 24 criteria? 25 A. I believe I did.
Page 48 1 Q. What did you hear or learn in that 2 regard? 3 A. It is very fuzzy, but I believe that -- 4 that Craig did offer some constructive comments on 5 the profile. 6 Q. Was there any discussion, to your 7 knowledge, of allowing all of the members of the RDI 8 board of directors to provide input to Korn Ferry 9 regarding what came to be search criteria? 10 A. I don't recall that. I don't remember 11 that. 12 Q. Was there any discussion at the board of 13 directors meeting at which the C.E.O. search process 14 was first discussed about what involvement, if any, 15 members of the RDI board of directors who were not 16 going to be on the C.E.O. search committee would 17 have in -- 18 MR. SWANIS: Objection. 19 BY MR. KRUM: 20 Q. -- the process? 21 MR. SWANIS: Objection. Form, 22 foundation. 23 MR. HELPERN: Join. 24 THE WITNESS: I don't recall that 25 either.	Page 49 1 BY MR. KRUM: 2 Q. Do you recall that there was some 3 discussion or some document or both that indicated 4 that the full board would be provided three final 5 candidates for interviews as part of the C.E.O. 6 search process? 7 A. I vaguely recollect that, but I can't 8 remember when and where I heard it. But I do 9 remember that vaguely. 10 Q. Okay. That did not happen, correct? 11 A. That did not happen. 12 MR. HELPERN: Objection. Form. 13 MR. SWANIS: Join. 14 BY MR. KRUM: 15 Q. So, what happened next, to your 16 knowledge, in the C.E.O. search process after Korn 17 Ferry identified five candidates? 18 A. The next step was that the committee 19 then proceeded to interview the candidates. 20 Q. And by the committee, you mean each of 21 the four members? 22 A. No. At that point before the very first 23 interview was the time when Ellen came into the 24 meeting and said she was no longer going to 25 participate in the committee.

Page 50 1 Q. What did she say? 2 A. She said that, "I decided to be a 3 candidate for the job, and I think that disqualifies 4 me from acting on this committee." 5 And we agreed, the committee agreed. 6 Q. What discussion, if any, was there about 7 whether the process needed to be redone or revised 8 or modified in any manner on account of Ellen 9 Cotter's involvement? 10 MR. SWANIS: Objection. Form. 11 MR. HELPERN: Join. 12 THE WITNESS: Because of her 13 involvement, I didn't understand that part of it. 14 BY MR. KRUM: 15 Q. When Ellen Cotter came in and announced 16 that she was going to be a candidate and -- what 17 else, if anything, did she say or did anyone else 18 say other than what you've already testified? 19 A. That was it. She excused herself. She 20 was only in the room I would say for no more than 21 five minutes. 22 Q. Who was present when that happened? 23 A. Doug was present, Margaret was present. 24 Q. And you? 25 A. And myself.	Page 51 1 Q. Craig Tompkins, was he there? 2 A. I have a recollection that he -- that 3 he -- that he was there, but I can't say for sure. 4 Q. Was Ed Kane there? 5 A. No. 6 Q. Was Ed Kane ever present at any C.E.O. 7 search committee activities, to your knowledge? 8 A. My recollection is that he did attend 9 one of the interviews, I think it was the day before 10 the -- the day of the Christmas party. And -- the 11 Reading Christmas party. 12 And Ed happened to be there anyway. I 13 think he did participate in one session, yes. 14 Q. Who was the interviewee of that session? 15 A. I believe this was the interview -- I 16 can't recall which interview he was -- 17 Q. Was it Ellen? 18 A. No. Well, maybe it was. Maybe it was 19 Ellen. It might have been Ellen. 20 I can't remember who it was. But I know 21 he participated in one. 22 Q. So what's your best recollection as to 23 when in time the meeting at which Ellen announced 24 she was a candidate occurred? 25 A. It would be sometime mid-December.
Page 52 1 Q. Had any candidate interviews occurred 2 prior to that? 3 A. No. 4 Q. What discussion, if any, was there of 5 whether another director should be added to the 6 C.E.O. search committee on account of Ellen ceasing 7 to serve? 8 A. I don't recall there was any discussion. 9 Q. What discussion was there, if any, of 10 whether the -- whether any part of the process that 11 had occurred to date needed to be reviewed on 12 account of Ellen's participation in it? 13 MR. SWANIS: Objection. Form, 14 foundation. 15 MR. HELPERN: Join. 16 THE WITNESS: I don't recall any 17 discussion of that either. 18 BY MR. KRUM: 19 Q. At any point in time, Mr. Gould, were 20 you ever party or privy to a discussion in which the 21 subject was whether any part of the C.E.O. search 22 process should be reviewed or redone on account of 23 the fact that Ellen Cotter had participated in it? 24 MR. RHOW: Vague. 25 MR. SWANIS: Same objection.	Page 53 1 THE WITNESS: The only time I think I 2 was part of that discussion would be at board 3 meetings when Jim, Jr., made some concerns -- 4 expressed some concerns about it. And maybe 5 Jim, Jr., may have mentioned it to me as well, but I 6 can't remember. 7 BY MR. KRUM: 8 Q. Okay. Whether at the meeting when Ellen 9 Cotter announced her candidacy or at any time 10 thereafter were you ever party or privy to or did 11 you ever learn of any discussions regarding Margaret 12 Cotter resigning from the C.E.O. search committee? 13 A. Never -- I never heard any conversation 14 about Margaret resigning. I think Margaret recused 15 herself from -- I think she did. I can't recall. 16 But I know when it came to a discussion 17 of Ellen as the preferred candidate, I think she 18 offered to recuse herself. And I think the 19 committee felt she could sit in and listen. 20 Q. Who said what about Margaret recusing 21 herself? 22 A. I don't recall exactly the way it came 23 up, but when it became apparent to Doug and myself 24 that we felt that Ellen was probably, given the 25 situation, the preferred candidate, the obvious

Page 54 1 thing was because of -- to have frank discussions, 2 somebody might say "why doesn't Margaret leave the 3 room," and I think we decided it wasn't necessary 4 for her to do so. 5 Q. What difference did it make whether 6 Ellen was the preferred candidate or simply a 7 candidate to whether or not Margaret Cotter should 8 or should not continue to serve as a member of the 9 C.E.O. search committee? 10 MR. HELPERN: Objection to form. 11 MR. SWANIS: Join. 12 THE WITNESS: Well, from my standpoint, 13 since they were aligned together with this 14 litigation, that they might be together, voting 15 together, be more concerned about each other's 16 situation. 17 And so we had to be very conscious 18 because of all the various sides that were here, 19 family disputes. And I think that's why a committee 20 member might say, "Well, maybe to talk candidly 21 perhaps Margaret should not be here." 22 BY MR. KRUM: 23 Q. In your next to last answer in which you 24 referred to Ellen as the preferred candidate given 25 the situation, to what were you referring by the	Page 55 1 words "given the situation"? 2 A. None of the candidates met the perfect 3 profile that we all wish we would come up with, you 4 know, somebody like from central casting. 5 Ellen did not have certain of the 6 qualities we were looking for in the sense of the 7 real estate experience and this and that. But none 8 of the candidates had what we were looking for. 9 So, as we interviewed these 10 candidates -- and by the way, all of them were very, 11 very qualified good candidates. They really were. 12 I was very impressed with the quality of the people 13 that Korn Ferry had put forward. 14 And this became apparent to me, anyway, 15 that Ellen was the type of person who would continue 16 the continuity, that people liked her, that she had 17 had a good reputation, we had been working with her 18 for all these years. And given all those 19 circumstances, she stood head and shoulders above a 20 person who would be asked to come into this horrible 21 vicious situation. 22 It made it almost an impossible task for 23 somebody to enter this corporate management 24 structure and be able to thrive. 25 Q. So is it fair to say your view was that
Page 56 1 once Ellen announced her candidacy, she was the 2 presumptive favorite? 3 MR. HELPERN: Objection. Form, 4 misstates testimony. 5 MR. SWANIS: Join. 6 MR. RHOW: Join. 7 THE WITNESS: No. It only became 8 apparent to me after we had interviewed everybody, 9 and I could see that by -- you know, she was 10 definitely the most well-known to the directors, she 11 provided the continuity, and she had a stake in the 12 venture. You know, she had major share holdings 13 with her family. And a new person would be coming 14 in without that. 15 So she would be -- have her interests 16 aligned with the shareholders. 17 BY MR. KRUM: 18 Q. By virtue of being a shareholder, you 19 mean? 20 A. By being a major shareholder, yes. 21 Q. Mr. Gould, did it occur to you at any 22 time prior to the meeting at which Ellen Cotter 23 announced her candidacy for the C.E.O. position that 24 she would or might be a candidate? 25 A. Yes.	Page 57 1 Q. When? 2 A. Early on. I mean I always thought that 3 she might end up being a candidate. But she hadn't 4 declared herself to do so. 5 Q. And when you say "early on," you mean 6 early on in the C.E.O. search process? 7 A. Correct. It always occurred to me she 8 might at some point enter the fray. 9 Q. Did you ever discuss that with her prior 10 to the meeting at which she announced her candidacy? 11 A. No. 12 Q. Did you ever discuss the subject of 13 Ellen possibly being a candidate for the C.E.O. 14 position with anybody prior to the C.E.O. search 15 committee meeting at which she announced her 16 candidacy? 17 A. I can't recall that conversation with 18 anybody. I'm sure there must have been 19 conversations, but I don't -- I can't remember them. 20 Q. For example, did you have any 21 discussions or communications with Doug McEachern 22 regarding Ellen being a candidate for the C.E.O. 23 position at any time prior to the C.E.O. search 24 committee meeting at which she announced that she 25 was a candidate?

Exhibit 2

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 WILLIAM GOULD

TAKEN ON JUNE 29, 2016

VOLUME 2

Job No.: 319129

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

Page 280 1 into existence on or about June 30, 2015, do you 2 have that in mind? 3 A. I do. 4 Q. At the inception, what discussion, if 5 any, was there of whether Ellen Cotter should be on 6 the committee in view of the fact that she held the 7 position as interim C.E.O. of the company? 8 A. At the outset I don't remember any 9 discussion being held concerning that particular 10 topic. 11 Q. Was there some discussion of that at any 12 point in time prior to her tendering -- announcing 13 her candidacy? 14 A. I don't recall it. 15 Q. Do you recall that there was a point in 16 time when Tim Storey relayed to you that he had 17 spoken to Margaret, including regarding the C.E.O. 18 search, and had asked if she intended to be a 19 candidate and had received what he characterized to 20 be as a not-responsive or non-responsive response 21 from her? 22 Do you recall that? 23 MR. FERRARIO: Do you mean Ellen? You 24 said Margaret. 25 MR. KRUM: I said Margaret. I meant	Page 282 1 backed down. They said they weren't going to be 2 interested if Ellen was interested. 3 Q. What is your best recollection as to 4 when in time Ellen announced her candidacy? 5 A. My best recollection would be sometime 6 in December of 2015, maybe in November. 7 Q. Do you actually have any recollection of 8 the C.E.O. search committee, either independently or 9 in conjunction with Korn Ferry, having any 10 discussions or communications regarding a method or 11 process to hire -- excuse me -- to process or 12 consider internal candidates for the position of 13 C.E.O.? 14 A. I do remember there was a -- a 15 discussion with Korn Ferry. And I -- I don't 16 remember how we decided to process the internal 17 candidates. 18 Q. Well, do you know whether there was a 19 decision? 20 A. I can't recall. 21 Q. Do you -- the discussion you remember 22 with Korn Ferry, who was party to that? 23 A. I think Mr. Mayes. 24 Q. Okay. Who on behalf of the C.E.O. 25 search committee?
Page 281 1 Ellen. 2 THE WITNESS: You mean Ellen? 3 BY MR. KRUM: 4 Q. Yes. 5 A. Very vaguely. 6 Q. At that point in time did you and 7 Mr. Storey have any communications regarding the 8 subject of whether Ellen should be a member of the 9 C.E.O. search committee? 10 A. If we did, I can't recall it. 11 Q. Whether at -- on or about June 30, 2015, 12 when the C.E.O. search committee was formed or at 13 any point during the time you served on that 14 committee, were you ever party to any communications 15 regarding how to handle any internal candidates for 16 the position of C.E.O.? 17 A. There was a communication saying that 18 we -- that the company would be -- the search 19 committee would be encouraging internal candidates 20 to submit their feelings about being candidates for 21 the job. 22 And I don't remember how we decided to 23 handle them. I think the problem went away or the 24 issue went away when Ellen announced her candidacy, 25 and the other internal candidates at that point	Page 283 1 A. I can't remember. 2 Q. How did it occur? In person or 3 telephone? 4 A. My -- my recollection is that it 5 occurred by telephone. 6 Q. How long did it last? 7 A. I would think -- I mean most of the 8 calls with Korn Ferry were about a half an hour or 9 more. So my guess is this particular one would be 10 around that -- that amount of time. 11 Q. And approximately how long did the 12 discussion regarding how to handle internal 13 candidates last? 14 A. Not very long. 15 Q. Five minutes or less? 16 A. Five minutes or less is my recollection. 17 Q. Do you recall if the -- if at any point 18 in time Korn Ferry interviewed any internal 19 candidates, that is, prior to the interview of 20 Ellen, in -- well, strike that. 21 Do you recall if Korn Ferry ever 22 interviewed any internal candidates? 23 A. I don't believe they did. 24 Q. They did not interview Ellen either, did 25 they?

Page 284 1 A. I don't know that. But I don't think 2 they interviewed any other internal candidates. 3 Q. Well, to your recollection, did you as a 4 member of the C.E.O. search committee ever receive 5 any feedback, whether by way of formal assessment or 6 even informally, from Korn Ferry regarding the 7 candidacy of Ellen Cotter for the position of C.E.O. 8 of RDI? 9 MR. RHOW: Vague. 10 You can answer. 11 THE WITNESS: No. I do not remember 12 getting any assessment from Korn Ferry about Ellen. 13 BY MR. KRUM: 14 Q. What's your recollection as to how it 15 came to pass that Korn Ferry was selected to be the 16 recruiter engaged by the company for the C.E.O. 17 search? 18 A. My recollection is that Ellen as the 19 C.E.O. of the -- interim C.E.O. of the company at 20 that time made the decision and made the 21 recommendation to the board. 22 Q. Did you have any discussions with anyone 23 regarding whether Ellen as the interim C.E.O. should 24 be the person empowered to select the recruiter the 25 company was going to use for the C.E.O. search?	Page 286 1 firm and has an excellent reputation. 2 And I don't think the board spent any 3 time debating whether Korn Ferry was the right 4 entity to conduct the work on this. 5 Q. Now, the answer you just gave, 6 Mr. Gould, was that what you recall Ellen Cotter 7 saying or was that what you thought -- 8 A. That's what I thought. 9 Q. Okay. What did Ellen Cotter 10 communicate, to the best of your recollection, as to 11 why she had selected Korn Ferry? 12 A. Just I think she said they're an 13 outstanding firm, she had been familiar with them, I 14 think she said she had used them before. And that 15 was what she basically said to the board. 16 Q. Did she disclose to the board or 17 subsequently to anybody in your presence what steps 18 she had taken and on whom she had relied, if anyone, 19 in making her determination to select Korn Ferry? 20 A. Not that I can recall. 21 Q. Do you have any understanding or 22 information whether anybody else who was employed by 23 or for RDI participated in the process, if there was 24 a process, that resulted in Ellen selecting Korn 25 Ferry?
Page 285 1 A. No. 2 Q. Do you know if there were any 3 discussions by any board members of the subject of 4 whether Ellen as the interim C.E.O. should be 5 empowered to select the recruiter the company was 6 going to use for the C.E.O. search? 7 A. I don't recall any such discussions. 8 Q. Did you or, to your knowledge, any other 9 member of the C.E.O. search committee ever have any 10 communications with Korn Ferry regarding a possible 11 candidacy of Ellen for the permanent C.E.O. position 12 at any time prior to Ellen's announcement of her 13 candidacy? 14 A. I did not. And I don't know about the 15 others. 16 Q. Do you know if Craig Tompkins ever had 17 such communications? 18 A. I don't know that. 19 Q. Directing your attention, Mr. Gould, 20 back to the subject of the engagement of Korn Ferry, 21 what is your recollection, if any, as to what Ellen 22 communicated about why she had selected Korn Ferry? 23 A. Ellen I believe had used Korn Ferry 24 before. Korn Ferry is a well established 25 independent national -- major national head hunting	Page 287 1 A. I believe Ellen was being assisted by 2 Craig Tompkins. 3 Q. What's your basis for that belief? 4 A. Because Craig became the secretary to 5 the committee and recorded the deliberations of the 6 committee and seemed to be involved in the 7 discussions that I had with Korn Ferry. And they 8 mentioned Craig Tompkins in terms of delivering -- 9 negotiating the contract with Korn Ferry and things 10 of that nature. 11 Q. Did you ever hear or learn anything else 12 that serves as a basis for your belief today that 13 Craig Tompkins assisted Ellen Cotter in whatever 14 steps she took that resulted in her selecting Korn 15 Ferry? 16 A. Well, I looked -- at the time I remember 17 Craig Tompkins was helping Ellen more like an 18 administrative assistant to work out the details 19 with Korn Ferry. And I had a conversation with 20 Craig Tompkins at one point about some of the 21 characteristics that we were looking for in a new 22 C.E.O. 23 Q. The conversation to which you just 24 referred between you and Craig Tompkins was at the 25 point of the process when Korn Ferry was preparing

Page 288 1 something called a position specification; is that 2 right? 3 A. Yes. 4 MR. KRUM: I'll ask the court reporter 5 to mark as Exhibit 372 a document entitled "Reading 6 International, Inc. Meeting of Board of Directors 7 Telephonic Meeting June 30, 2015." It bears 8 production numbers WG74 through 80. 9 (Whereupon the document referred 10 to was marked Plaintiffs' 11 Exhibit 372 by the Certified 12 Shorthand Reporter and is attached 13 hereto.) 14 THE WITNESS: I'm prepared. 15 BY MR. KRUM: 16 Q. Do you recognize Exhibit 372? 17 A. Yes, I do. 18 Q. What is it? 19 A. This is a -- some points concerning the 20 formulation of the search committee's agenda and 21 objectives in finalizing candidates for new C.E.O. 22 Q. Did you receive this document in advance 23 of the June 30, 2015 telephonic board meeting? 24 A. I do. 25 Q. I direct your attention, Mr. Gould, to	Page 290 1 search objectives and finalizing candidate 2 qualifications or whether only the C.E.O. search 3 committee would? 4 A. I don't recall the discussion about that 5 topic. 6 Q. Was it your view that the members of the 7 RDI board of directors who were not on the C.E.O. 8 search committee had no basis to provide input to -- 9 into the search objectives or the candidate 10 qualifications? 11 A. No. My view on it would have been that 12 if any director wanted to look at anything, they 13 could do so; but that the actual work in doing it 14 would be left to this committee, so we wouldn't have 15 to involve everybody trying to handle each item. 16 Q. Item B(2) on the second page of 17 Exhibit 372 reads as follows: 18 "Agree to process for considering 19 internal" -- "internal candidates." 20 Do you see that? 21 A. I do. 22 Q. And if I recall correctly, you recall no 23 such discussions as among RDI board members? 24 A. Correct. 25 MR. TAYBACK: Objection. Asked and
Page 289 1 the second page. It's entitled, 2 "Chief Executive Officer 3 Succession/Search Agenda For 4 Discussion." 5 Do you see that? 6 A. I do. 7 Q. And I direct your attention in 8 particular to item B that begins, 9 "Build Consensus View of Board: 10 Search Objectives and Finalize 11 Candidate Qualifications." 12 Do you see that? 13 A. I do. 14 Q. Did you ask how it came to pass that 15 this discussion as set out on this page was framed 16 in the manner in which it's framed? 17 A. No. 18 Q. Now, as a practical matter, the full RDI 19 board of directors did not participate in setting 20 search objectives or finalizing candidate 21 qualifications, right? 22 A. That's correct. 23 Q. What discussion was there, if any, at 24 the June 30, 2015 board of directors meeting about 25 whether the full board would be involved in setting	Page 291 1 answered. 2 BY MR. KRUM: 3 Q. Item C on the second page of Exhibit 372 4 reads as follows: 5 "Interview finalist candidates with 6 a view that the three top 7 candidates will interview with the 8 entire board of directors." 9 Do you see that? 10 A. I do. 11 Q. That didn't happen either, did it? 12 A. That did not happen. 13 Q. Okay. That's all we have with that 14 document. 15 MR. KRUM: I'll ask the court reporter 16 to mark as Exhibit 373 what appears to be an 17 engagement letter between Korn Ferry and RDI. The 18 document's dated July 9, 2015. It bears production 19 numbers RDI5742 through 48. 20 (Whereupon the document referred 21 to was marked Plaintiffs' 22 Exhibit 373 by the Certified 23 Shorthand Reporter and is attached 24 hereto.) 25 THE WITNESS: I'm prepared.

Page 296 1 Cotter reported to having considered were unknown to 2 her prior to the process or steps she took to vet 3 them? 4 A. I think each of the firms she was 5 looking at were prominent search firms. And I think 6 everybody knew of them. I'm sure Ellen knew of 7 them, as well. 8 Q. Do you see that on the last page of 9 Exhibit 373 there's a handwritten date to the right 10 of Ellen Cotter's -- what purports to be Ellen 11 Cotter's signature? 12 A. I do. 13 Q. August 3, 2015? 14 A. Yes. 15 Q. Does that comport with your recollection 16 as to when Korn Ferry was formally engaged? 17 A. The time frame, it seems like it's about 18 right. 19 MR. KRUM: I'll ask the court reporter 20 to mark as Exhibit 374 what purports to be an email 21 chain of June 18, 2015, between Robert Wagner and 22 Craig Tompkins. The document bears production 23 number RDI18761 through 65. 24 (Whereupon the document referred 25 to was marked Plaintiffs'	Page 298 1 the meetings. 2 BY MR. KRUM: 3 Q. Did you see at the bottom of the first 4 page of Exhibit 374 in the second line of that email 5 it refers to Mr. Mayes as "Korn Ferry senior client 6 partner real estate practice"? 7 A. I do. 8 Q. And do you see that it also indicates 9 that Mr. Mayes had taken the lead on the -- on a 10 prior search for Reading International for a real 11 estate professional? 12 It's the next sentence to which I'm 13 referring, next two lines. 14 A. Yes, I see that. 15 Q. Okay. Does that refresh your memory 16 about whether you ever heard or learned anything 17 about Mr. Mayes's particular responsibilities as a 18 Korn Ferry executive? 19 A. It does. 20 Q. And what do you now recall that you 21 didn't before reading this? 22 A. That he is -- that he had had a prior 23 experience in connection with the real estate search 24 and that he himself was a real estate specialist. 25 Q. Okay. And what is your best
Page 297 1 Exhibit 374 by the Certified 2 Shorthand Reporter and is attached 3 hereto.) 4 THE WITNESS: Thank you. 5 Okay. I'm ready. 6 BY MR. KRUM: 7 Q. Have you ever seen Exhibit 374? 8 A. I don't believe so. 9 Q. Well, you see that it's a series of 10 emails between Craig Tompkins and Robert Wagner, 11 right? 12 A. Yes. 13 Q. Have you read them, Mr. Gould? 14 A. Briefly, yes. 15 Q. Okay. Does that refresh your 16 recollection at all as to what you knew or 17 understood previously regarding Craig Tompkins's 18 involvement in the actions of Ellen Cotter to meet 19 with Korn Ferry? 20 MR. TAYBACK: Object to the form of the 21 question. I'm not sure the witness indicated he 22 didn't recall. 23 THE WITNESS: It doesn't refresh my 24 recollection, but I can see -- on that point. But I 25 do see that he was actively involved in coordinating	Page 299 1 recollection, Mr. Gould, as to when you first 2 understood that Mr. Mayes himself was a real estate 3 specialist? 4 A. I don't -- I don't recall. 5 Q. Okay. Do you recall when you learned 6 that, whenever that was, whether you thought that 7 made sense from RDI's perspective in the C.E.O. 8 search? 9 A. I thought it made sense. 10 Q. Why? 11 A. Because one of the major assets of the 12 company is really the real estate assets, and it was 13 important that the person who comes in to me at that 14 time would have a good understanding how to develop 15 those assets. 16 Q. And when you refer to those assets, 17 meaning those real estate assets, are you referring 18 to any particular assets? 19 A. No. I'm really -- really referring to 20 all the -- the real estate owned by the company and 21 all of its developmental potential. 22 MR. KRUM: I'll ask the court reporter 23 to mark as Exhibit 375 a June 21 email from Robert 24 Wagner to Craig Tompkins. It bears production 25 number RDI21595 and 96.

Page 304 1 to a halt in the sense of the -- it was not being 2 actively pursued, but that they still had the -- the 3 finalists from the search, as they said, still -- I 4 think they said still on hold or -- I forgot thing 5 language that they used here in the email. 6 Q. And what was your understanding, if any, 7 as to why the search had either come to a halt or at 8 least was not being actively pursued? 9 A. I don't recall the reason except for the 10 fact perhaps -- my recollection is that there was so 11 much going on with the departure of Jim, Jr., that 12 it was just on the back burner, and there were more 13 important issues to be handled at that point. 14 Q. Do you recall that or is that your 15 surmise? 16 A. That's my surmise. 17 MR. RHOW: You don't have to surmise. 18 THE WITNESS: Okay. Try not to. 19 BY MR. KRUM: 20 Q. I direct your attention, Mr. Gould, to 21 the second paragraph on the first page of 22 Exhibit 375. 23 At the end of the second line there's a 24 sentence that talks about how Korn Ferry would treat 25 internal candidates, which was like any other	Page 306 1 internal candidates through Korn Ferry's unique 2 proprietary assessment process. 3 Do you see that? 4 A. I do. 5 Q. Do you recall that Korn Ferry's 6 proprietary assessment process was one of the stated 7 reasons for engaging Korn Ferry? 8 A. No. 9 Q. Okay. To your knowledge, was any 10 candidate put through a Korn Ferry proprietary 11 assessment process? 12 A. To my knowledge, no. 13 Q. In fact, the C.E.O. search committee 14 told Korn Ferry not to pursue that process with any 15 candidates because the committee had already settled 16 on Ellen Cotter, correct? 17 A. Yes. 18 Q. I direct your attention, Mr. Gould, 19 further down on the second paragraph on the first 20 page of Exhibit 375. 21 Toward the end of the line the sentence 22 says -- reads as follows: 23 "But I think that it would be a big 24 mistake for Reading to just anoint 25 one of the internal candidates as
Page 305 1 candidates that Korn Ferry would generate. 2 Do you see that? 3 A. I do. 4 Q. And do you see the next line says, among 5 other things, 6 "Interviewing them at length"? 7 A. Yes. 8 Q. To your knowledge, did Korn Ferry ever 9 interview an internal candidate? 10 A. To my knowledge, no. 11 Q. And at some point Wayne Smith was an 12 internal candidate, right? 13 A. Yes. 14 Q. At some point Andrzej Matyeyzinski was an 15 internal candidate? 16 A. Yes. 17 Q. And at some point Ellen Cotter was an 18 internal candidate? 19 A. Yes. 20 Q. And your recollection is that none of 21 those people were interviewed by Korn Ferry, 22 correct? 23 A. Yes. 24 Q. Do you see the next part of that 25 sentence that talks about Korn Ferry putting the	Page 307 1 the next C.E.O. in the interest of 2 expediency." 3 Do you see that? 4 A. I do. 5 Q. Had you ever learned, heard or been told 6 that that was Korn Ferry's view? 7 A. No. 8 Q. Do you see beginning at -- or strike 9 that. 10 You see in the first sentence of the 11 last paragraph on the first page of Exhibit 375 at 12 the end of the sentence Mr. Wagner says, 13 "We made it clear that we are ready 14 to start immediately"? 15 A. Yes. 16 Q. What's your recollection as to when Korn 17 Ferry actually started? 18 A. I don't have any recollection. 19 (Whereupon Mr. Ferrario left the 20 deposition proceedings at this 21 time.) 22 BY MR. KRUM: 23 Q. Directing your attention to the top of 24 the second page of Exhibit 375, do you see that 25 Mr. Wagner says, referring to the Korn Ferry

Page 356 1 Q. Did Ellen Cotter participate in the 2 interviews on Friday the 13th of any or all of 3 Brooks, Cruse, Chin and Sheridan? 4 A. No. 5 Q. Why not, if you know? 6 A. Yes. At the beginning as we were about 7 to begin our interviewing session we all arrived at 8 the company, Ellen came into the room and said that 9 she had decided that she was going to throw her hat 10 into the ring for this job; and she felt that given 11 that, it would be unethical and improper for her to 12 be involved in the search committee. 13 Q. What was the discussion that ensued, if 14 any? 15 A. I believe that all of us -- my rec- -- 16 my -- my response and I know Doug's was that we 17 agree we don't think she should be involved in the 18 search committee if she, herself, is going to be a 19 candidate. 20 Q. What else, if anything else, was 21 discussed about the search committee or the search 22 in view of Ellen's announcement that she was going 23 to be a candidate? 24 A. I can't recall anything at that time 25 other than that.	Page 358 1 announced before the first candidate interview at or 2 about 8:30 in the morning on November 13, 2015, that 3 she had been decided -- she had decided to be a 4 candidate that she also indicated that she had just 5 decided or words to that effect? 6 A. Words to that effect. 7 Q. And as best you can recall, what did she 8 say in that respect? 9 A. Just the -- all I can remember is the 10 notion that she said she had decided that she wanted 11 to give it a try, and so she didn't think it would 12 be proper for her to be on -- working with us on the 13 search committee anymore. 14 Q. Okay. But the question I was asking was 15 about what's your best recollection as to what she 16 had said about when she had decided? 17 A. I can't recall actually what she said 18 about that. 19 Q. And -- 20 A. My impression was that she had just 21 decided it. That's my impression. 22 Q. What's the basis for that impression? 23 A. Well, I don't know that. I can't give 24 you any basis for it. 25 Q. Okay. Was there any discussion at that
Page 357 1 Q. Do you recall anything at any subsequent 2 point in time prior to the decision to select Ellen? 3 MR. TAYBACK: Object to the form of the 4 question. 5 MR. FERRARIO: I'll object to the extent 6 it calls for attorney-client communications. 7 MR. RHOW: Do you have -- 8 THE WITNESS: I can't really recall 9 anything else about that, about Ellen, her role in 10 the search committee or anything else. 11 BY MR. KRUM: 12 Q. Did you or anyone else ask her when she 13 had decided to be a candidate? 14 A. No. 15 Q. Did you or anyone else ask her when she 16 first considered being a candidate? 17 A. No. 18 Q. Did you or anyone else ask her why she 19 had not disclosed prior to the day of candidate 20 interviews that she was a candidate? 21 A. Well, I believe in making her statement 22 to the search committee members other than herself, 23 she indicated that she had just decided that she was 24 going to do it. 25 Q. So your -- your memory is that when she	Page 359 1 point, meaning after Ellen announced her candidacy 2 and before the first interview with Mr. Brooks began 3 on the morning of November 13, 2015, whether 4 Margaret should remain on the C.E.O. search 5 committee in view of the fact that her sister had 6 announced her candidacy for the C.E.O. position? 7 A. No, there was no discussion of that. 8 Q. Was there ever any discussion of that? 9 A. The only discussion of that came in at 10 the time when the search committee was starting to 11 make a determination as to whether Ellen would be 12 the preferred candidate. 13 And at that point Doug -- Doug McEachern 14 and I asked each other whether we should ask 15 Margaret to leave the room. And both of us at that 16 point felt that was not necessary, I recall. 17 Q. Well, prior to that point in time, did 18 it occur to you that if you and Mr. McEachern did 19 not agree on -- on either a candidate or the 20 prioritizing or ranking, if you will, of candidates, 21 that Margaret Cotter could be the deciding person in 22 terms of what the committee did? 23 MR. TAYBACK: Objection. Incomplete 24 hypothetical. 25 THE WITNESS: No. I don't -- I don't

Page 360 1 remember having thought about that. 2 BY MR. KRUM: 3 Q. Did you or, to your knowledge, 4 Mr. McEachern seek the advice of counsel with 5 respect to the conduct of the C.E.O. search at any 6 point in time? 7 A. No. 8 Q. What happened next after the four 9 candidate interviews of Friday, November 13, 2015? 10 A. After that -- after that there was a -- 11 another candidate that was proposed by Korn Ferry. 12 And I believe we had a subsequent session with 13 Mr. Caverly. As I recall, he came in at a different 14 time. 15 And then we had to interview Ellen. 16 So there was a subsequent -- one or two 17 subsequent interview sessions sometime in December. 18 One of them was done by Skype and one with the -- 19 the new candidate, which Korn Ferry had recommended 20 was in New York, was running a privately-owned 21 hotel, had been running it. And we interviewed that 22 gentleman on Skype. 23 Q. Do you recall his name? 24 A. No. 25 Q. Did it begin with a D?	Page 362 1 A. It would be -- it would be Margaret, 2 Doug and myself. 3 Q. Did Mr. Tompkins participate in any of 4 these interviews? 5 A. No. 6 Q. Did you have any substantive discussions 7 with Mr. Tompkins about the C.E.O. search process 8 beyond the conversation about which you already 9 testified and which he had substantive comments 10 about the position specification? 11 A. No. 12 Q. Did Ed Kane participate in any of the 13 candidate interviews or was he present as the case 14 may be? 15 A. He was present for one. And he happened 16 to be there either to go to a meeting, an audit 17 committee meeting, but he did take place -- he did 18 take -- he did participate in one interview. 19 Q. Which one? 20 A. I can't recall right now. 21 Q. Okay. And what did he say, if anything, 22 during that -- 23 A. Well, he asked questions and -- you 24 know, but all the other interviewers did. And he 25 just had his own thinking on the subject.
Page 361 1 A. Could have. 2 Q. Okay. I'm sorry. I don't have the name 3 at hand. 4 And what were your impressions of that 5 candidate? 6 A. I thought the candidate was a -- was 7 good. I think it would have been better to have the 8 interview in person where you get a better -- can 9 see better the movements and look into their eyes 10 and get a better feel for it. 11 It wasn't -- I don't think the interview 12 on Skype was as good as a personal interview. He 13 had the camera turned a little funny and it 14 wasn't -- wasn't as good. 15 Q. When -- when relative to the other two 16 candidate interviews that occurred after 17 November 13, 2015, was Ellen interviewed? 18 A. Ellen was interviewed I believe after 19 the Skype interview in -- with the fellow in 20 New York, and then we had Ellen come in -- it could 21 have been the same day as the -- as the Reading 22 Christmas party. 23 And we interviewed Ellen -- I think she 24 was the last candidate we interviewed. 25 Q. Who -- who is the "we"? You --	Page 363 1 If I recall, he wasn't too aggressive 2 during that interview session. 3 Q. With respect to the interview of Ellen 4 Cotter that occurred in December, perhaps on the day 5 of the Reading holiday party, how long did that 6 last? 7 A. My guess is it -- I'm mean I'm just 8 trying to put it -- the exact time, I guess, is 9 about 45 minutes. 10 Q. Okay. Who led that interview? 11 A. I did. 12 Q. What did you cover? What were the 13 topics you covered? 14 A. Doug -- when I say I led it, I think it 15 was really Doug and myself. He we covered all kinds 16 of things; I mean what prior involvement, what she 17 saw, what her future thinking was about the future 18 of the company, how she saw her shortcomings. 19 We went through the whole gamut of -- of 20 the same kinds of questions that we asked the 21 others. The only difference with Ellen was that we 22 had had 20 years of prior experience dealing with 23 her. We knew a lot about her. 24 Q. So what did that -- what did that mean? 25 That there was less in the interview learning about

1 prepared these minutes?

2 A. Craig Tompkins.

3 Q. When did he prepare it?

4 A. Shortly after this meeting.

5 Q. Who asked him to do so?

6 A. He was the recording secretary of the
7 search committee appointed by Ellen.

8 Q. So, what happened, Mr. Gould, between
9 the time of Ellen Cotter's interview and the
10 telephonic meeting that's the subject of Exhibit 389
11 with respect to the C.E.O. search?

12 A. Korn Ferry was contacted and told and
13 were asked to stand down. And other than that, I'm
14 not sure what else was done.

15 Q. Why did this telephonic meeting not
16 occur within days of Ellen Cotter's interview?

17 A. I think one problem may have been the
18 Christmas season and the difficulties of getting
19 everybody together for a call, but I don't know the
20 exact reason why there was a delay.

21 Q. What communications, if any, did you
22 have with Ed Kane between Ellen Cotter's interview
23 and this telephonic meeting on December 29th?

24 A. I don't recall any conversations I had
25 with Ed Kane.

Page 412 1 Q. Directing your attention, Mr. Gould, to 2 the third paragraph on the first page of 3 Exhibit 389, you see that it talks about the 4 committee discussing whether it was appropriate for 5 Margaret Cotter to vote on the matter. 6 A. I do. 7 Q. Is that the -- is that a different 8 discussion than the one about which you testified 9 this morning? 10 A. Yes. 11 Q. Does this fairly sum up what was 12 discussed and concluded? 13 A. Yes. 14 Q. By the way, did you actually review and 15 approve these minutes? 16 A. Yes. 17 Q. When? 18 A. I don't remember exactly when, but it 19 was -- I believe I received a draft of these minutes 20 for approval. 21 Q. Did you receive the draft promptly after 22 the telephonic meeting? 23 A. I believe that I did. 24 Q. Do you have any knowledge or information 25 regarding whether Mr. Tompkins had a draft prepared	Page 414 1 outside chief executive officer 2 would be members of the board and 3 controlling stockholders of the 4 company." 5 Do you see that? 6 A. I do. 7 Q. Does that -- having read that, does that 8 refresh your recollection that it was a 9 consideration in the view of either you and/or 10 McEachern and/or Margaret that having Margaret and 11 Ellen reporting to some to somebody else who 12 reported to them in a different capacity, it was a 13 problem or potential -- 14 A. Well, it could be a potential problem. 15 It does refresh my recollection a little bit but not 16 much. 17 I don't think this was a problem that I 18 had, because in my own mind if a subordinate 19 executive does not report to the C.E.O., we've got a 20 real problem. 21 Q. Well, in point of fact, if Margaret and 22 Ellen run -- won the trust and estate case and 23 proved to be the controlling shareholders, they were 24 in a position to not report to anybody, whether it 25 be the C.E.O., the board or anybody else, correct?
Page 413 1 as of the commencement of the meeting? 2 A. No, I don't remember that. 3 Q. You see that it indicates at the end of 4 the first paragraph that Mark Ferrario, outside 5 counsel, was present at the invitation of the 6 committee? 7 A. Yes, I do. 8 Q. Was Mr. Bonner available? 9 MR. TAYBACK: Objection. Foundation. 10 THE WITNESS: I don't know. 11 BY MR. KRUM: 12 Q. Okay. Well, I -- I'm not asking for any 13 communications you had with either lawyers at the 14 company or with certainly Mr. Bonner or 15 Mr. Ferrario. 16 Did you ask -- did you personally ask 17 for Mr. Ferrario to be present? 18 A. No. 19 Q. I direct your attention, Mr. Gould, to 20 the second page of Exhibit 389 to the last bullet 21 point on that page. It reads, 22 "The practical difficulties of 23 having an executive management 24 structure where two of the 25 executives reporting up to a new	Page 415 1 A. No. As shareholders they wouldn't be, 2 but as officers of the company they would be, 3 because there is a direct reporting line to 4 subordinate officers, the C.E.O. and the board. And 5 the board members would have to act appropriately. 6 And if they displease the controlling shareholders, 7 the board members could be dismissed. 8 Q. Well, that's exactly right. 9 And the same would be true for the 10 C.E.O., correct? 11 A. Correct. Correct. 12 Q. I direct your attention, Mr. Gould, to 13 the third bullet point on the second page of 14 Exhibit 389. 15 Do you see it refers to compensation 16 demands of certain of the president and C.E.O. 17 candidates? 18 A. Yes. 19 Q. Does that refer to anybody other than 20 Chin? 21 A. Yes. Well, I think what this refers to 22 is although Chin wasn't -- Chin was the most vocal 23 about it, there were others who seemed to have the 24 incorrect view that the business of the company was 25 not doing well and that they should get some

Page 436 1 don't need to repeats it. 2 A. Okay. I think I've -- I think I've 3 given you the complete Storey earlier. 4 Q. On the last page of Exhibit 313 in the 5 first paragraph, in the third line it refers to, 6 "On motion duly made and seconded, 7 the committee resolved," 8 So forth and so on with respect to Ellen 9 Cotter being the selection. 10 You see that? 11 A. Yes. 12 Q. Was there actually a motion and a 13 second, if you recall? 14 A. I don't remember there being one. I 15 just -- I don't recall. 16 Q. And do you recall that there was a vote 17 from which Ellen had abstained but stated her 18 concurrence with the vote? 19 MR. RHOW: You mean Margaret? 20 BY MR. KRUM: 21 Q. Margaret? 22 A. Yes. I do remember that Margaret did 23 say something to that effect. 24 Q. And the next thing that happened was the 25 board meeting; is that correct?	Page 438 1 was very supportive of Ellen's being the nominee. 2 Q. Do you recall if he said in words or 3 substance that he thought it was important to take 4 into consideration that she was or might be the 5 controlling shareholder or a controlling 6 shareholder? 7 A. I do recall something to that effect, 8 yes. 9 Q. Do you recall with any greater 10 specificity than that? 11 A. No. 12 MR. KRUM: I'll ask the court reporter 13 to mark as Exhibit 314 a document that purports to 14 be a form 8-K issued filed by Reading. 15 MR. RHOW: I think you want 391. 16 MR. KRUM: Three -- 17 MR. RHOW: 91. 18 MR. KRUM: Yes. I've regressed quite a 19 bit, haven't I? 20 All right. Thanks, Ekwon. 21 I'll ask the court reporter to mark as 22 Exhibit 391 what purports to be a form 8-K for RDI 23 dated October 13, 2015. 24 (Whereupon the document referred 25 to was marked Plaintiffs'
Page 437 1 A. That's the next thing that happened. 2 Q. Subsequent to the -- strike that. 3 Prior to December 17th when you were 4 selected to be chairman of the C.E.O. search 5 committee, was that a position or role that Ellen 6 had -- had held or handled, whether formally or 7 informally? 8 A. Well, there really wasn't -- at that 9 point really Ellen's role had been acting as the 10 lead in terms of selecting Korn Ferry and dealing 11 with them on the contract, coordinating our 12 responses. 13 But when she said she was going to be 14 off the committee, then I think I basically just 15 assumed that role. 16 Q. Why was it a month later that you were 17 appointed officially to that role? 18 A. That was -- I don't know why. But I 19 think I was kind of operating as the de facto head 20 of the group at that point. 21 Q. Directing your attention, Mr. Gould, 22 back to the board meeting at which Ellen Cotter was 23 made president and C.E.O., what comments do you 24 recall were made by Mr. McEachern, if any? 25 A. I can recall nothing more than that he	Page 439 1 Exhibit 391 by the Certified 2 Shorthand Reporter and is attached 3 hereto.) 4 (Off-the-record discussion.) 5 THE WITNESS: Thank you. 6 I'm familiar with this. 7 BY MR. KRUM: 8 Q. What is Exhibit 391? 9 A. It's a Form 8-K filed with the S.E.C. 10 Q. Did you review this document prior to it 11 being filed? 12 A. I believe I did, yes. 13 Q. Did you provide any comments with 14 respect to the document you reviewed? 15 A. My recollection is I did not. 16 Q. And do you believe Exhibit 391 to be the 17 document you reviewed? 18 A. Yes. 19 Q. I direct your attention, Mr. Gould, to 20 the page that's labeled in the lower right-hand 21 corner 3/5, which is the third page of Exhibit 391? 22 A. Yes. 23 Q. Do you have that? 24 A. I do. 25 Q. And you see at the top it says item

Exhibit 3

In the Matter Of:
Cotter, Jr. vs. Cotter, et al.

ROBERT MAYES

August 18, 2016

Job Number: 331292

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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

1 A. I don't.

2 Q. Was it -- do you recall that in or about
3 December of last year, 2015, Mr. Tomkins
4 communicated to you that Korn Ferry should stand
5 down or stand still or suspend work? Do you recall
6 that?

7 A. Correct.

8 Q. And as best you recall, Mr. Mayes, what
9 did Mr. Tomkins say to you in words or substance
10 when he communicated that?

11 A. He indicated that the board had decided
12 to name Ellen the permanent C.E.O., that she had
13 decided to accept, and that we should shut down our
14 efforts at that point.

15 Q. Okay. Did you have any communications
16 with Mr. Tomkins or anybody else at Reading
17 International, which I'm going to call RDI, in the
18 weeks or days preceding the conversation you just
19 described in which you had been given any status
20 report of where they were in their decision-making?

21 A. No. We do -- we proactively
22 communicated with them to set updates relative to
23 the process, interest level of candidates and to
24 inquire with regard to next steps. But
25 communication was spotty.

1 **Q. When you say "communication was spotty,"**
2 **what do you mean?**

3 A. That the board was not responsive.
4 There were probably a few weeks there where there
5 was radio silence. Which isn't uncommon.

6 **Q. Okay. And when was that?**

7 A. I'm not prepared with dates. I
8 apologize.

9 **Q. Well, can you place it in time relative**
10 **to an event?**

11 For example, was it in the several
12 weeks --

13 A. Sure.

14 **Q. -- preceding the conference call?**

15 A. There was a period -- there was a date
16 where the board interviewed four external
17 candidates. I believe it was a Friday and I believe
18 it was November or December.

19 I'm sure the documents show the date.

20 And then from that point on our
21 communication got a little spotty.

22 **Q. Okay. So, let's -- let's start with**
23 **that particular event.**

24 Directing your attention, Mr. Mayes, to
25 the Friday when the board interviewed several

1 candidates, were you party to a telephone call with
2 the C.E.O. search committee following those
3 interviews?

4 A. Actually, in-person meetings. So at the
5 end of the day I was in the offices meeting with
6 Margaret Cotter, Doug McEachern and Bill Gould were
7 on the phone.

8 And at that point we sort of debriefed
9 on the -- on the pool of candidates.

10 Q. Who -- I'm sorry. That was a phone
11 call?

12 A. I was in the office.

13 Q. You were at Reading's office?

14 A. Yes.

15 Q. And so you met with Margaret Cotter,
16 Bill Gould and Doug McEachern?

17 A. Bill -- Bill was on the phone.

18 Q. Okay. And was someone else from Korn
19 Ferry present for that?

20 A. No.

21 Q. Okay. How long that meeting last?

22 A. An hour.

23 Q. And who said what, as best you can
24 recall?

25 A. We talked largely about -- well, we

1 spent five minutes on three candidates, we probably
2 spent, you know, another 20 on one candidate in
3 particular, and then sort of 30 minutes to talk
4 about process and where we would go from there in
5 terms of the next steps.

6 **Q. Why was 20 minutes spent talking about**
7 **one candidate?**

8 A. There was one candidate in particular
9 who -- who was of interest.

10 **Q. When you say "of interest," does that**
11 **mean -- are you telling -- strike that.**

12 **Does "interest" mean that one or more of**
13 **Margaret Cotter, Bill Gould and Doug McEachern**
14 **indicated that they viewed this candidates as of**
15 **interest?**

16 MS. LINDSAY: Objection. Lacks
17 foundation.

18 BY MR. KRUM:

19 **Q. Well, when you say "of interest," what**
20 **does that mean?**

21 A. Well, it -- it -- common practice, we
22 force rank the candidates after the interviews, and
23 he would have been at the top of the list.

24 **Q. Who was that?**

25 MS. GOODMAN: And before he discloses

1 the names of other candidates, is it possible that
2 we can have the record designated confidential under
3 the protective order in order to protect the
4 confidentiality of candidates who were not hired
5 into the role?

6 MR. KRUM: Well --

7 MS. HENDRICKS: We would have no
8 objection to that.

9 MR. KRUM: Well, let's -- I'll just
10 withdraw the question for the time being.

11 BY MR. KRUM:

12 Q. I think I've covered that with others.
13 I don't need to repeat it with you, Mr. Mayes.

14 So, Directing your attention, Mr. Mayes
15 to the meeting you recall you had on the Friday
16 following the series of candidate interviews by
17 Margaret Cotter, Bill Gould and Doug McEachern, what
18 was the -- discussed in the approximate 30 minutes
19 in which you discussed process?

20 A. Oh, boy. I mean it was -- we have these
21 discussions for a living so I can't recall
22 specifics. But -- but it was more or less talk
23 about where we would go --

24 Actually I can tell you.

25 So the initial -- our initial focus was

1 to prioritize real estate experience, number one;
2 and number two, some consumer-facing operating
3 business experience, say hospitality.

4 And as a result of that discussion, we
5 flip-flopped that. So, going forward we were going
6 to prioritize the op- -- the operating company
7 experience over real estate.

8 So that was -- that was really the gist
9 of the second half of that -- that meeting.

10 BY MR. KRUM:

11 Q. And who said what in that regard?

12 A. I can't recall.

13 Q. Do you recall what anybody said --
14 anything anybody said that gave rise to that -- that
15 conclusion that you just described?

16 A. No. No. I mean it was just -- you
17 know, I can tell you the outcome, the bottom line,
18 and that was that we were redirecting our efforts.

19 Q. Okay. So what happened next in terms of
20 the C.E.O. search after this meeting?

21 (Whereupon Mr. Vera entered the
22 deposition proceedings at this
23 time.)

24 THE WITNESS: We went back to work and
25 focused on candidates from hospitality.

1 But not a whole lot of time elapsed
2 between that point and the call with Craig Tomkins.

3 BY MR. KRUM:

4 Q. Okay. What communication, if any, did
5 you have with anybody at RDI between this meeting
6 following the initial set of interviews and the
7 Tomkins call about which you've already testified?

8 A. I sent one -- I sent an additional
9 candidate idea from -- a candidate from the
10 hospitality world in New York that we were fairly
11 excited about. And that was -- there may have been
12 other sort of detail oriented emails, but that was
13 the only major event.

14 Q. Okay. Was anybody else interviewed for
15 the position, to your knowledge?

16 A. Not by -- not by RDI. Not by the board.

17 MS. LINDSAY: Objection. Vague.

18 BY MR. KRUM:

19 Q. Okay. Was this candidate from New York
20 interviewed --

21 A. No.

22 Q. -- either in person, telephonic or by
23 Skype or something?

24 A. He may have been interviewed
25 telephonically by the board. I can't recall. I met

1 with him via Skype, but --

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

8 A. Yeah. The only --

9 MS. LINDSAY: Objection. Lacks
10 foundation.

11 BY MR. KRUM:

12 Q. You can go ahead.

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

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

19 MS. LINDSAY: Objection. Lacks
20 foundation.

21 THE WITNESS: Yes.

22 BY MR. KRUM:

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

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

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

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

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

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

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

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

22 A. No.

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

24 A. No.

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

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

3 A. No.

4 Q. No one?

5 A. No.

6 (Off-the-record discussion.)

7 BY MR. KRUM:

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

9 A. Yeah. Rob's a partner at Korn Ferry.
10 And Rob had a relationship -- has a relationship
11 with Craig Tomkins that dates back to college.

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

14 Q. That's the answer to the next question.
15 Thank you.

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

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

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

25 MS. LINDSAY: Objection. Vague.

1 that she wasn't up for it.

2 **Q. Did you have any subsequent**
3 **communications with Ellen Cotter about whether she**
4 **was or was considering being a candidate for the**
5 **C.E.O. position?**

6 A. Not until the week of the -- the
7 external candidate interviews.

8 **Q. That's the interviews that occurred on**
9 **the Friday about which you've already testified?**

10 A. Correct.

11 **Q. And what happened then?**

12 A. She called me a day or two before those
13 interviews were to take place to recuse herself from
14 the -- the search committee.

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

16 A. She indicated that she was now
17 considering becoming permanent C.E.O. and,
18 therefore, she needed to recuse herself.

19 **Q. What did you say?**

20 A. "Okay."

21 **Q. And in Korn Ferry's practice, in your**
22 **experience, are interim executives viewed as**
23 **candidates or possible candidates for the position**
24 **they're holding on an interim basis?**

25 MR. VERA: Objection. Vague an, calls

1 for an expert conclusion.

2 MS. LINDSAY: Join.

3 THE WITNESS: It's not uncommon for
4 interim C.E.O.'s to be considered for the permanent
5 C.E.O. role.

6 BY MR. KRUM:

7 Q. Did you have any discussions with any of
8 Margaret Cotter, Bill Gould and/or Doug McEachern
9 about Ellen Cotter as a candidate or possible
10 candidate for the C.E.O. position?

11 A. Not to -- not to my recollection.

12 Q. Up to this point in time just prior to
13 the candidate interviews that occurred on a Friday
14 when Ellen Cotter called you and told you she was
15 recusing herself because she was formally a
16 candidate, with whom had you interacted or
17 interfaced at RDI in connection with the C.E.O.
18 search?

19 A. We communicated with the entire search
20 committee, but I would say most of the communication
21 was with Ellen.

22 Q. Did you also communicate with Craig
23 Tomkins?

24 A. I can't recall.

25 MS. LINDSAY: Objection. Vague.

1 **Q. And then what else, if anything,**
2 **happened with respect to Mr. -- with respect to**
3 **Wayne Smith's candidacy?**

4 MS. LINDSAY: Objection. Vague.

5 THE WITNESS: I don't -- I don't believe
6 he was formally interviewed by the board.

7 BY MR. KRUM:

8 **Q. What did -- what did Korn Ferry do, if**
9 **anything, beyond the conversation you had with him;**
10 **that is, in connection with his candidacy?**

11 A. That was essentially it. We had a very
12 candid conversation. And then Wayne recognized
13 that, you know, 90 percent of the time when a board
14 hires a search firm, it's the external candidate
15 that wins the day.

16 **Q. Did you ever speak to any other internal**
17 **candidate or possible candidate?**

18 MR. VERA: Objection. Vague.

19 MS. LINDSAY: Join.

20 THE WITNESS: I can't recall.

21 BY MR. KRUM:

22 **Q. More particularly, did you speak to the**
23 **other person that Ellen had mentioned as a candidate**
24 **or possible candidate during the June 20 --**

25 A. I can't recall who that was, so --

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

2 A. Generate interest among the candidate
3 pool.

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

6 A. Sure.

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

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

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

14 Q. Did you have those conversations?

15 A. I did.

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

18 A. Correct.

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

21 A. No.

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

1 based on the interviews you did of Ellen Cotter,
2 Margaret Cotter, Bill Gould and Doug McEachern?

3 A. Yes.

4 Q. So, directing your attention, Mr. Mayes,
5 to page three of five of the position specification,
6 near the top it reads "Specific responsibilities
7 include," and then there follows at the bottom of
8 that page and over to the next a series of bullet
9 points.

10 Do you see those?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. And those bullet points were created
15 based on those conversations you had with Ellen
16 Cotter, Margaret Cotter, Bill Gould and Doug
17 McEachern?

18 MS. LINDSAY: Objection. Vague.

19 BY MR. KRUM:

20 Q. Is that right?

21 A. Yeah. I mean it's -- I want to say it's
22 a combination of previous C.E.O. position
23 specifications that were relevant and conversations
24 with the search committee.

25 Q. Well, that's why people hire Korn Ferry,

1 A. Yes.

2 Q. Do you see that it references "Craig"?

3 A. Yes.

4 Q. Is that Craig Tomkins?

5 A. Yes.

6 Q. Did you speak with him regarding the
7 position specification document?

8 A. We did. I did.

9 Q. Do you recall in substance what
10 either -- what he said?

11 A. Craig -- Craig's input did run counter
12 to the four members of the search committee. He
13 emphasized the need for someone with theater or
14 operating business experience.

15 Q. And what did the other four emphasize?

16 A. They emphasized real estate.

17 Q. Okay. Let me show you what previously
18 was mark as Exhibit 381.

19 (Whereupon the document previously
20 marked as Plaintiffs' Exhibit 381
21 was referenced and is attached
22 hereto.)

23 BY MR. KRUM:

24 Q. Did you send Exhibit 381 on the date it
25 bears, September 25, 2015?

1 Sorry.

2 Q. And how did that become clear to you?

3 MR. VERA: Objection. Calls for
4 speculation.

5 MS. LINDSAY: Join.

6 THE WITNESS: I just -- I had -- well,
7 when she recused herself from the search committee,
8 I figured there was a reason for that.

9 BY MR. KRUM:

10 Q. Did you have any communications with any
11 of the other members of the search committee,
12 meaning Margaret Cotter, Bill Gould, and/or Doug
13 McEachern, about Ellen Cotter as a candidate?

14 MS. LINDSAY: Objection. Vague.

15 THE WITNESS: No.

16 BY MR. KRUM:

17 Q. To your knowledge, did anyone at Korn
18 Ferry?

19 A. I don't believe so.

20 MS. LINDSAY: Objection. Lacks
21 foundation.

22 BY MR. KRUM:

23 Q. You were the senior person --

24 A. Yes.

25 Q. -- running this search, right?

1 A. Yeah.

2 Q. So your expectation was that anybody
3 working with you would report to you anything
4 relevant to the search, right?

5 A. Right.

6 MR. KRUM: We've been going an hour.
7 Why don't we take a break.

8 MS. GOODMAN: Okay.

9 VIDEOTAPE OPERATOR: This concludes
10 video file one. We are off the record at 10:33.
11 (Brief recess.)

12 VIDEOTAPE OPERATOR: This commences
13 video file two in the deposition of Mr. Robert
14 Mayes.

15 We are on the record at 10:44.

16 BY MR. KRUM:

17 Q. Mr. Mayes, is it common for an interim
18 C.E.O. to chair a C.E.O. search committee?

19 MS. LINDSAY: Objection. Lacks
20 foundation.

21 BY MR. KRUM:

22 Q. In your experience?

23 MS. LINDSAY: Calls for speculation and
24 opinion.

25 MR. VERA: Join.

1 THE WITNESS: No.

2 BY MR. KRUM:

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

5 A. A dozen.

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

10 A. 50.

11 MS. LINDSAY: Objection. Vague.

12 BY MR. KRUM:

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

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

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

22 A. I'm sorry?

23 Q. I direct your attention to the --

24 A. Oh, sure.

25 Q. -- the proprietary assessment that was

1 part of the Korn Ferry engagement by RDI.

2 Do you have that in mind?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes.

6 Q. Korn Ferry was paid for that, right?

7 A. Yes.

8 Q. Okay.

9 MR. KRUM: I'll pass the witness.

10 I'll reserve my right to ask whatever
11 other questions, if any I need to, based on what
12 happens after I pass the witness.

13 MR. SEARCY: Okay.

14 MS. LINDSAY: Okay. Let's just take a
15 couple minutes to rearrange.

16 MR. KRUM: Okay. Off the record.

17 VIDEOTAPE OPERATOR: We are off the
18 record at 10:46.

19 (Off-the-record discussion.)

20 VIDEOTAPE OPERATOR: We are back on the
21 record at 10:48.

22

23 EXAMINATION

24 BY MS. LINDSAY:

25 Q. Good morning.

1 goal. They can go -- they can be done in 45 days,
2 they can go a year on occasion.

3 **Q. Do you usually work with a search**
4 **committee?**

5 A. No. Those are almost ex- -- the only
6 time there's a committee involved is for a C.E.O.
7 search.

8 **Q. So, who do you ordinarily work with?**

9 A. C.E.O.'s, C.O.O.'s, C.F.O.'s, chief
10 investment officers probably the most common.

11 **Q. How is a position specification created?**

12 A. Input from the stakeholders at the
13 client company, and then me writing it.

14 **Q. And so when you have a position**
15 **specification, is that generally based on what the**
16 **company is telling you they want?**

17 A. Yeah.

18 **Q. And it's not really an independent**
19 **evaluation of what you think the company needs?**

20 A. I'd say two thirds the -- the former,
21 one third the latter.

22 **Q. In your experience, how often does a**
23 **position remain unfilled at the end of a search?**

24 A. 10 to 15 percent of the time.

25 **Q. Why might that happen?**

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

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

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

8 BY MS. LINDSAY:

9 Q. So, that happens often?

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

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

17 BY MS. LINDSAY:

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

20 A. Definitely.

21 Q. And why might that be a concern?

22 MR. KRUM: Same objection.

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

25 ///

1 particular candidate?

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

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

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

12 **Q. Okay.**

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

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

20 BY MS. LINDSAY:

21 **Q. Do you recognize Exhibit 422?**

22 A. Yes.

23 **Q. What is it?**

24 A. It is a candidate report.

25 **Q. For Ellen Cotter?**

1 A. Correct.

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

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

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

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

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

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

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

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

23 MR. KRUM: Okay. Thanks.

24 BY MS. LINDSAY:

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

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

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

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

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

13 A. Yeah.

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

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

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

21 BY MS. HENDRICKS:

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

25 A. Very much so.

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

3 A. No.

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

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

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

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

13 A. No. No.

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

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

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

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

1 A. Correct.

2 Q. Is that right?

3 A. I think so.

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

8 A. Yeah.

9 Q. What -- what did he say?

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

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

20 A. Right.

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

25 MR. KRUM: Objection. Foundation.

Exhibit 4

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Index No. A-15-179860-B

VIDEOTAPED DEPOSITION OF ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

1 A I don't -- I don't really remember exactly
2 what he said, but we just proceeded with the
3 process after.

4 **Q When you say "we proceeded with the
5 process after," what does that mean?**

6 A The search committee, I think Bill Gould
7 took the lead for the search committee. They
8 proceeded with the interviews of the
9 candidates, the finalist candidates that
10 Korn Ferry had recommended, reviewing all their
11 résumés and doing the interviews.

12 **Q When did you first tell the -- any member
13 of the CEO search committee, other than
14 Margaret, your sister, that you were
15 considering being a candidate?**

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

17 **Q Do you recall doing so, but simply not
18 when you did?**

19 A I don't recall the specifics of when that
20 discussion began, and I don't recall if it
21 was -- I know Bill Gould had encouraged me to
22 consider it.

23 So I don't know if he brought it up to me
24 before I talked to him about it.

25 **Q Do you recall that you had a conversation**

1 with Tim Storey in which he asked whether you
2 were a candidate or thinking about or
3 considering being a candidate for the position
4 of CEO?

5 A I don't recall having that discussion with
6 Tim.

7 Q What did Bill Gould say or do to encourage
8 you to be a candidate?

9 A The sense I got from the conversation with
10 Bill was, he said, You've been in the job,
11 you're actually doing a good job.

12 We had evaluated purchasing the Sundance
13 theater circuit and he said he watched how I
14 brought the management team together to create,
15 you know, due diligence and that the due
16 diligence that we did on that acquisition or
17 potential acquisition was very thorough.

18 But I think he noticed that the entire
19 management team had come together and were
20 working together very collaboratively. And he,
21 he said you should consider this.

22 Q When did that conversation occur?

23 A I don't remember.

24 Q When was the work done with respect to the
25 possible purchase of the Sundance theater

1 **Did you have the impression from the**
2 **conversation you had with Margaret, in which**
3 **she had indicated that she was impressed with a**
4 **couple of the candidates, that Margaret was**
5 **going to support someone other than you for the**
6 **CEO of RDI?**

7 A I think Margaret recognized at the time
8 that while some of these candidates were
9 qualified, that the experience that I brought
10 to the table with the company and the way I had
11 performed from the middle of June of 2015, I
12 would have expected her to support me.

13 But she was -- she did interview a couple
14 of these candidates and was impressed.

15 **Q Did you have the same expectations with**
16 **respect to Bill Kane -- Bill Gould?**

17 A Well, as I said, Bill had -- my
18 recollection was that Bill had encouraged me to
19 consider being a candidate.

20 **Q What communications had you had with**
21 **Doug McEachern regarding you either becoming a**
22 **candidate or being a candidate?**

23 A I think Doug had also encouraged me to
24 think about being a candidate.

25 **Q What's your best recollection as to what**

1 he said to you when?

2 MR. TAYBACK: With respect to encouraging
3 her?

4 MR. KRUM: Yes.

5 A I don't remember the specifics of our
6 conversation, but I remember Doug saying that
7 you should consider this, we've watched you in
8 this role and you should consider being
9 candidate.

10 Q When did you have that conversation with
11 him?

12 A I don't remember.

13 Q Some point before you decided to be a
14 candidate?

15 A Yes.

16 Q Was anyone else present for that
17 conversation?

18 A I had one conversation with Doug on the
19 phone that I can remember. I don't know if
20 anybody else in subsequent conversations.
21 There might have been other people there, I
22 don't recall.

23 Q In the conversation you had with
24 Mr. McEachern on the phone that you remember,
25 that was just between the two of you?

Exhibit 5

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,)

vs. Index No. A-15-179860-B)

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

Defendants.)

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

Nominal Defendant.)
-----)

VIDEOTAPED DEPOSITION OF MARGARET COTTER

New York, New York

Wednesday, June 15, 2016

Reported by:
MICHELLE COX
JOB NO. 316939

1 conversation or were you a part of any
2 communication, such as an e-mail, in which a
3 subject of -- of discussion was the waiver by
4 Korn Ferry of the final payment due on the
5 director of real estate search?

6 A I may have been. I don't recall.

7 Q What, to the best of your knowledge,
8 happened in August 2015, if anything, following
9 Exhibit 311 to advance the CEO search?

10 A In August, it appears that a search firm
11 was identified and possibly retained. I don't
12 know if they were actually retained in August
13 or September.

14 Q Did you read the CEO success profile and
15 assessment portion of Exhibit 311, which is all
16 but the first two pages of it?

17 A I don't -- I don't recall reading this.

18 Q I'm sorry.

19 When you say you don't recall reading
20 that, does that mean, as you look at it, it
21 does not like familiar?

22 A No, I just don't recall reading it.

23 MR. KRUM: I'll ask the court reporter to
24 mark as Exhibit 312, September 30, 2015 e-mails
25 with the "Subject: RDI CEO Status Report,

Exhibit 6

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3	JAMES J. COTTER, JR.,	)	
4	individually and derivatively	)	
5	on behalf of Reading	)	
	International, Inc.,	)	
6	Plaintiff,	)	Case No.
7	VS.	)	A-15-719860-B
8	MARGARET COTTER, ELLEN COTTER,	)	Coordinated with:
9	GUY ADAMS, EDWARD KANE, DOUGLAS	)	Case No.
10	MCEACHERN, TIMOTHY STOREY,	)	P-14-082942-E
	WILLIAM GOULD, and DOES 1	)	Case No.
	through 100, inclusive,	)	A-16-735305-B
11	Defendants.	)	
12	and	)	
13	_____	)	
14	READING INTERNATIONAL, INC., a	)	
	Nevada corporation,	)	
15	Nominal Defendant.	)	
16	_____		
17	(Caption continued on next		
18	page.)		
19	VIDEOTAPED DEPOSITION OF TIMOTHY STOREY		
20	Wednesday, August 3, 2016		
21	Wednesday, California		
22			
23	REPORTED BY:		
24	GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR		
25	Job No.: 323867		

1 A. My recollection is that Ellen had said
2 previously she did not wish to be CEO, that she
3 would act as interim until we found a CEO.

4 BY MR. KRUM:

5 **Q. And during this -- the call that is**
6 **summarized in Exhibit 33, what did you say to her,**
7 **and what did she say to you about her being a**
8 **candidate for CEO?**

9 A. It appears that I would have said
10 something like, "And I'm sure you are not going to
11 be a CEO." I didn't get a -- or "you don't wish to
12 be a CEO," and I didn't get a response saying
13 that's correct. So I think I was implying or
14 stating to Bill Gould as a feedback as to what I
15 understood her position might be.

16 **Q. Do you recall that the telephonic board**
17 **meeting that is referenced in this e-mail here,**
18 **Exhibit 33, first, that it occurred on or about**
19 **June 30, the next day?**

20 A. Yes.

21 **Q. Do you recall that the -- there was a CEO**
22 **search committee of Ellen, Margaret, Bill Gould,**
23 **and Doug McEachern announced by Ellen that day?**

24 MR. SEARCY: Objection. Vague.

25 A. I don't remember specifically, but I

Exhibit 7

Filed Under Seal

Exhibit 8

Filed Under Seal

Exhibit 9

Filed Under Seal

Exhibit 10

Filed Under Seal

Exhibit 11

Filed Under Seal

Exhibit 12



KORN FERRY

1900 Avenue of the Stars, Suite 2600
Los Angeles, California 90067

PRIVATE AND CONFIDENTIAL

July 9th, 2015

Ms. Ellen Cotter
Board Director
Reading International, Inc.
6100 Center Drive
Los Angeles, California 90045

Dear Ellen,

Thank you for including Korn Ferry International ("Korn Ferry") in the discussion to undertake the search for a Chief Executive Officer for Reading International, Inc. ("RDI"). This letter outlines our understanding of your needs as well as our search and assessment processes, staffing, compensation parameters, and details of our fee and expense arrangements.

If you are in agreement with this engagement letter, we ask that you sign and return the acknowledgment form, which authorizes us to proceed with the search assignment. Please return via fax or email in addition to sending the original by mail.

OUR UNDERSTANDING OF YOUR REQUIREMENTS

After a series of rapid changes and a level of organizational discomfort, RDI requires a strong leader to stabilize the environment within the company. The new Chief Executive Officer must ensure alignment of goals across the leadership team, and preserve a tightly knit culture while optimizing the impact of a strong senior leadership team, and directly impact value creation for the firm's real estate portfolio.

THE PARTNERSHIP

Our experience over forty years has shown that the most successful search assignments are those in which we work closely and partner with our client. While we seek to identify and recommend qualified candidates for a position, you and your colleagues will decide whom to hire. There are several ways in which you can enhance this partnership:

- Indicate clearly those areas relevant to the search that you wish us to keep confidential.
- Provide timely feedback to Korn Ferry on all aspects of the assignment.
- Schedule interviews promptly with candidates and report your findings as soon as possible.

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EXH 373
DATE
W/
PATRICIA HUBBARD

RDI0005742

JA5215

- Provide Korn Ferry with information on candidates you may have identified from other sources or from within your organization, so that they may be evaluated as part of the search process.
- Provide information to candidates about your company that will enable them to make informed career decisions.
- Agree on a communication strategy to discuss the progress of the search, including marketplace intelligence affecting the search.

CEO SEARCH / ASSESSMENT: INTEGRATED PROCESS AND APPROACH

As part of the engagement Korn Ferry will design and deploy a customized assessment process for finalist candidates (up to six). We will leverage the same assessments and processes for both internal and external candidates. This provides several benefits. It will provide an objective and unbiased comparison of both internal and external candidates. Internal candidates and the selected CEO will also receive feedback and coaching so that they understand their results compared to benchmarks. Furthermore, internal candidates will also receive developmental information so they understand why they may not have been selected as CEO as well as their leadership gaps and steps they can take to close the gap. Finally, we will work with the selected CEO to create a development plan to enhance their onboarding and future success. An overview of the assessment process for candidates you are considering as your next CEO is as follows.

Step One: Mobilization

We will partner with the CEO Selection Committee to pursue alignment for and definition of a tailored RDI CEO Success Profile. This profile will guide our pursuit and vetting of candidates and ultimately your selection of the next RDI CEO. To create the success profile we will leverage Korn Ferry's proprietary four dimensions (KF4D) of leadership framework and processes (illustrated below).

The creation of a success profile involves the following activities:

- Review of Reading International business and strategy documents
- Interview Selection Committee members and other key stakeholders
- Draft CEO Success profile to include strategic context, company culture and values, CEO role responsibilities, competencies, experiences, traits and drivers.
- Review, vetting and approval of a customized Reading International CEO success profiles

Step Two: Online Assessments

Candidates will take our proprietary online assessment(s) demonstrated to distinguish their capabilities. For example, The Korn Ferry Assessment of Leadership Potential (KFALP) captures data that is aligned with three of the four domains of a CEO Success Profile; experience, traits (e.g., personality) and drivers. Specifically, KFALP measures candidates business experience, motivators, personality traits, derailers, self-awareness, learning agility, and capacity for problem solving. The fourth domain, competencies (i.e., leadership skills/capabilities), are measured through interviews and described in the next section. Additional online assessment may be included as we gather requirements for the CEO role.

Step Three: Leadership and Skills Interview

A maximum of six finalist candidates (internal or external) will then participate in a two hour face-to-face Leadership and Skills interview with a Korn Ferry leadership consultant and search consultant. This interview will explore and collect evidence covering each of the core skills and leadership competencies Korn Ferry research has shown to be critical for success in the RDI success profile. The consultants will probe and validate specific areas from the assessment results, review the executive's experience, probe into approaches to key situations the executive has faced, and explore career aspirations. The consultants may also draw on other data as supplied by RDI including role descriptions.

Step Four: Data Analysis and Draft Reports

Following the interviews of internal candidates and external finalist candidates, the consultants will draft the assessment reports based on the outcomes of the on-line assessment, comparison to the best-in-class profile for the position, leadership interview, skill interview plus analysis of any other data available, as appropriate. The reports will integrate all findings and clearly identify strengths and development opportunities.

Step Five: CEO and Board Briefing

Once all of the assessments have been completed, the consultants will review these reports with you and the Board in detail and share conclusions and recommendations regarding readiness for the CEO role.

Step Six: Candidate Feedback and CEO Onboarding

The leadership and/or search consultants will provide individual face-to-face feedback to the internal candidates and your new CEO. For internal candidates, this session typically last 1-1.5 hours and focuses on discussing strengths, areas of potential concern and developmental

suggestions that will help them advance their leadership capabilities in their current or future roles. For the new CEO, we recommend a more in-depth coaching and feedback sessions (2-3) that includes the creation of an onboarding action plan to most effectively hit the ground running in the first 60-90 days on the job. If warranted or desired additional coaching can be arranged.

PROFESSIONAL FEES AND EXPENSES

Our professional fees are non-contingent and non-refundable. The professional fee for the **assessment** project is \$70,000, billed in two monthly installments of \$435,000. The first installment is due and payable upon your acceptance of this engagement letter. Billings for the second installment will be rendered ninety (90) days respectively after the date of your acceptance of this engagement letter. The billings are due and payable upon receipt.

Our **search** fees are equal to 30 percent (30%) of the total first year's estimated compensation for each position we intend or are intended to fill. As an exception to this, in the event a pre-designated "carve out" candidate is hired (up to a maximum of three) within ninety (90) days of the inception of the search we will reduce our fee to twenty five percent (25%) of the total first year's estimated compensation. For fee calculation purposes, estimated first year compensation includes base salary, target or guaranteed incentive bonus. We will exclude equity compensation from the fee calculations.

In addition to our fees, Korn Ferry is also reimbursed for all administrative support, Search Assessment and research services. These expenses will be billed at a flat fee of \$10,000 and payable pro rata at the time of each fee installment.

From a compensation standpoint, we anticipate a required package of a base salary of \$350,000 to \$450,000 with an annual performance-based bonus target of up to one hundred percent (100%). In addition, long term incentive compensation in form of restricted shares and / or stock options upfront and annually, providing for meaningful economic upside.

Our initial fee for this search assignment is \$150,000 and it is our practice to bill this fee, along with administrative expenses, in three (3) installments of thirty four percent (34%), thirty three percent (33%) and thirty three percent (33%). The first installment is due and payable upon your acceptance of this engagement letter. The search fees will not exceed \$250,000.

Billings for the second and third installments will be rendered forty five (45) and ninety (90) days respectively after the date of your acceptance of this engagement letter. The billings are due and payable upon receipt. If the estimated initial fees have been fully invoiced prior to the completion of the assignment, no further fees will be billed until the engagement has been concluded.

There will also be cancellation of additional outstanding payment for Head of Real Estate search billed June 15, 2015 in the amount of \$42,967.

At the conclusion of the search assignment, we will reconcile any outstanding fees, i.e., the difference between the initial fees (noted above) and the final sum based upon the placed candidate's actual compensation. In the event that more than one executive is hired as a result of the work performed by Korn Ferry, a full fee, based upon actual first year compensation, will be due for each individual hired. Our fees and expenses are neither refundable nor contingent upon our success in placing a candidate with your organization. This fee structure applies even if an internal candidate emerges as your choice.

Either party may discontinue this assignment by written notification at any time. Our first fee and expense installment is a minimum retainer and, thus, is non-refundable even if you cancel within thirty (30) days of your acceptance of this proposal; in such event, the second and third fee and expense installments will no longer be due or payable. If cancellation occurs after thirty (30) days, and prior to sixty (60) days, the second fee and expense installment shall be due and payable in full in such event, the third fee and expense installment will no longer be due or payable. If cancellation occurs after sixty (60) days, all fees and expenses have been earned and are payable in full.

CLIENT SATISFACTION

Korn Ferry actively seeks client feedback on the quality of our work. At the conclusion of the assignment, we may ask you to take part in Korn Ferry's Client Satisfaction Survey conducted by an independent organization. We seek your candid assessment of our work so that we may be responsive to any suggestions regarding our professional service.

KORN FERRY GUARANTEE

Korn Ferry guarantees every placed candidate for a period of twelve months from his/her start date. If a candidate is released by the client company for performance related issues during the first twelve months of his/her employment, or leaves of his/her own volition Korn Ferry will conduct a new search to replace the candidate for no additional retainer (charging only expenses as incurred). This excludes candidates who leave for reasons such as a change in ownership, organizational realignment and restructuring.

THE CONSULTING TEAM

A key component of the Korn Ferry executive search process is the appointment of the consulting team. Robert Wagner will have overall relationship management responsibility, while I will lead the search assignment, including candidate development, interviews, report writing, references, education verification, compensation negotiation and follow-up. I will be supported by Dan Pulver who will assist in the identification of qualified candidates. Sidney Cooke will lead the assessment process. Anjelica Zalin will manage administrative details. Our contact numbers are as follows:

Robert Wagner Senior Client Partner	Office Direct: (310) 226-2672 Mobile: (310) 344-7297 Email: robert.wagner@kornferry.com
Robert Mayes Senior Client Partner	Office Direct: (310) 226-6369 Mobile: (312) 656-9407 Email: robert.mayes@kornferry.com
Sidney Cooke Managing Principal, LTC	Office Direct: (415) 277-8300 Mobile: (303) 330-5115 Email: Sidney.cooke@kornferry.com



Dan Pulver
Senior Associate

Office Direct: (310) 226-6339
Mobile: (410) 258-7949
Email: dan.pulver@kornferry.com

Anjelica Zalin
Project Coordinator

Office Direct: (310) 226-6357
Email: anjelica.zalin@kornferry.com

CONCLUSION

Ellen, we would be delighted to have the opportunity to work with you on this important assignment for Reading International, Inc. We recognize the role the successful candidate will play in your company's future plans, and can assure you of our commitment on your behalf. Please call me if you have any questions or require any further information.

Yours sincerely,

Robert Mayes
cc. Robert Wagner, Sidney Cooke



ACKNOWLEDGEMENT

Reading International, Inc. authorizes Korn Ferry to proceed with an executive search assignment for the position of Chief Executive Officer

Please indicate your acceptance of the terms and conditions set forth above by signing and returning a copy of this agreement via email or fax (310) 553-6452 and following up with the hard copy in the mail.

Ellen Cotter

Ellen Cotter
Board Director
Reading International, Inc.

08/03/2015

Date

Robert Mayes
Senior Client Partner
KORN FERRY

Date

Invoices should be addressed for the attention of:

Name:

Billing address:

*Ellen Cotter
6100 Center Drive, Suite 900
Los Angeles, CA 90045*

Exhibit 13

From: Robert Wagner <Robert.Wagner@KornFerry.com>
Sent: Thursday, June 18, 2015 10:08 PM
To: Craig Tompkins
Cc: Ellen Cotter
Subject: CEO search
Attachments: image001.jpg; image002.jpg; image003.jpg; Cooke_Sidney_Bio.pptx

Craig,

Bob and I have asked Sidney Cooke from Korn Ferry's Leadership & Talent Consulting division to join us for the meeting. Sidney (bio attached) has done great CEO and other assessment work with Caruso, and he would be an important addition to the search. Sidney will schedule his flight from San Francisco to Los Angeles once I have told him the time of the meeting.

Thanks,

Rob

From: Craig Tompkins [mailto:Craig.Tompkins@readingrdi.com]
Sent: Thursday, June 18, 2015 1:24 PM
To: Robert Wagner
Cc: Ellen Cotter
Subject: RE: CEO search

Thanks.

I will be up in Oregon tomorrow. We are in a meeting now, and will get back to you a bit later in the afternoon with a suggested time.

Craig

From: Robert Wagner [mailto:Robert.Wagner@KornFerry.com]
Sent: Thursday, June 18, 2015 12:58 PM
To: Craig Tompkins
Cc: Ellen Cotter
Subject: CEO search

Craig,

I was able to change my travel plans for tomorrow, and I will be able to meet with Ellen. I have a call into Bob Mayes, Korn Ferry's Senior Client Partner, Real Estate Practice who I asked to take the lead on the Head of Real Estate search that we started for Reading International in late March. Jim is also based in Korn Ferry's Los Angeles headquarters, and after about 2 1/2 months on the search we have several serious candidates under consideration. Bob will also adjust tomorrow's plans in order to accommodate Ellen's schedule.

Will you be joining us for tomorrow's meeting?

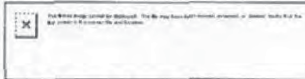
Regards,

1

EXH 374
DATE 6-29-16
WIT Gould
PATRICIA HUBBARD

RDI0018761

JA5223



Robert A. Wagner
Senior Client Partner



1900 Avenue of the Stars
Suite 2600
Los Angeles, CA 90067

Tel: +1 (310) 226-2672
Fax: +1 (310) 788-8408
email: robert.wagner@kornferry.com
www.kornferry.com



Follow Korn Ferry  Access our award-winning articles and research from the Korn Ferry Institute

From: Craig Tompkins [<mailto:Craig.Tompkins@readingrdi.com>]
Sent: Thursday, June 18, 2015 12:22 PM
To: Robert Wagner
Cc: Ellen Cotter
Subject: RE: Korn Ferry Featured in Wall Street Journal's "Boss Talk"

Rob,

As you may have seen in the press, Jim Cotter, Jr. is no longer our CEO/President. Ellen Cotter has been appointed as our new interim CEO/President, and the Board is currently contemplating doing an executive search for new CEO/President considering both outside and inside candidates. Ellen would like to meet you and learn about what you have been doing for Reading, and to talk about your potential involvement in the currently anticipated CEO search. Ellen is going to be in NYC all of next week, so it would be great if you have availability tomorrow. Ellen is in our West LA Office: 6100 Center Drive, Suite 900.

Ellen: set out below is Rob's contact information.

1900 Avenue of the Stars
Suite 2600
Los Angeles, CA 90067

Tel: +1 (310) 226-2672
Fax: +1 (310) 788-8408
email: robert.wagner@kornferry.com
www.kornferry.com

From: Robert Wagner [<mailto:Robert.Wagner@KornFerry.com>]
Sent: Tuesday, December 09, 2014 6:47 PM
To: Craig Tompkins
Subject: Korn Ferry Featured in Wall Street Journal's "Boss Talk"

Craig,

Today *The Wall Street Journal* issued an article featuring Korn Ferry in the "Boss Talk" section. Below is the online version of the story, which will also be showcased in the print edition tomorrow.

Among other key areas, CEO Gary Burnison talks about our firm's performance, how we are "boosting" our talent management business, the importance of investing in talent, what Boards are looking for and the critical role of culture, diversity and learning agility within global organizations.

Regards,

Rob

<http://www.wsj.com/articles/korn-ferrys-ceo-what-boards-look-for-in-executives-1418151461>

Korn/Ferry's CEO: What Boards Look for in Executives

Gary Burnison Aims to Boost Company's Business in Talent Management

With nearly \$1 billion in revenue in fiscal 2014, Korn/Ferry International is the world's largest executive-search firm, and its 400 some executive recruiters have helped place leaders atop Office Depot Inc., Puma SE, and Major League Baseball.

But only so many C-suite jobs open up each year. So the Los Angeles-based company has been trying to boost its business in talent management, offering recruiting and development tools aimed at professional employees.

Thanks in part to a recovering U.S. job market, there's plenty of opportunity there: Research firm IDC estimates that employers will spend around \$20 billion to attract, assess and retain workers in 2014.

Chief Executive Gary Burnison, age 53, has been overseeing Korn/Ferry's slow transition by acquiring leadership-development firms like PDI Ninth House and Global Novations LLC, and converting its bank of knowledge about executive careers into a portfolio of products that organizations can buy or license, from interview guides to software that helps managers identify and cultivate high-potential employees. On Tuesday, Korn/Ferry announced a record quarter in revenue from fees, though sales in its talent-consulting division edged up only 0.5%.

Mr. Burnison, who has been CEO since 2007, spoke with *The Wall Street Journal* about why companies should seek curiosity in hires, the cost of turnover, and what boards want in executives these days. Edited excerpts:

WSJ: Your executive-search business was up in the first quarter by 9%. Are companies investing in growth, or are they mostly replacing people who leave?

Mr. Burnison: Industries like health care, technology and energy are going through massive change, and it's going to continue for the foreseeable future. That creates a need for new positions, whether it's about delivering health care remotely or finding new ways to tap people instantaneously through social media. Those needs didn't exist a decade ago.

WSJ: Executive search seems like an old-fashioned, Rolodex business. Are LinkedIn and other social-networking tools going to make it obsolete?

Mr. Burnison: CEOs are in this mad fight for growth and relevancy, so they're paying us not for finding people, but for finding out who people are. You can go lots of places to find people. But you're going to want somebody to answer, "Okay, but what is this person really like? What do others really say about them?"

WSJ: How do you answer those questions?

Mr. Burnison: For the boardroom or the C-suite, the technical competencies are a starting point. What we've seen through our research is that the No. 1 predictor of executive success is learning agility. So we want to get a real line of sight into a person's thinking style and leadership style. Right now, you're seeing me how I want you to see me. What you really want to know is "How does Gary make decisions under pressure?"

WSJ: What is learning agility?

Mr. Burnison: It comes down to people's willingness to grow, to learn, to have insatiable curiosity. Think about the levers of growth that a CEO has. You can consolidate, or tap [new markets], or innovate. When it comes down to the last two, particularly innovation, you want a workforce that is incredibly curious.

WSJ: What are companies getting wrong today about managing their employees?

Mr. Burnison: There's this gap between what [executives] say and how they invest in people's careers. They spend an enormous amount on development and performance management, but it's not well spent.

WSJ: Where are they investing poorly in talent?

Mr. Burnison: They should be asking, how do you develop people in their careers? How do you extend the life of an employee? This is not an environment where you work for an organization for 20 years. But if you can extend it from three years to six years; that has enormous impact. [Turnover] is a huge hidden cost in a profit-and-loss statement that nobody ever focuses on. If there was a line item that showed that, I guarantee you'd have the attention of a CEO.

WSJ: Why aren't CEOs focused on turnover?

Mr. Burnison: A CEO only has an average tenure today of five years. You have 20 quarters to show that you have a winning team. There is a trade-off between knowing in your heart that you've got to empower people, you've got to develop them. But then there's the other side, that says, "Oh, my gosh. I've got to win this next game."

WSJ: How should leaders look beyond the short-term horizon?

Mr. Burnison: The strategic partner to the CEO should be the CHRO [chief human-resources officer] in almost any organization. It shouldn't be the CFO. The person that is responsible for people should be the biggest lever that a CEO can pull. Too often, it's not.

WSJ: You've been CEO for seven years. Is the clock ticking?

Mr. Burnison: We're all by definition "on the clock." However, that ticking clock should never impede the journey. I am having a lot of fun and there is still an enormous amount of work to be done.

WSJ: You're pushing to create more management products for companies. Why, and what are they?

Mr. Burnison: People are hard to scale. [Products are] very easy to scale. It's going to be based on predictors of success. By culture, by industry, by function, around the world. It could be a program for how we assess and develop people. It could be licensing a piece of content around onboarding or hiring. Candidates could take an online assessment. You would get feedback and you could license our interviewing technology to say, "With this person, you may want to probe this area and this area when you're interviewing them."

WSJ: What do your search clients ask for most often?

Mr. Burnison: The No. 1 request we get in the search business is diversity. Diversity in thought. Diversity in backgrounds. Diversity, yes, in gender. Diversity yes, in race. Diversity, yes in terms of cultural upbringing. That's got serious legs.

Exhibit 14

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From: Robert Wagner <Robert.Wagner@KornFerry.com>
Sent: Sunday, June 21, 2015 3:53 AM
To: Craig Tompkins
Subject: Yesterday's meeting with Ellen

Craig,

Bob Mayes, Sid Cooke and I had a pleasant and informative 45 minute meeting with Ellen yesterday afternoon. She was understandably under a lot of stress due to the sudden developments of the past few days, but we had a productive discussion of Reading International's need for a new CEO. She discussed the option of hiring a consumer oriented versus a real estate oriented CEO, but she clearly felt that a real estate executive would be more appropriate. We agreed, given the company's many New York, Australian and other real estate assets. We told her that to conduct a dual track search for both consumer and real estate candidates would confuse the market place, and it would signal Reading's lack of focus (she agreed). Ellen asked us how long this executive search would take, and we responded three or four months. She seemed quite surprised by this answer, as she had anticipated that the project would take much longer based upon the length of the CFO search (nine months). We indicated that Korn Ferry did not conduct that search, but we mentioned that we were at offer stage with two finalist candidates after working on the Head of Real Estate search for three months (we have kept both candidates warm since Jim's departure). We allowed that the CEO search could take a bit longer due to summer vacation delays, but not a lot longer.

Ellen asked a lot of basic questions about Korn Ferry, our fee, the candidate sourcing process and how we would handle any internal Reading candidates, of which there appear to be several. We explained that we would treat their internal candidates like any other candidates that Korn Ferry would generate. This includes converting their resumes to our format, interviewing them at length, putting them through our unique proprietary assessment process and making them feel that they were being thoroughly considered. She was glad to hear that. Sid, who has a Ph.D. in clinical psychology from Baylor University, discussed how Korn Ferry's assessment methodologies and leadership & talent consulting tools would help the company to find candidates with the appropriate cultural attributes, which seemed to really resonate with Ellen. I sensed that she would be relieved to place this critical search in the hands of professionals that would work closely with her, her sister and the board to fill the position, but who knows what the board will say when she goes to New York next week. She was clearly weighing whether to go internal or external, but I think that it would be a big mistake for Reading to just anoint one of the internal candidates as the next CEO in the interests of expediency. She clearly wants to carry her father's legacy forward, although she appeared to be unsure as to whether she herself was interested in the role given how suddenly this situation has arisen. I mentioned that Korn Ferry has five offices in Australia and New Zealand which could source potential Australian candidates for the search, which she found to be an interesting option. I added that perhaps a partner from one of our offices could meet with Reading's Australia employees to give them some comfort as to how Korn Ferry would conduct the search, but this did not seem to interest her as much since she mentioned that a couple of the company's key Australia employees would be flying to the U.S. in the near future.

We left with a good understanding of what the company's needs are, and we made it clear that we are ready to start immediately. She seemed to really appreciate the meeting, too, and she indicated that our process and capabilities had given her a lot of comfort. The fact that Korn Ferry is globally headquartered in Century City seemed to be a positive to her, too, rather than our having a small outpost branch in Los Angeles like our East Coast-based competitors have (I don't think that Heidrick & Struggles even has a Los Angeles office

1

EXH 375
DATE 6-29-16
WIT Gould
PATRICIA HUBBARD

RD10021595

JA5229

anymore). Bob, Sid and I discussed the situation outside the building after leaving the meeting, and we all felt that if Reading handles this critical project correctly the company will thrive. If it doesn't, it won't.

Thanks again for the introduction to Ellen, I liked her. Despite the current stress that she is under, she had a refreshing sense of humor and a good understanding of the company's options (that is often not the case in situations like this). Bob, Sid and I have all had considerable experience with fluid family organizations (including where lawsuits exist), and so these circumstances are nothing new to us. We will wait to hear from you or Ellen as to next steps.

Incidentally, my wife, Carolyn, and I will be in Portland on July 17 through July 19. We would be delighted to take you and your wife to dinner on Saturday, July 18 if this would be convenient for the two of you.

Regards,

Rob

Exhibit 15

Filed Under Seal

Exhibit 16

Filed Under Seal

Exhibit 17

Filed Under Seal

Exhibit 18

1 **DEC**

2 MARK G. KRUM (Nevada Bar No. 10913)
3 MKrum@LRRC.com
4 LEWIS ROCA ROTHGERBER CHRISTIE LLP
5 3993 Howard Hughes Parkway, Suite 600
6 Las Vegas, Nevada 89169
7 (702) 949-8200
8 (702) 949-8398 fax

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

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

17 Plaintiff,

18 v.

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

24 Defendants.

25 and

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

28 Nominal Defendant.

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

32 Plaintiffs,

33 vs.

34 MARGARET COTTER, ELLEN COTTER,
35 GUY ADAMS, EDWARD KANE, DOUGLAS
36 McEACHERN, WILLIAM GOULD, JUDY
37 CODDING, MICHAEL WROTNIAK, CRAIG
38 TOMPKINS, and DOES 1 through 100,
inclusive.

CASE NO. A-15-719860-B
DEPT. NO. XI
Coordinated with:
CASE NO. P-14-082942-E
DEPT. NO. XI
CASE NO. A-16-735305-B
DEPT. NO. XI
Jointly administered

**DECLARATION OF PLAINTIFF
JAMES J. COTTER, JR. IN
OPPOSITION TO ALL INDIVIDUAL
DEFENDANTS' MOTIONS FOR
PARTIAL SUMMARY JUDGMENT
(AND GOULD JOINDERS)**

[Business Court Requested: [EDCR 1.61]

**[Exempt From Arbitration: declaratory
relief requested; action in equity]**

Defendants.

and

READING INTERNATIONAL, INC., a
Nevada corporation,

Nominal Defendant.

I, James J. Cotter, Jr. hereby declare, under the penalty of perjury and the laws of Nevada,
as follows:

1. I am over eighteen (18) years of age. I have personal knowledge of the facts
contained in this declaration, except on those matters stated upon information and belief, and as to
those matters, I believe them to be true. If called upon to testify as to the contents of this
declaration, I am legally competent to do so in a court of law.

2. I am the Plaintiff in the above-captioned action. I am, and at all times relevant
hereto was, a shareholder of RDI. I have been a director of RDI since on or about March 21, 2002.
I have been involved in RDI management since mid-2005, I was appointed Vice Chairman of the
RDI board of directors in 2007 and President of RDI on or about June 1, 2013. I was appointed
CEO by the RDI Board on or about August 7, 2014, immediately after James J. Cotter, Sr. (JJC,
Sr.) resigned from that position. I am the son of the late JJC, Sr., and the brother of defendants
Margaret Cotter ("MC") and Ellen Cotter ("EC"). I presently own approximately 560,186 shares
of RDI Class A non-voting stock and options to acquire another 50,000 shares of RDI Class A
non-voting stock. I am also the co-trustee and beneficiary of the James J. Cotter Living Trust,
dated August 1, 2000, as amended (the "Trust"), which owns 2,115,539 shares of RDI Class A
(non-voting) stock and 1,123,888 shares of RDI Class B (voting) stock. The Trust became
irrevocable upon the passing of JJC, Sr. on September 13, 2014.

3. I submit this declaration in support of the oppositions to all of the motions for
summary judgment filed by one or more of the individual defendants in this action.

4. Nominal defendant Reading International, Inc. (RDI or Company) is a Nevada
corporation and is, according to its public filings with the United States Securities and Exchange

Commission (the "SEC"), an internationally diversified company principally focused on the development, ownership and operation of entertainment and real estate assets in the United States, Australia and New Zealand. The Company operates in two business segments, namely, cinema exhibition, through approximately 58 multiplex cinemas, and real estate, including real estate development and the rental of retail, commercial and live theater assets. The Company manages world-wide cinemas in the United States, Australia and New Zealand. RDI has two classes of stock, Class A stock held by the investing public, which stock exercises no voting rights, and Class B stock, which is the sole voting stock with respect to the election of directors. An overwhelming majority (approximately eighty percent (80%)) of the Class A stock is legally and/or beneficially owned by shareholders unrelated to me, EC or MC. Approximately seventy percent (70%) of the Class B stock is subject to disputes and pending trust and estate litigation in California between EC and MC, on the one hand, and me, on the other hand, and a probate action in Nevada. Of the Class B stock, approximately forty-four percent (44%) is held in the name of the Trust. RDI is named only as a nominal defendant in this derivative action.

5. I signed a verification of a Second Amended Verified Complaint (the "SAC") in this action. I stand by the substantive allegations of the SAC and incorporate them herein by reference.

The Position of CEO at RDI

6. Certain of the motions for summary judgment brought by the individual defendants in this action suggest that I was appointed CEO of RDI in August 2014 after what amounted to no deliberation by the Board of Directors. That is absolutely false. In fact, as early as 2006, James J Cotter, Sr. ("JJC, Sr."), then the CEO and controlling shareholder of RDI, had communicated to the RDI board of directors his proposed succession plan for the positions of President and CEO. That plan was for me to work under the direction of JJC, Sr. to learn the businesses of RDI, including by functioning in a senior executive role.

7. Since 2005, I was involved in most RDI executive management meetings and privy to most significant internal senior management memos. As mentioned above, I was appointed Vice Chairman of the RDI board in 2007. The RDI Board appointed me President of

1 RDI on or about June 1, 2013, and I filled those responsibilities without objection by the RDI
2 board of directors.

3 8. Soon after I became CEO, my sisters, Ellen, who was an executive at RDI in the
4 domestic cinema segment of the Company's business, and Margaret, who managed RDI's limited
5 live theater operations as a third-party consultant, both communicated to me and to members of
6 the RDI Board of Directors that they did not want to report to me as CEO. In fact, neither of them
7 previously while working for or with the Company effectively had ever reported to anyone other
8 than our father, JJC, Sr. Margaret in particular resisted and effectively refused to report to me until
9 she no longer needed to do so, following my (purported) termination as President and CEO of the
10 Company. They also co-opted at least one employee, Linda Pham, who claimed at some point in
11 2014 that I had created a hostile work environment for her, which accusation was not well-taken
12 and, in any event, moot with the passage of time by Spring 2015, as director Kane acknowledged
13 at the time.

14 **Disputes With My Sisters**

15 9. My sisters and I had certain disputes with respect to matters of our father's estate.
16 The most significant and contentious dispute concerned who would be the trustee or trustees of the
17 voting trust that, following our father's death, holds approximately 70% of the voting stock of
18 RDI. According to a 2013 amendment to his trust documentation, Margaret was to be the sole
19 trustee. Pursuant to a 2014 amendment to his trust documentation, Margaret and I were to serve
20 contemporaneously as co-trustees. In early February 2015, Ellen and Margaret commenced a
21 lawsuit in California state court challenging the validity of the 2014 amendment to our father's
22 trust documents (the "California Trust Action").

23 10. My sisters and I also had certain disputes with respect to RDI. Most generally, they
24 disagreed with my view and approach of running RDI like a public company, including hiring a
25 senior executive qualified to oversee the development of the Company's valuable real estate and,
26 more fundamentally, operating the Company to increase its value for all shareholders, not just its
27 value to the Cotter family as controlling shareholders.

Threatened Termination and Termination

11. Late in the day on May 19, 2015, I received from Ellen, as the chairperson of the RDI Board of Directors, an agenda for a supposed special meeting of the RDI board on May 21, 2015, two days later. I learned that the benignly described first item on the agenda, "status of president and CEO," apparently referred to a secret plan of Ellen and Margaret, together with Ed Kane, Guy Adams and Doug McEachern, to vote to remove me as President and CEO of RDI. However, that meeting commenced and concluded without the threatened vote being taken.

12. Next, on or about May 27, 2015, the lawyer representing Ellen and Margaret in the California Trust Action transmitted to my lawyer in that action a document that proposed to resolve the disputes between my sisters and me, including with respect to who would be the trustee of the voting trust and whether Margaret and Ellen would report to me as CEO of RDI. (A true and correct copy of the May 27, 2015 document, which was marked as deposition exhibit 322, is attached hereto as exhibit "A.")

13. On Friday, May 29, 2015, the (supposed) special board meeting of May 21 was to resume. That morning, before the meeting, I met with Ellen and Margaret. At that meeting, they told me that they were unwilling to mediate or to negotiate any of the terms of the May 27 document described above. They also told me that if I did not agree to resolve my disputes with them on the terms set out in that document, that the RDI Board of Directors would vote at the (supposed) meeting that day to terminate me as President and CEO.

14. The (supposed) special board meeting commenced on May 29 and the issue of my termination as President and CEO was the subject. At this (supposed) special meeting, or another, McEachern pressured me to resign as President and CEO. Eventually, the non-Cotter members of the RDI Board of Directors met with my sisters separately from me. Following that, the majority of the non-cotter directors, namely, Messrs. Adams, Kane and McEachern, advised me that the meeting would adjourn temporarily and resume telephonically at 6 p.m. They further advised that, if I had not reached a resolution of disputes between me and my sisters by the time the (supposed) special meeting reconvened telephonically at 6 p.m. that day, they would proceed with the vote to

1 terminate me, meaning that the three of them would vote to terminate me as President and CEO of
2 RDI.

3 15. That afternoon, Ellen and Margaret again refused to mediate and again refused to
4 negotiate. Ultimately, I indicated a willingness to resolve disputes based on the document
5 provided, subject to conferring with counsel. At or about 6 p.m., the (supposed) special RDI board
6 meeting resumed telephonically, at which time Ellen reported to the five non-Cotter directors that
7 we had reached an agreement in principle to resolve our disputes, subject to conferring with
8 respective counsel. Ed Kane congratulated us and made a statement to the effect that he hoped that
9 I was CEO of the Company for 30 years. No vote was taken on my termination.

10 16. On or about June 8, 2015, I communicated to my sisters that I could not agree to
11 the document their lawyer had transmitted to my lawyer on or about June 2, 2015. Ellen called a
12 (supposed) special board meeting for June 12, 2015, at which meeting each of Messrs. Adams,
13 Kane and McEachern made good on their threat to vote to terminate me and did so.

14 **Director Interest and Independence**

15 17. One or more of the defendants' motions for summary judgment claim that SEC
16 filings by RDI describe the non-Cotter directors as "independent," that I signed one or more of
17 those SEC filings and that I therefore admit that those directors are independent for the purposes
18 of this action. That is inaccurate. The term "independent" as used in RDI's SEC filings do not
19 refer to matters of Nevada law. It referred usually to the fact that, pursuant to the terms of the
20 Company's listing agreement with NASDAQ, the stock exchange on which RDI stock trades,
21 directors meet the standard of independence of NASDAQ. None of the director defendants have
22 ever suggested to me that they understood use of the term "independent" in RDI's SEC filings to
23 communicate anything other than that non-Cotter directors were not members of the Cotter family
24 which, in one manner or another, controlled approximately 70% of the voting stock of RDI. As
25 among members of the RDI Board of Directors, the term "independent" was used historically to
26 refer to directors who were not members of the Cotter family.

27 18. Ed Kane was a life-long friend of my father, having met when they were graduate
28 students. Kane was in my father's wedding and was a speaker at my father's funeral. Over my

1 lengthy tenure as a director at RDI, I observed Kane as a director of RDI acting at all times as if
2 his job as a director was to carry out my father's wishes. Kane admitted to me that he was not
3 independent for purposes other than the NASDAQ listing agreement and suggested after I became
4 CEO that the Company would benefit from independent directors knowledgeable about its two
5 principal businesses, cinemas and real estate.

6 19. On the contentious issue between me and my sisters regarding who would be the
7 trustee(s) of the voting trust, Kane communicated to me that his view was that it was my fathers'
8 wishes that Margaret alone be the trustee, and he pressured me to agree to that. At one point in the
9 context of discussions regarding terminating me as President and CEO of RDI, Kane said to me
10 angrily that he thought I "f*##ed Margaret" by the 2014 amendment to my father's trust
11 documentation, which amendment made me a co-trustee with Margaret of the voting trust.

12 20. Kane remains very close with my sisters, who still call him "Uncle Ed" (which I
13 ceased doing after joining RDI). They continue to get together socially, including for family meals
14 during holiday periods, which is what they admittedly did around the Christmas holidays in 2015.

15 21. Guy Adams is a long time friend of my father. After Adams effectively became
16 unemployed, my father attempted to provide him work and income. Eventually, my father through
17 a company he wholly-owned entered into an agreement with Adams to pay Adams \$1000 per
18 month. That company now is part of my father's estate, of which my sisters are executors, such
19 that they are in a position to control whether Adams is paid that money or not. Adams also has
20 carried interests in certain real estate in which my father invested. My sisters as executors of my
21 father's estate are in position to see to it that Adams is or is not paid any monies he is owed on
22 account of those carried interests.

23 22. Prior to on or about May 2015, Adam's financial condition and, more particularly,
24 his dependence on or independence from my sisters, in terms of his financial situation, had not
25 arisen as a subject. When I suspected that Adams had agreed with my sisters to vote to terminate
26 me as President and CEO of RDI, that raised the issue of whether he was financially dependent on
27 them. I now know that he is. I learned from Adams' sworn declarations in his California state
28 court divorce case that almost all of his income comes from RDI and from one or more companies

1 that my sisters control. Adams is not independently wealthy. I asked him about his financial
2 dependence or independence at the (supposed) May 21, 2015 special board meeting, at which time
3 he refused to answer.

4 23. Michael Wrotniak's wife Trisha was Margaret's roommate in her freshman year of
5 college at Georgetown University. Margaret and Trisha have been life-long best friends starting
6 with their first year in college together. Michael also went to Georgetown University where he
7 met his wife Trisha and also developed a very close friendship with Margaret in college. Given
8 that Margaret only has a few friends, her relationship with Trisha and Michael is extremely
9 important. Margaret has spent a lot of time with Michael and his wife over the years, as all three
10 live in metropolitan New York City. Margaret became like an aunt to Trisha and Michael's
11 children. My sister Ellen and mother also know Trisha and Michael very well, and they have all
12 attended social events together in New York, such as birthday and cocktail parties my sister
13 Margaret has hosted at her apartment in New York City. I believe Margaret's oldest child refers to
14 Trisha and Michael as Aunt and Uncle. Michael's communication with me as a director has been
15 very guarded, which I understand to reflect his knowledge of the lawsuit and his close relationship
16 with Margaret.

17 24. Judy Coddling has had a very close personal relationship with my mother for more
18 than thirty years. (Ellen lives with our mother, who has chosen my sisters' side in the disputes
19 between us.) Ms. Coddling has become close with my sisters Ellen and Margaret. On October 13,
20 2015, over breakfast I had with her, she expressed to me that RDI is a family business and that the
21 only people who should manage it should be one of the Cotters and that she would help make sure
22 of that, whether it be Ellen or me. Her reaction to the offer to purchase all of the stock of the
23 Company at a price in excess of what it trades in the market (the "Offer"), first made by
24 correspondence dated on or about May 31, 2015, reflected Ms. Coddling's unwavering loyalty to
25 Ellen. Before the board meeting at which the Board was going to discuss the Offer, she indicated
26 to me that there was no way that the Offer should even be considered (clearly having spoken to
27 Ellen about it before the board meeting).

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

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

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

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

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

3 **The Executive Committee**

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

17 **The Supposed CEO Search**

18 30. When RDI filed a Form 8-K with the SEC and issued a press release announcing
19 the termination of me as President and CEO, RDI also announced that it would engage a search
20 firm to conduct the search for a new President and CEO. The board empowered Ellen to select the
21 search firm. Ellen selected Korn Ferry ("KF"). She explained to the RDI Board of Directors the
22 she selected KF because KF offered a proprietary assessment tool, which would be used to assess
23 the three finalists for the position of President and CEO, which assessment she asserted would
24 "de-risk" the search process. The Board agreed. Ellen also told the Board that the three final
25 candidates would be presented to the Board for interviews. The Board agreed. Ellen selected
26 herself, Margaret, Bill Gould and Doug McEachern to be members of the CEO search committee,
27 which the Board accepted without substantive discussion.
28

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

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

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

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

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

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

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

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

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

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

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

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

11 **The Offer**

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

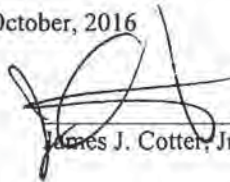
22 40. On or about June 7, 2016, in view of the Offer, I asked Ellen to provide me the
23 Company's business plan. I understood that there was none and her failure to respond confirmed
24 that.

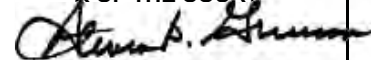
25 41. The Board reconvened on June 23, 2016, regarding the Offer. No materials had
26 been delivered to Board members prior to that meeting. At that meeting, Ellen made an oral
27 presentation regarding the supposed value of the Company. I found it difficult to follow her oral
28 presentation with no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

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

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

15 DATED this 13th day of October, 2016

16 
17 James J. Cotter, Jr.



1 OMSJ

2 MORRIS LAW GROUP

3 Steve Morris, Bar No. 1543

4 Akke Levin, Bar No. 9102

5 411 E. Bonneville Ave., Ste. 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 474-9400

8 Facsimile: (702) 474-9422

9 Email: sm@morrislawgroup.com

10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913

12 Yurko, Salvesen & Remz, P.C.

13 1 Washington Mall, 11th Floor

14 Boston, MA 02108

15 Telephone: (617) 723-6900

16 Facsimile: (617) 723-6905

17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 JAMES J. COTTER, JR.,) Case No. A-15-719860-B

23 derivatively on behalf of Reading) Dept. No. XI

24 International, Inc.,)

25) Coordinated with:

26 Plaintiff,)

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

28) Dept. No. XI

29 MARGARET COTTER, ELLEN)

30 COTTER, GUY ADAMS,) Jointly Administered

31 EDWARD KANE, DOUGLAS)

32 McEACHERN, WILLIAM) PLAINTIFF'S SUPPLEMENTAL

33 GOULD, JUDY CODDING,) OPPOSITION TO MOTION

34 MICHAEL WROTNIAK,) SUMMARY JUDGMENT NOS. 2

35) AND 6 AND GOULD

36 Defendants.) SUMMARY JUDGMENT

37 And) MOTION

38 READING INTERNATIONAL,)

39 INC., a Nevada corporation,) Hearing date: December 11, 2017

40 Nominal Defendant.) Hearing time: 8:30 a.m.

41)

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

1
2 **I. INTRODUCTION¹**

3 Like the Interested Director Defendants' MSJ No. 6 before it,
4 their "Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5
5 and 6" (the "Supplement") largely addresses "straw man" issues and, based
6 thereon, relies on law not relevant to the principal issue raised by the
7 matters discussed, which issue is breaches of the duty of loyalty. Likewise,
8 and contrary to what the Interested Director Defendants assume, most of the
9 matters as framed by their MSJ No. 6 and Supplement are not matters which
10 Plaintiff contends in and of themselves give rise to or constitute breaches of
11 fiduciary duty, as distinct from in conjunction with other matters and as
12 distinct from the manner in which Plaintiff has framed the issues (which of
13 course is Plaintiff's right and obligation).

14 For example, Plaintiff does not contend that the "compensation
15 packages of Ellen and Margaret Cotter" as such give rise to or constitute
16 breaches of fiduciary duty. With respect to those matters, what Plaintiff
17 contends is that: (i) the CEO search process was manipulated and aborted
18 and that EC was made CEO as a result, notwithstanding the fact that she
19 lacked the experience which was agreed to be the *sine qua non* to be RDI's
20 CEO; and that (ii) MC was hired into a critical senior executive position for
21 which she had no prior experience and with respect to which all non-Cotter
22 directors had understood and agreed she was not qualified, both in order to
23 accommodate the wishes of EC and MC as the controlling shareholders.

24
25 _____
26 ¹Plaintiff concurrently is submitting four supplemental oppositions, one
27 with respect to each of so-called Summary Judgment Motion Nos. 1, 3, 5,
28 and 6. Because each addresses issues relating to Summary Judgment
Motion No. 2 and to Gould's separate summary judgment motion, each also
is submitted as a supplemental brief with respect to those motions, as well.

1 Plaintiff does contend that, as framed by Plaintiff, these are matters which
2 give rise to or constitute breaches of fiduciary duty independent of other
3 complained of matters, not solely together with some or all of them.

4 MSJ No. 6 and the supplement do correctly identify the
5 authorization by Adams and Kane of the 100,000 share option as a matter
6 Plaintiff claims gives rise to or constitutes breaches of fiduciary duty in and
7 of itself, not just together with other complained of conduct. However, MSJ
8 No. 6 and the Supplement recast the duty of loyalty issues raised by Adams'
9 and Kane's acts and omissions as merely a duty of care issue, thereby
10 addressing another straw man argument that misses the point and is
11 unavailing.

12 With the foregoing by way of introduction, and for reasons
13 described in Plaintiff's briefs, including herein, the Individual Director
14 Defendants' arguments in MSJ Nos. 2 and 6 and the Supplement are
15 unavailing, and those motions should be denied.

16 **II. SUPPLEMENTAL STATEMENT OF FACTS**

17 **A. The 100,000 Share Option.**

18 As the Court knows well from the record before it, the request
19 by EC and MC as executors of the estate of James J. Cotter, Sr. (the "Estate")
20 to exercise a supposed option to acquire 100,000 shares of RDI Class B
21 voting stock (the "100,000 share option") originally was precipitated in or
22 around April 2015 by concerns that non-Cotter shareholders such as Mark
23 Cuban would launch a proxy contest to acquire control of RDI at a time
24 when EC and MC could not lawfully (under applicable California probate
25 code provisions) vote the Class B voting stock held in the name of the Trust,
26 of which they were only two of three trustees. Defendant Kane identified
27 legal questions, the answers to which would result in him and Adams
28

1 authorizing or not authorizing the requested exercise. Answers were not
2 provided to those questions in the Spring of 2015, and the 2015 annual
3 shareholders meeting ("ASM") was not scheduled and did not occur as it
4 customarily did in or about May or June. Finally, in the Fall of 2015, after
5 the ASM had been scheduled for early November (to comply with the
6 Nevada 18-month rule) and a record date in early October had been set,
7 Adams and Kane were faced with a deadline to provide that voting stock to
8 EC and MC, or not. In late September 2015, Adams and Kane authorized the
9 exercise of the 100,000 share option (so that the books and records of the
10 Company could be changed to reflect ownership by the estate (of which EC
11 and MC were executors) of that voting stock before the record date). The
12 third member of the board audit and conflict committee, director Storey,
13 was not satisfied with the legal advice on which Adams and Kane relied as
14 the sole basis to authorize the exercise of the 100,000 share option, and
15 conveniently was not included in the belatedly called and rushed audit and
16 conflicts committee meeting at which Adams and Kane authorized the
17 exercise.

18 **B. The Aborted CEO Search and the Result, EC as CEO.**

19 Plaintiff respectfully refers the Court to his separate brief which
20 discusses in detail the purported, aborted search for a permanent CEO,
21 which resulted in the CEO search committee of MC, Gould and McEachern
22 selecting EC and presenting her to the full Board, which dutifully agreed.
23

24 **C. Employment of Margaret as EVP RED NY.**

25 MC being employed at RDI, in the position of the senior
26 executive at the Company responsible for development of its valuable New
27 York real estate (referred to as Union Square and Cinemas 1, 2 & 3), had
28 been sought by MC since shortly after Mr. Cotter became CEO. *See*

1 Declaration of Akke Levin ("Levin Decl."), Ex. 1 (Storey 2/10/16 Dep. Tr. at
2 28:3-30:2; 31:5-34:22 and 39:15-42:16) and Exs. 4 through 11 (Deposition
3 Exhibit Nos. 1-6, 109, and 110). However, Mr. Cotter as CEO and all non-
4 Cotter members of the RDI Board agreed that the Company needed a senior
5 executive experienced in real estate, which MC was not, to lead those
6 projects. *Id.* However, those Board members also were of the view that MC
7 could and should be made an employee of the Company, to accommodate
8 her desire to have health benefits. *Id.*

9 This issue came to a head when in or about May 2015, Mr. Cotter
10 as CEO, with the support of senior executives including General Counsel
11 Bill Ellis, concluded that the Company should offer that senior executive
12 position to a particular candidate with substantial real estate experience. *See*
13 Ex. 2 (William Ellis 6/28/16 Dep. Tr. at 128:5-23). MC objected and EC
14 effectively sided with Margaret. *Id.*

15 The issue was soon mooted because Mr. Cotter was terminated
16 and EC as her first act as interim CEO suspended the search for a senior real
17 estate executive, explaining disingenuously that the new permanent CEO
18 should be involved in the decision. *See* Ex. 3 (Ellen Cotter 5/18/16 Dep. Tr.
19 at 212:3-213:9).

20 Less than a year later, MC was given the position she sought, for
21 what she had no prior experience and is unqualified. *See* James J. Cotter, Jr.
22 October 13, 2016 Declaration ¶ 36, Ex. 18 to Supplemental Opposition to MSJ
23 No. 2 and 5, and Gould MSJ (filed concurrently). She also was provided
24 what amounted to a \$200,000 pre-employment bonus, purportedly in
25 consideration of concessions she previously had been willing to make for
26 free to become an employee of the Company and obtain health benefits. *Id.*

1 **D. EC's Gift to Adams.**

2 EC in March 2016, only two months after she had been made
3 permanent CEO, "recommended" that Adams receive an extraordinary
4 bonus of \$50,000, purportedly for extra efforts he had made to be a helpful
5 director. *See* James J. Cotter, Jr. October 13, 2016 Declaration, ¶ 38.
6 Historically, RDI directors typically were paid \$10,000 for providing time
7 and effort above and beyond their ordinary board and committee duties. *Id.*
8 Mr. Cotter, who as a director at the time, did not observe or learn of Adams
9 providing extraordinary service that would warrant a \$50,000 payment,
10 which was a material departure from past practices at the Company. *Id.* His
11 understanding is that Adams was paid \$50,000 for what amounted to
12 exemplary loyalty to EC. *Id.* Consistent with their practices, the non-Cotter
13 members of the Board, as Board members and Board compensation
14 committee members, approved the \$50,000 being paid to Adams. *Id.*

15 As discussed in another brief regarding MSJs Nos. 1 and 2, most
16 and in some years almost all of Adams' income is provided by companies
17 EC and MC control, including RDI. As discussed therein, \$50,000 is a
18 material amount to him.

19 **III. ARGUMENT**

20 **A. The Fiduciary Duties At Issue Here.**

21 Because MSJ No. 6 and the recent "Supplement" construct a
22 "straw man" argument about what is at issue on account of the authorization
23 of the 100,000 share option, the hiring of MC to be EVP RED NY and the
24 payment of \$200,000 to her before she even became an executive employee
25 of RDI, as well as the \$50,000 payment to Adams, this brief summarizes the
26 applicable legal duties before addressing what the evidence shows and what
27 the result therefore must be with respect to MSJ No. 6.
28

1 First, and contrary to what MSJ. No. 6 and the "Supplement"
2 assume, the issues raised by of the authorization of the 100,000 share option,
3 the hiring of MC to be EVP RED NY and the payment of \$200,000 to her
4 before she even became an executive employee of RDI and the \$5000
5 payment to Adams are issues arising from the duty of loyalty. The duty of
6 care therefore is discussed briefly below simply to provide a ready
7 distinction between the two.

8 The duty of care typically is described as requiring directors to
9 act on an informed basis. *Schoen v. SAC Holdings, Corp.*, 137 P.3d 1171, 1178
10 (Nev. 2006). Whether directors acted on an informed basis "turns on
11 whether the directors have informed themselves "prior to making a business
12 decision, of all material information reasonably available to them." *Smith v.*
13 *Van Gorkom*, 488 A. 2d 858, 872 (Del. 1985) (quoting *Aronson v. Lewis*, 473 A.
14 2d 805, 812 (Del. 1984)). Due care thus is a function of the decision-making
15 process, not the decision. *See, e.g., Citron v. Fairchild Camera & Instrument*
16 *Corp.*, 569 A. 2d 53, 66 (Del. 1989). This necessarily raises "[t]he question [of]
17 whether the process employed [in making the challenged decision] was
18 either rational or employed in a good faith effort to advance the corporate
19 interests." *In re Greater Se. Cmty. Hosp. Corp. I*, 353 B.R. 324, 339 (Bankr.
20 D.D.C. 2006).

21 The duty of loyalty requires that directors "maintain, in good
22 faith, the corporation's and its shareholders' best interests over anyone else's
23 interests." *Schoen*, 137 P.3d at 1178 (citations omitted). The duty of loyalty
24 was described in the seminal Delaware Supreme Court case of *Guth v. Loft* as
25 follows:

26 "Corporate officers and directors are not permitted to
27 use their position of trust and confidence to further
28 their private interests. While technically not trustees,
they stand in a fiduciary relation to the corporation
and [to] its shareholders. A public policy, existing

1 through the years, and derived from a profound
2 knowledge of human characteristics and motives,
3 has established a rule that demands of a corporate . .
4 . director, peremptorily and inexorably, the most
5 scrupulous observance of his duty [of loyalty], not
6 only affirmatively to protect the interests of the
7 corporation committed to his charge, but also to
8 refrain from doing anything that would work injury
9 to the corporation [or its shareholders] . . . The rule
10 that requires an undivided and unselfish loyalty to
11 the corporation demands that there shall be no
12 conflict between duty and self-interests."

13 *Guth v. Loft*, 5 A.2d 503, 510 (Del. 1939).

14 The duty of loyalty is "unremitting." See, e.g., *Malone v. Brincat*,
15 722 A.2d 5, 10 (Del. 1998). The duty of good faith is one element of the duty
16 of loyalty. *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006). The concept of good
17 faith is particularly relevant in cases in which there is a "controlling
18 shareholder with a supine or passive board." *In re Walt Disney Co. Derivative*
19 *Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006).

20 **A. The Interested Director Defendants' Arguments Address**
21 **"Straw Man" Issues and Are Unavailing.**

22 First, as a threshold point, several of the matters raised in MSJ
23 No. 6 are not matters which Plaintiff contends in and of themselves give rise
24 to or constitute breaches of fiduciary duty, as distinct from in conjunction
25 with other matters. In particular, Plaintiff does not contend that the
26 "compensation packages of Ellen and Margaret Cotter" as such give rise to
27 or constitute breaches of fiduciary duty. Nor does Plaintiff contend that the
28 "additional compensation to [MC] and Guy Adams" give rise to or constitute
independent breaches of fiduciary duty, at least in the manner the
individual director defendants depict.

As briefed elsewhere, Plaintiff contends that the CEO search
committee members, MC, Gould and McEachern, and then the remaining
director defendants then on the Board, breached their fiduciary duties on
account of the aborted CEO search, not merely the result of hiring EC, who

1 lacked the experience which was agreed to be the *sine qua non* to be RDI's
2 CEO. The point is not the amount of money EC is paid as CEO. The point is
3 how she came to be CEO in spite of the fact that she demonstrably failed to
4 satisfy the critical position criteria, which was as a result of a purposefully
5 manipulated and aborted CEO search as discussed in Plaintiff's
6 Supplemental Opposition to MSJ Nos. 2 and 5. As to her compensation,
7 actions taken subsequently, in 2017, toward tripling her salary to over \$3
8 million, are evidence of the director defendants' ongoing breaches of the
9 duty of loyalty in favor of protecting and perpetuating the control EC and
10 MC exercise over RDI.

11 As to the "compensation package" MC received, presumably
12 meant by the director defendants to include her annual salary and bonus, as
13 well as the \$200,000 she was paid before she even became an executive
14 employee RDI, those matters are not claimed by Plaintiff to give rise to or
15 constitute fiduciary breaches in and of themselves, but rather Plaintiff
16 contends that they reflect categories of waste and/or damages resulting
17 from the breaches of the fiduciary duty of loyalty that resulted in MC being
18 hired for a position for which she had no prior experience and for which she
19 is demonstrably unqualified. (One of plaintiff's experts, Al Nagy, will offer
20 testimony regarding MC's abject lack of experience and qualifications for the
21 position she holds.).

22 As to the \$50,000 paid to Guy Adams, that too is not a
23 compensation issue. Instead, it too is a duty of loyalty issue, at least for EC,
24 whose status as a controlling shareholder and CEO enabled her to
25 effectively cause those monies to be paid, which Plaintiff contends was
26 either a payment for loyalty or a payment for services Adams did not
27 provide as a director, and thereby another category of waste and/or
28 damages.

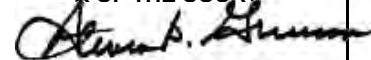
1 With respect to the authorization of the exercise of the 100,000
2 share option by Adams and Kane as members of the Board compensation
3 committee, Plaintiff contends that their actions and omissions give rise to or
4 constitute breaches of the duty of loyalty independent of other actions. In
5 that regard, Plaintiff contends that Adams and Kane improperly authorized
6 the exercise of the 100,000 share option not merely because they did not
7 ascertain whether it was legally owned by the Estate, among other issues,
8 but to the point for present purposes, that Adams and Kane authorized the
9 exercise of the 100,000 share option for the purpose of assisting EC and MC
10 in perpetuating their control of RDI. Of course, that is not a decision made
11 because it was in the interests of RDI and its other shareholders. In that
12 regard, Plaintiff also contends that the consideration provided for the
13 exercise, RDI Class A non-voting shares, was not consideration of value or at
14 least sufficient value to the Company to warrant approval of the exercise,
15 and that the Company incurred losses and/or damages as a result.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO MOTION SUMMARY JUDGMENT NOS. 2 AND 6 AND GOULD SUMMARY JUDGMENT MOTION**, to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 1st day of December, 2017.

By: /s/ PATRICIA FERRUGIA



MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

DECL

MORRIS LAW GROUP

Steve Morris, Bar No. 1543

Akke Levin, Bar No. 9102

411 E. Bonneville Ave., Ste. 360

Las Vegas, Nevada 89101

Telephone: (702) 474-9400

Facsimile: (702) 474-9422

Email: sm@morrislawgroup.com

Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913

Yurko, Salvesen & Remz, P.C.

1 Washington Mall, 11th Floor

Boston, MA 02108

Telephone: (617) 723-6900

Facsimile: (617) 723-6905

Email: mkrum@bizlit.com

Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES J. COTTER, JR.,) Case No. A-15-719860-B

derivatively on behalf of Reading) Dept. No. XI

International, Inc.,)

) Coordinated with:

Plaintiff,)

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

) Dept. No. XI

MARGARET COTTER, ELLEN)

COTTER, GUY ADAMS,) Jointly Administered

EDWARD KANE, DOUGLAS)

McEACHERN, WILLIAM) **DECLARATION OF AKKE**

GOULD, JUDY CODDING,) **LEVIN IN SUPPORT OF**

MICHAEL WROTNIAK,) **PLAINTIFF'S SUPPLEMENTAL**

) **OPPOSITION TO MOTION**

Defendants.) **SUMMARY JUDGMENT NOS. 2**

And) **AND 6 AND GOULD**

) **SUMMARY JUDGMENT**

READING INTERNATIONAL,) **MOTION**

INC., a Nevada corporation,)

Nominal Defendant.)

1 I, Akke Levin, state and declare as follows:

2 1. I am an attorney with Morris Law Group, counsel for
3 Plaintiff James J. Cotter, Jr. I make this declaration based upon personal
4 knowledge, except where stated upon information and belief, and as to that
5 information, I believe it to be true. If called upon to testify as the contents of
6 this declaration, I am legally competent to testify to its contents in a court of
7 law.

8 2. Attached hereto as **Exhibit 1** are true and correct copies of
9 excerpts from the deposition of Timothy Storey, taken on February 12, 2016.

10 3. Attached hereto as **Exhibit 2** is a true and correct copy of
11 excerpts from the deposition transcript of William Ellis, taken on June 28,
12 2016.

13 4. Attached hereto as **Exhibit 3** is a true and correct copy of
14 excerpts the deposition transcript of Ellen Cotter, take on May 18, 2016.

15 5. Attached hereto as **Exhibit 4** is a true and correct copy of
16 the document marked as Deposition Exhibit 1 in this action.

17 6. Attached hereto as **Exhibit 5** is a true and correct copy of
18 the document marked as Deposition Exhibit 2 in this action.

19 7. Attached hereto as **Exhibit 6** is a true and correct copy of
20 the document marked as Deposition Exhibit 3 in this action.

21 8. Attached hereto as **Exhibit 7** is a true and correct copy of
22 document marked as Deposition Exhibit 4 in this action.

23 9. Attached hereto as **Exhibit 8** is a true and correct copy of
24 document marked as Deposition Exhibit 5 in this action.

25 10. Attached hereto as **Exhibit 9** a true and correct copy of
26 document marked as Deposition Exhibit 6 in this action.

27 11. Attached hereto as **Exhibit 10** is a true and correct copy of
28 document marked as Deposition Exhibit 109 in this action.

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

Executed this 1st day of December, 2017.

Akke Levin

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **DECLARATION OF AKKE LEVIN IN SUPPORT OF PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO MOTION SUMMARY JUDGMENT NOS. 2 AND 6 AND GOULD SUMMARY JUDGMENT MOTION** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 1st day of December, 2017.

By: /s/ PATRICIA FERRUGIA

Exhibit 1

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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

Job Number 291961

TIMOTHY STOREY - 02/12/2016

Page 2

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff JAMES J. COTTER, JR.,

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5 BY MARK G. KRUM

6 3993 Howard Hughes Parkway, Suite 600

7 Las Vegas, Nevada 89169-5996

8 Telephone: 702-949-8200

9 Facsimile: 702-949-8398

10 E-mail: Mkrum@lrrc.com

11

12 For Defendants MARGARET COTTER, ELLEN COTTER, DOUGLAS

13 McEACHERN, GUY ADAMS and EDWARD KANE:

14 QUINN EMANUEL URQUHART & SULLIVAN LLP

15 BY MARSHALL M. SEARCY and LAUREN LAIOLO

16 865 South Figueroa Street, 10th Floor

17 Los Angeles, California 90017

18 Telephone: 213-443-3000

19 Facsimile: 213-443-3100

20

21

22

23

24

25

Page 3

1 APPEARANCES OF COUNSEL (Continued):

2

3 For Nominal Defendant GREENBERG & TRAUIG LLP:

4 GREENBERG TRAUIG LLP

5 BY MARK E. FERRARIO

6 1840 Century Park East, Suite 1900

7 Los Angeles, California 90067

8 Telephone: 310-586-7700

9 Facsimile: 310-586-7800

10 E-mail: Ferrario@gtlaw.com

11

12 For Defendants WILLIAM GOULD and TIMOTHY STOREY:

13 BIRD, MARELLA, BOXER, WOLFFERT, NESSIM, DROOKS,

14 LINCENGER & RHOW

15 BY EKWAN E. RHOW

16 1875 Century Park East, 23rd Floor

17 Los Angeles, California 90067-2561

18 Telephone: 310-201-2100

19 Facsimile: 310-201-2110

20 E-mail: Eer@birdmarella.com

21

22

23

24

25

Page 4

1 APPEARANCES OF COUNSEL (Continued):

2

3 Derivatively on behalf of READING INTERNATIONAL, INC.:

4 ROBERTSON & ASSOCIATES, LLP

5 BY ALEXANDER ROBERTSON

6 550 West C Street, Suite 500

7 San Diego, California 92101

8 Telephone: 619-531-7000

9 Facsimile: 619-531-7007

10 E-mail: Arobertson@arobertsonlaw.com

11

12 Also Present:

13 WILLIAM SLOGGATT, Videographer

14 ELLEN COTTER

15 DOUG McEACHERN

16 JAMES J. COTTER, JR.

17

18

19 I N D E X

20 WITNESS: TIMOTHY STOREY

21 EXAMINATION BY: PAGE

22 Mr. Krum 10

23 Mr. Robertson 213

24

25

Page 5

1 E X H I B I T S

2 EXHIBIT DESCRIPTION IDENTIFIED MARKED

3 EXHIBIT 1 Document with production 19 19

4 numbers TS 1289 to 91

5 EXHIBIT 2 Document with production 24 24

6 numbers TS 272 to 274

7 EXHIBIT 3 Document with production 30 30

8 numbers TS 280 and 281

9 EXHIBIT 4 Document with production 33 33

10 numbers TS 462 and 463

11 EXHIBIT 5 Document with production 37 37

12 numbers TS 464 to 467

13 EXHIBIT 6 Document with production 39 39

14 numbers TS 294 and 295

15 EXHIBIT 7 Document with production 49 49

16 number 169

17 EXHIBIT 8 Document with production 50 50

18 numbers TS 157 to 160

19 EXHIBIT 9 Document with production 54 54

20 numbers 1169 and 1170

21 EXHIBIT 10 Document with production 63 63

22 number TS 121

23 EXHIBIT 11 Document with production 73 73

24 numbers TS 246 to 250

25

TIMOTHY STOREY - 02/12/2016

Page 6				Page 7			
1	EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED	1	EXHIBIT	DESCRIPTION
2	EXHIBIT 12	Document with production number WG 69 and 70	77	77	2	EXHIBIT 27	Document with production number TS 409
4	EXHIBIT 13	Document with production numbers TS 1 to 3	78	78	4	EXHIBIT 28	Document with production numbers GA73, 79 and 80
5	EXHIBIT 14	Document with production number TS 726	80	80	5	EXHIBIT 29	Document with production numbers GA 6155 and 56
7	EXHIBIT 15	Document with production number GA 7510	82	82	7	EXHIBIT 30	Document with production number TS 43
8	EXHIBIT 16	Document with production TS 441 and 442	87	87	8	EXHIBIT 31	Document with production number TS 614
9	EXHIBIT 17	Document with production numbers 1099 to 1103	108	108	9	EXHIBIT 32	Document with production numbers TS 615 to 617
10	EXHIBIT 18	Document with production number TS 93	121	121	10	EXHIBIT 33	Document with production number TS 2305
11	EXHIBIT 19	Document with production numbers TS 112 and 113	122	122	11	EXHIBIT 34	Document with production numbers TS 574 to 580
12	EXHIBIT 20	Document with production numbers TS 340 and 341	123	123	12	EXHIBIT 35	Document with production number TS 822
13	EXHIBIT 21	E-mail from Mr. Storey	123	Retained	13	EXHIBIT 36	Document with production numbers TS 857 and 858
14	EXHIBIT 22	Document with production number TS 118	124	124	14	EXHIBIT 37	Document with production numbers TS 843 to 845
15	EXHIBIT 23	Document with production number TS 114 to 116	126	126	15	EXHIBIT 38	Document with production numbers 5081 to 5083
16	EXHIBIT 24	Document with production numbers TS 82 and 83	127	127	16	EXHIBIT 39	Document with production numbers TS 884 to 887
17	EXHIBIT 25	Document with production numbers 363 to 365	130	130	17	EXHIBIT 40	Document with production number TS 915
18	EXHIBIT 26	Document with production numbers TS 761 and 762	142	142	18		
19					19		
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Page 8				Page 9			
1	EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED	1	THE VIDEOGRAPHER: This is the beginning of	
2	EXHIBIT 41	Document with production numbers TS 588 to 590	189	189	2	videotape number 1 in the deposition of Timothy Storey,	
4	EXHIBIT 42	Document with production number TS 474	193	193	3	taken by the plaintiff, in the matter Cotter, Jr. versus	
5	EXHIBIT 43	Document with production numbers TS 523 and 524	194	194	4	Cotter, et al., case number A-15-719860-B, held at 1453	
6	EXHIBIT 44	Document with production numbers TS 741 to 743	197	197	5	Third Street Promenade, Santa Monica, California, on	
7	EXHIBIT 45	Document with production number TS 604	198	198	6	February 12th, 2016, at 9:30 a.m.	
8	EXHIBIT 46	Document with production numbers TS 916 to 919	200	200	7	The court reporter is Teckla Hollins. I am William	
9	EXHIBIT 47	Document with production number TS 697	203	203	8	Sloggatt, the videographer, an employee of Litigation	
10	EXHIBIT 48	Document with production numbers TS 115 and 116	204	204	9	Services, located at 3770 Howard Hughes Parkway,	
11	EXHIBIT 49	Document with production numbers TS 1275 to 1277	235	235	10	Suite 300, Las Vegas, Nevada 86169.	
12	EXHIBIT 50	Document with production numbers TS 1020 to 1024	238	238	11	This deposition is being videotaped at all times	
13	EXHIBIT 51	Document with production numbers TS 1139 to 1140	243	243	12	unless specified to go off the video record.	
14	EXHIBIT 52	Minutes of special nominating committee, dated October 5, 2015	252	252	13	Would all present please identify themselves,	
15					14	beginning with the witness?	
16					15	THE WITNESS: Timothy Storey.	
17					16	MR. RHOW: Ekwan Rhow on behalf of the witness and	
18					17	Bill Gould.	
19					18	MR. FERRARIO: Mark Ferrario for Reading.	
20					19	MR. SEARCY: Marshall Searcy for Ellen Cotter,	
21					20	Margaret Cotter, Doug McEachern, Guy Adams and Ed Kane.	
22					21	And also present today are Ellen Cotter and Doug	
23					22	McEachern.	
24					23	MS. LAIOLO: Lauren Laiolo for Ellen Cotter,	
25					24	Margaret Cotter, Doug McEachern, Guy Adams, Ed Kane.	
					25	MR. ROBERTSON: Alex Robertson for T2 intervening	

Page 26 1 as a listed company. But I think, you know, on the 2 other hand, the board recognized the fact that three of 3 those executives happened to be related, and there was 4 the need to try and provide a forum so that discussions 5 could be had to ameliorate issues between them. 6 Q. What issues were those? 7 A. Well, I think, firstly, there were issues 8 arising out of the family litigation that we've all 9 discussed and raised. 10 And secondly, I think there were just the usual 11 kind of issues that would arise between three senior 12 executives of a company when change was afoot. And, of 13 course, that was exacerbated by the fact that they 14 happened to be related. 15 Q. And by the "family litigation," are you 16 referring to the trust and estate litigation? 17 A. Yes, although I think -- at that stage, I don't 18 think litigation had actually been commenced. But it 19 was, I think, apparent to everybody that there were 20 issues between the three family members that needed 21 ironing out, both in relation to the estate matters, but 22 I see it as executives within the same company. 23 Q. Now, in terms of the issues between the three 24 family members, what issues were those that were 25 apparent?	Page 27 1 A. Well, I think the board, quite purposefully, 2 tried to keep out of issues between the family members. 3 I don't think -- Well, I certainly didn't see it as a 4 matter affecting my position as a director of the 5 company. But, you know, obviously, on the other hand, 6 it was clear that there was some issues between them 7 regarding the will and trust structures that Jim 8 Cotter, Sr. had left. 9 Q. So for how long, if at all, was the board in 10 any respect, in your judgment, successful in staying out 11 of those family issues? 12 MR. SEARCY: Objection. Lacks foundation. 13 MR. RHOW: That's vague. 14 You can answer. 15 THE WITNESS: Well, you are talking about a quite 16 lengthy period of time, so it's a bit difficult to make 17 any kind of judgment. I think that the board did 18 reasonably well to keep out of the family issues for 19 most of the time, but you couldn't ignore the fact that 20 those issues were there. 21 So I think it's fair to say that the board was 22 concentrating on trying to run the company as a listed 23 company, you know, business, and trying to remain 24 outside of the family issues. But as I said, clearly 25 they were there, and clearly they had effect from time
Page 28 1 to time. 2 MR. KRUM: 3 Q. Take a look again at the third page of 4 Plaintiff's Exhibit 2, at the next bullet point that 5 talks about the possible employment position of Margaret 6 Cotter. Do you see that. 7 A. Yes. 8 Q. And it has brackets and a blank. Do you see 9 that? 10 A. I do. 11 Q. And why was that? 12 A. This was part of a document that was being 13 negotiated or discussed between the parties. The CEO at 14 the time had concerns and issues about changing Margaret 15 Cotter's status to an employee, and I guess this was an 16 a document, as I say, as part of the process where I had 17 put some wording down in the hope that we could find a 18 position that was acceptable. 19 Q. What did Margaret Cotter want? 20 MR. SEARCY: Objection. Lacks foundation. 21 MR. KRUM: Well, okay. 22 Q. What was communicated to you by Margaret Cotter 23 or anybody else who described what they said to Margaret 24 Cotter about what she wanted? 25 A. Well, I think the previous Exhibit 1 sets out,	Page 29 1 as I recollect, basically the position. 2 Q. Okay. 3 Which was that she wanted to be an employee of the 4 company? 5 A. Correct. 6 Q. And that she wanted to have responsibility for 7 development of certain properties -- of real estate 8 properties in New York? 9 A. Correct. How do you phrase that was the 10 debate. 11 Q. And explain that, if you would, please. 12 A. Well, just what her role would be in the 13 properties that were to be developed in New York. 14 Q. Is it correct that she wanted to be the senior 15 person in charge of the development of those properties? 16 A. I think that was the case at times. Other 17 times, she recognized that she needed assistance. 18 Q. Did she need assistance? 19 MR. SEARCY: Objection. Vague. 20 MR. RHOW: Calls for speculation. 21 MR. SEARCY: Speculation. 22 THE WITNESS: In my personal view, I think that 23 things would have been better for the company if there 24 were expert assistance there. I think that without 25 that, really -- but, you know, as to Margaret having a

Page 30 1 role, I think it was considered all are around that 2 there was a role available. 3 MR. KRUM: 4 Q. To whom did Margaret want to report, if you 5 know, based on anything she said to you or you 6 understand she said to anybody else? 7 A. Well, again, it was one of the matters in 8 discussion. On the one hand, I think Margaret did not 9 want to report to Jim Cotter, Jr., and wished to report 10 to the board. At other times, I think it was the case 11 that she recognized that Jim Cotter, Jr. was the CEO, 12 and that he was the appropriate person to report to. 13 Q. I'll ask the court reporter to mark as 14 Plaintiff's Exhibit 3, a two-page document bearing 15 production numbers TS 280 and 281. 16 (Whereupon the document referred to is marked by 17 the reporter as EXHIBIT 3 for identification.) 18 MR. KRUM: 19 Q. Mr. Storey, do you recognize Plaintiff's 20 Exhibit 3? 21 A. Yes, I do recognize it. If I can just finish 22 reading it, if I may. 23 Yes. 24 Q. What do you recognize Plaintiff's Exhibit 3 to 25 be?	Page 31 1 A. It's an e-mail from me to the other directors 2 prior to a discussion we were apparently going to have, 3 which I assume was a board meeting, where we were going 4 to talk about the framework. 5 Q. Directing your attention to the last full 6 paragraph on the first page of Plaintiff's Exhibit 3 -- 7 A. This is in parenthesis? 8 Q. Correct. 9 -- and more particularly, Mr. Storey, directing 10 your attention to the last half of that paragraph, 11 starting with the sentence that reads, "It is noted that 12 it is likely that in the new year, the company will 13 employ a director of U.S. real estate who will be a 14 direct report to the CEO," and then it continues to talk 15 about Margaret -- 16 A. Yes. 17 Q. -- having a role. Do you see that? 18 A. Yes. 19 Q. My question, Mr. Storey, is about the last 20 sentence, which reads, quote, "It is noted that the 21 director role will be a major issue, and subject to that 22 regime," closed quote. Do you see that? 23 A. Yes. 24 Q. What did you mean when you wrote that sentence? 25 A. I think if you look at the framework, from
Page 32 1 recollection, there's a definition of major issue, which 2 meant that it had to be referred, I think, to the 3 independent directors. 4 Q. Why was that? 5 A. I think that it was the view of both the 6 board -- if you call it the independent board, to 7 exclude the cause -- the independent board and the CEO 8 that it was appropriate to have a well-qualified person 9 involved in the development of the New York properties. 10 That was clearly a contentious issue, particularly with 11 Margaret, and there was a need to define what the 12 reporting lines and the position would be if such a 13 person was employed. 14 And so that sentence was included in draft to raise 15 what was obviously an issue, so that it was clear to the 16 board, but also clear in discussions with the Cotters, 17 that there would be a director of real estate who would 18 be reporting -- proposed to be reporting to the CEO. 19 Q. I'll ask the reporter to mark as Plaintiff's 20 Exhibit 4, a two-page document bearing production number 21 TS 462 and 463. 22 MR. RHOW: Two pages. 23 THE WITNESS: One page, yeah. 24 MR. RHOW: Is that accurate, by the way? Is the 25 second page redacted or blank?	Page 33 1 MR. KRUM: Well, I don't know is the answer. My 2 surmise, having reviewed a lot of documents, is that 3 it's blank. It's typically -- There are a lot of pages 4 that are stamped "Redacted." 5 MR. RHOW: That's fine. 6 MR. KRUM: It's yours, so ultimately you'll have to 7 check and confirm that. 8 (Whereupon the document referred to is marked by 9 the reporter as EXHIBIT 4 for identification.) 10 MR. KRUM: 11 Q. Mr. Storey, do you recognize Plaintiff's 12 Exhibit 4? 13 MR. FERRARIO: Summising it's blank. 14 THE WITNESS: I do. 15 MR. KRUM: 16 Q. What do you recognize Plaintiff's Exhibit 4 to 17 be? 18 A. This is Bill Gold sending to the independent 19 board an e-mail that he's received from James 20 Cotter, Jr., regarding Margaret's position. It refers 21 to further some further correspondence which doesn't 22 appear to be attached. 23 Q. So do you recall that, in January of 2015, 24 Margaret had taken the position that she wanted to lead 25 the development of the two real estate projects in

Page 34 1 New York? 2 MR. SEARCY: Objection. Vague. 3 THE WITNESS: Margaret clearly, and understandably, 4 wanted to lead those two projects. She had been 5 involved with them for some time. But, as I said, it 6 was -- the board, the independent board, and the CEO 7 were of the view that it needed to be a highly-qualified 8 and experienced person involved and leading that. But, 9 of course, there was the desire as well to see -- by all 10 parties, I think, to see how Margaret could be 11 accommodated. 12 MR. KRUM: 13 Q. Why? 14 A. Well, I think for two reasons. One is that 15 Margaret had been -- in one of her capacities, had been 16 involved with the project for some time. But, of 17 course, they were coming to a different phase. 18 And secondly, I think it was also desired not to 19 let the family issues affect the operation of the 20 business, and so I think we were looking for a 21 compromise, a proper position that wouldn't be the case, 22 that wouldn't affect the operation of the business. 23 Q. What was your understanding, at or about the 24 time of Plaintiff's Exhibit 4, as to the personal 25 professional dynamic between James Cotter, Jr. on the	Page 35 1 one hand and Margaret Cotter on the other? 2 MR. SEARCY: Objection. Vague. 3 THE WITNESS: I think all three of the Cotters -- 4 the board and all three of the Cotters were trying to 5 operate the business in a way that it wasn't affected by 6 the family issues, which is appropriate. But, of 7 course, from time to time, things flared up, and there 8 was -- there were difficulties between particularly Jim 9 and Margaret around how things should happen going 10 forward. 11 MR. KRUM: 12 Q. When you say how things should happen going 13 forward, are you referring to the subject about which 14 you've already testified, namely Margaret's role in the 15 real estate developments? 16 MR. SEARCY: Objection. Vague. 17 THE WITNESS: Do you know what the objection was? 18 MR. KRUM: The court reporter -- The court reporter 19 didn't hear you. 20 THE WITNESS: Can you repeat the question? 21 MR. KRUM: Sure. 22 Q. When you mention in your prior answer about how 23 things should happen going forward, were you referring 24 to the subject of Margaret's role in the real estate 25 development projects?
Page 36 1 A. I think for Margaret, that was the predominant 2 issue at the time, but there were other issues, I'm 3 sure. 4 Q. What other issues do you recall? 5 A. At an earlier time, maybe then Margaret was 6 keen to be involved more in more detail in the operation 7 of the business overall. She was keen -- or had and was 8 keen to continue to attend various management meetings. 9 In recollection in particular, the management of the 10 Australian assets. 11 So there was one view that she was an executive who 12 had no involvement in that side of the business, and 13 therefore shouldn't be attending, which was a view Jim 14 Cotter, Jr. advocated, understanding he was the CEO. 15 And that was balanced by Margaret's view that she should 16 have the opportunity to attend. 17 Q. Margaret had had no prior involvement in those 18 business operations; correct? 19 A. I don't recollect that. I think, from memory, 20 she had been to some meetings, I've been told. But I 21 don't think she had any extensive involvement in the 22 Australia operations. 23 Q. I'll ask the court reporter to mark as 24 Plaintiff's Exhibit 5, a document bearing production 25 number TS 464 through 467.	Page 37 1 (Whereupon the document referred to is marked by 2 the reporter as EXHIBIT 5 for identification.) 3 MR. RHOW: Mark, so it is consecutive Bates 4 numbering between P 4, P 5. And again, it is our 5 production, but I just want to make sure. Do you know 6 if from other documents produced by other parties -- if 7 P 5 is the attachment to P 4? 8 MR. KRUM: I believe that it is. 9 MR. RHOW: Okay. 10 THE WITNESS: So P 4 is the one we said we didn't 11 know? 12 MR. RHOW: P 4 is where you said attached are 13 e-mails between Margaret and Jim which reflect the 14 current relationship. And P 5 -- and I'm not saying 15 anything that's not in the document, but you're not an 16 addressee of the document. So I'm just speculating, 17 since I don't know for sure, that these are the -- P 5 18 are the e-mails attached to P 4. 19 MR. KRUM: I think that's correct, and that's why 20 I've -- 21 MR. RHOW: Done in it that manner. 22 MR. KRUM: -- done it this way. 23 Let me just go through it, and we'll see what we 24 can cover. 25 Q. Mr. Storey, have you ever seen Plaintiff's

Page 38 1 Exhibit 5 previously? 2 A. Given it's addressed to me in places, I assume 3 so. Just can I finish the reading? 4 Q. Certainly. 5 Let me know when you've reviewed it to your 6 satisfaction, Mr. Storey. 7 A. Uh-huh -- Yes, I've read to my satisfaction. 8 Q. Okay. 9 Do you recall if Plaintiff's Exhibit 5 was one of 10 the attachments to Plaintiff's Exhibit 4? 11 A. I think it's most likely, yes. 12 Q. Okay. 13 And do you recall -- Well, did you review 14 Plaintiff's Exhibit 5 on or about the date of 15 Plaintiff's Exhibit 4? 16 A. I would assume so, yes. 17 Q. And do you recall -- Let me ask it differently. 18 Directing your attention to the bottom of the second 19 page, and the top of the third page of Plaintiff's 20 Exhibit 5, in particular to the e-mail exchange between 21 Margaret Cotter and Jim Cotter, Jr. about the two real 22 estate development projects in New York, first you see 23 what it says; correct? 24 A. Yes. 25 Q. Does that comport with your recollection that	Page 39 1 there was -- as of January 2015, there remained a 2 disagreement between Margaret -- Well, let me rephrase 3 that. 4 Does that comport with your recollection that, in 5 or about January of 2015, Margaret was still insisting 6 that she would be the person running those developments, 7 those real estate developments? 8 A. Yes. 9 MR. SEARCY: Objection. Lacks foundation. Vague 10 and argumentative. 11 MR. KRUM: 12 Q. I'll ask the court reporter to mark as 13 Plaintiff's Exhibit 5, a two-page document -- 14 MR. RHOW: 6, maybe. 15 MR. KRUM: 6. Thank you. That didn't take long. 16 I'll ask the court reporter to mark as Plaintiff's 17 Exhibit 6, a two-page document bearing production 18 numbers TS 294 and 95. 19 (Whereupon the document referred to is marked by 20 the reporter as EXHIBIT 6 for identification.) 21 MR. KRUM: And while Mr. Storey is reviewing it, I 22 will state for the record that it purports to be a 23 March 6th, 2015 e-mail from him to William Gould. 24 Q. As you know, Mr. Storey, the first question is, 25 do you recognize the document? And answer that when
Page 40 1 you're ready to do so. 2 A. Yes, I have read that. 3 Q. Okay. 4 Is this an e-mail that you sent on or about the 5 date it bears, March 6th, 2015? 6 A. Yes. 7 Q. Directing your attention, Mr. Storey, to the 8 middle of the first page, and particularly to the fourth 9 paragraph that begins with the words, "There are clear 10 issues the business needs to address." Do you see that, 11 sir? 12 A. I do. 13 Q. And then do you see beneath that there are five 14 bullet points? 15 A. Yes. 16 Q. In those bullet points, you use the word "we" 17 several times. Do you see that? 18 A. Yes. 19 Q. To whom does the "we" refer? 20 A. All independent board members. 21 Q. Okay. And -- 22 MR. FERRARIO: What did you say? 23 THE WITNESS: All independent board. 24 MR. FERRARIO: All independent board. 25 THE WITNESS: So the board, excluding the Cotters.	Page 41 1 MR. FERRARIO: Got it. 2 MR. KRUM: 3 Q. Did these statements regarding "we" reflect 4 your then present understanding of the view of the 5 independent, meaning the non-Cotter, directors? 6 A. They do. I mean, clearly there was some 7 discussion around these things, but my recollection is 8 that we were all generally on the same page. 9 Q. So there was agreement that Jim, Jr. should 10 remain as CEO as among the five non-Cotter directors? 11 MR. SEARCY: Objection. Lacks foundation. 12 MR. KRUM: 13 Q. Is that correct? 14 A. I think this document was a precursor to that 15 discussion to finalize that. But as I said, my view at 16 the time was that the independent board members all 17 agreed that that was the best course. 18 Q. And likewise, at the time of this document, 19 March 6th, 2015, the five non-Cotter board members also 20 agreed that RDI needed to hire a director of real estate 21 for the purposes of the two real estate developments in 22 New York; correct? 23 MR. SEARCY: Objection. Vague. Lacks foundation. 24 Assumes facts. 25 THE WITNESS: Same qualification as the previous

Page 42 1 answer. 2 MR. KRUM: 3 Q. Now, directing your attention, Mr. Storey, to 4 the third bullet point, the second sentence in that 5 bullet point reads, quote, "We do need to manage or help 6 Jim manage Margaret's expectations and involvement, 7 closed quote." Do you see that? 8 A. I do. 9 Q. And was the point of that that, as of the date 10 of this document, Margaret was still maintaining that 11 she should be the senior person running those real 12 estate development projects? 13 MR. SEARCY: Objection. Vague. 14 THE WITNESS: Yes, she -- with the document, she 15 clearly wanted to be the person running the New York 16 real estate development projects. 17 MR. KRUM: 18 Q. Take a look at the second page of Plaintiff's 19 Exhibit 6, please. You see there's a big black mark 20 there? 21 A. Yes. 22 Q. Take such time as you need to read this to 23 determine the context. My question for you is, what was 24 the subject matter of that text? 25 A. The black --	Page 43 1 Q. Yeah, not what does it say, not the substance. 2 Just what was the subject matter? 3 A. I don't know. 4 Q. Okay. 5 Do you recall whether by March 6th, 2015, Ellen and 6 Margaret had commenced a lawsuit in California superior 7 court? 8 A. Well, I'm sure that can be clarified for me. I 9 think that probably is the case. I think they commenced 10 it in February, but whether that -- 11 What do you call it, "dedactions"? 12 MR. RHOW: Redactions. 13 THE WITNESS -- whether that redaction related to 14 that. I don't know. 15 MR. KRUM: 16 Q. Were there discussions as among the five 17 non-Cotter directors of the potential effects on the 18 company of that lawsuit? 19 MR. SEARCY: Objection. Vague. 20 THE WITNESS: I think the directors were well -- 21 particularly by this stage, were well aware of the 22 issues, and that the issue was there. I think the 23 independent directors were very clear in their mind that 24 we really -- it was none of our business and it really 25 wasn't a matter of assisting, considering the governance
Page 44 1 of the company. As I said previously, obviously there 2 was an issue between them which we didn't want to affect 3 the company. 4 MR. KRUM: 5 Q. When you say that the independent directors 6 were well aware of the issues, what were those issues? 7 A. Well -- Well, I should rephrase that. I think 8 the independent directors were aware of the fact that 9 the proceedings had been issued, and that there were 10 significant matters between the three Cotters. But as 11 to the specifics of it, I don't -- certainly, I didn't 12 have any particular knowledge of it. 13 Q. Well, did there come a time, Mr. Storey, when 14 you learned and were told that one of the issues in that 15 litigation had to do with whether Margaret and Jim, Jr. 16 would be trustees of the voting trust or whether 17 Margaret alone would be the trustee? 18 A. Yes -- 19 Q. What do you recall -- 20 A. -- in some stage. 21 Q. What do you recall about when you first learned 22 that and how you first learned that? 23 A. I was aware in very general terms that there 24 had been a change made, I think, before the 2014 25 amendment was made, and that there were issues around	Page 45 1 whether that 2014 amendment had been made properly or 2 not. 3 Q. And what did the -- What was your understanding 4 as to what the 2014 amendment provided in terms of who 5 would be trustees of the voting trust that would vote 6 RDI class B stock? 7 A. I think it was -- 8 MR. SEARCY: Objection. Lacks foundation. 9 THE WITNESS: It all seemed very complex. And, 10 frankly, I didn't want to get into it because I didn't 11 see it as any of my business. But as I understood it, 12 there was a debate as to who would control the voting 13 stock, or who would vote. As I recollect, on the one 14 hand, Margaret Cotter could, as I understand it, under 15 the 2013 provision. And under the 2014 provision, there 16 was some process where the stock could change yearly 17 between Margaret and Jim. 18 MR. KRUM: 19 Q. What's your best recollection, Mr. Storey, as 20 to when you first learned about what you just described? 21 A. I would say early 2015, late 2014. 22 Q. Do you recall how you first learned what you 23 first learned? 24 A. No, but I was in reasonable regular discussions 25 with both Jim and Ellen and, to a degree, Margaret.

Exhibit 2

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF WILLIAM D. ELLIS
TAKEN ON JUNE 28, 2016

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

Page 126 1 copy to Jim Cotter, Jr. The subject is Randy Boggan 2 resume. 3 Let me know when you've reviewed that? 4 A. I have. 5 Q. Do you recognize Exhibit 354? 6 A. Yes. 7 Q. Is this an email that you sent 8 transmitting Randy Boggan's resume -- 9 A. Yes. 10 Q. -- on March 17, 2015? 11 A. Yes. 12 Q. And you knew Mr. Boggan, right? 13 A. Yes. 14 Q. How? 15 A. We worked on Lehman Brothers together 16 for about 20 years. 17 Q. And his resume speaks for itself, but in 18 your own words how would you describe his real 19 estate development experience? 20 A. I think he is highly qualified, diverse 21 background, a very good candidate for what Reading 22 needed. 23 Q. And was his experience in construction 24 and development or asset management and leasing or 25 some experience in each of those areas?	Page 127 1 A. Some experience in each, more -- better 2 rounded than the other folks we had talked to. 3 Q. Your email on the first page of 4 Exhibit 354 reads in part as follows: 5 "His attached resume shows more 6 C.F.O. type experience, but it has 7 all been for real estate companies. 8 And he prepared this for the C.F.O. 9 market. We originally considered 10 him for the C.F.O. position, but he 11 lacks public company experience." 12 All that was accurate, right? 13 A. Correct. 14 Q. What happened to Mr. Boggan's candidacy 15 to become the director of real estate at RDI? 16 A. They hired him on as a consultant 17 instead. He works there right now as a consultant 18 and has been there for over a year. 19 Q. That happened after the director of real 20 estate search was suspended, correct? 21 A. That is true, yes. I think that's -- 22 I'm not sure the exact time, but that sounds right. 23 Q. Do you know the scope of the 24 responsibilities he was hired to handle as a 25 consultant?
Page 128 1 A. Most things involving real estate from 2 the business side. He deals with leases and 3 landlords and tenants and asset management, just 4 about everything. 5 Q. At some point a candidate by the name of 6 Jon Genovese was considered for the position of 7 director of real estate at RDI, right? 8 A. Yes. 9 Q. What was the nature of his experience, 10 if you recall? 11 A. He was more on the developer/leasing 12 side. I believe he could build things and lease 13 them out. He worked for Westfield. 14 Q. Did you make any recommendations 15 regarding whether RDI should hire him as director of 16 real estate? 17 A. I recommended that they hire him. 18 Q. What happened? 19 A. I'm sorry? 20 Q. What happened? 21 A. Jim wanted to hire him and apparently 22 Ellen and Margaret did not, so it did not go 23 forward. 24 Q. What discussions, if any, did you have 25 with Ellen and/or Margaret about Jon Genovese?	Page 129 1 A. I don't -- I don't recall talking to 2 Margaret, because she was really in New York a lot 3 at this time. Ellen didn't -- I -- I'm a little 4 vague. 5 Ellen and Margaret had heard some kind 6 of rumors about something with him that spooked them 7 a bit about his background or something with 8 Westfield. I never saw anything really in writing 9 or anything that resonated with me. Something about 10 how he departed under bad terms or something. I'm a 11 little rusty on that. 12 But it sounded like scuttlebutt to me. 13 And I -- I don't think it changed my mind. 14 MR. KRUM: I'll ask the court reporter 15 to mark next in order a document bearing production 16 number RDI43965 and 66. 17 THE REPORTER: Exhibit 355. 18 (Whereupon the document referred 19 to was marked Plaintiffs' 20 Exhibit 355 by the Certified 21 Shorthand Reporter and is attached 22 hereto.) 23 THE WITNESS: Thank you. 24 BY MR. KRUM: 25 Q. Mr. Ellis, you've been provided

Exhibit 3

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF ELLEN COTTER
TAKEN ON MAY 18, 2016
VOLUME 1

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

Page 210 1 A. I don't know if I responded in an email 2 or in writing. 3 Q. Did you respond orally? 4 A. I don't remember. 5 Q. So as you sit here today you don't 6 recall whether you responded? 7 A. I don't. 8 MR. KRUM: I'll ask the court reporter 9 to mark as Exhibit 204 a May 19 email from Jim 10 Cotter, Jr., to other members of the RDI board of 11 directors. The subject is director of real estate 12 confidential. The document bears production numbers 13 MC11461 and 62. 14 (Whereupon the document referred 15 to was marked Plaintiffs' 16 Exhibit 204 by the Certified 17 Shorthand Reporter and is attached 18 hereto.) 19 THE WITNESS: Yep. 20 BY MR. KRUM: 21 Q. Do you recognize Exhibit 204? 22 A. I do. 23 Q. Did you receive Exhibit 204 on May 19th? 24 A. I assume I did. 25 Q. Do you see that four paragraphs from the	Page 211 1 bottom of the first page of Exhibit 204 Jim Cotter, 2 Jr., reports that Korn Ferry doubled up the 3 reference check on Jon and came back with uniformly 4 favorable references? 5 A. I see that. 6 Q. Is that what you were referencing in 7 your testimony earlier about Korn Ferry following 8 through on the -- the report that Bob Smerling 9 forwarded from somebody else? 10 A. Yes. 11 Q. And you see that in the first paragraph 12 at the top of the second page of Exhibit 204 there's 13 a reference to the prior Bob Smerling report? 14 A. Yes. 15 Q. Did you respond to Exhibit 204? 16 A. I'm not sure if I did or not. 17 Q. As you sit here today what reason, if 18 any, can you recall for having not responded to 204, 19 Exhibit 204, orally or in writing, and communicating 20 approval -- your approval to offer Jon Genovese the 21 position of director of real estate -- U.S. real 22 estate at RDI? 23 MR. SEARCY: Objection. Assumes facts, 24 vague. 25 THE WITNESS: I don't recall why I
Page 212 1 didn't respond to this. 2 BY MR. KRUM: 3 Q. Well, you ultimately decided not to 4 offer that position to Mr. Genovese, correct? 5 A. What are you referring to? When I 6 became interim C.E.O.? 7 Q. Yes. 8 A. When I became interim C.E.O., hiring a 9 director of real estate was not the most important 10 thing on my agenda. I wanted to make sure that the 11 company was continuing to run smoothly. And we were 12 going to reach out to a search firm which ultimately 13 became Korn Ferry. 14 And so if we were going to be hiring a 15 new C.E.O., this position would have been important. 16 And I wanted whoever the C.E.O. was to have the 17 opportunity to hire somebody that they wanted to 18 have in that role. 19 Q. So you concluded that it was not 20 important for RDI to have a director of real estate 21 with experience of the sort that Jon Genovese 22 possessed -- 23 A. No. 24 Q. -- on or about June 12 of 2015, right? 25 MR. SEARCY: Objection. Argumentative,	Page 213 1 misstates testimony. 2 THE WITNESS: No. What I said was when 3 I became the interim C.E.O., this -- hiring Jon 4 Genovese did not need to be dealt with at that 5 moment. Transitioning the company and making sure 6 that the operations were dealt with was important. 7 And if we were going to hire a new C.E.O., I wanted 8 to make sure that this role was hired by the new 9 C.E.O. 10 BY MR. KRUM: 11 Q. Well, you already testified that the 12 work -- such predevelopment work and any development 13 work with respect to Union Square and 14 Cinemas 1, 2 & 3 was not put on hold when you became 15 interim C.E.O., right? 16 MR. SEARCY: Objection. Lacks 17 foundation. It's also argumentative. 18 THE WITNESS: It was not put on hold. 19 BY MR. KRUM: 20 Q. And in the middle of August 2015, two 21 months after you become interim C.E.O. and Korn 22 Ferry had not even finalized search criteria for the 23 C.E.O. search, did you have any conversations with 24 anybody regarding whether the decision to not hire a 25 director of real estate should be revisited?

Exhibit 4

Filed Under Seal

Exhibit 5

Filed Under Seal

Exhibit 6

Filed Under Seal

Exhibit 7

Filed Under Seal

Exhibit 8

Filed Under Seal

Exhibit 9

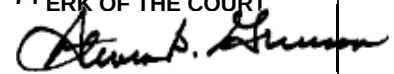
Filed Under Seal

Exhibit 10

Filed Under Seal

Exhibit 11

Filed Under Seal



OMS
Steve Morris (BN 1543)
Akke Levin (BN 9102)
Morris Law Group
411 E. Bonneville Ave., Ste. 360
Las Vegas, NV 89101

Mark G. Krum (BN 10913)
Yurko, Salvesen & Remz, P.C.
One Washington Mall, 11th Floor
Boston, MA 02108
Tel: 617-723-6900
Fax: 617-723-6905
E-mail: mkrum@bizlit.com

Attorneys for plaintiff
James J. Cotter

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, ELLEN COTTER,
GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, WILLIAM GOULD, JUDY
CODDING, MICHAEL WROTONIAK 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-14-0824-42-E
Dept. No. XI

Jointly Administered

**PLAINTIFF JAMES COTTER, JR.'S
SUPPLEMENTAL OPPOSITION TO
SO-CALLED SUMMARY
JUDGMENT MOTION NOS. 2 AND 3
AND GOULD SUMMARY
JUDGMENT MOTION**

1 **I. INTRODUCTION**

2 As the Court knows, plaintiff James J. Cotter Jr. (“Plaintiff” or “Mr. Cotter”) has made claims
3 for (i) breach of the duty of care, (ii) breach of the duty of loyalty, (iii) breach of the duty of candor and
4 (iv) aiding and abetting fiduciary breaches in his pending Second Amended Complaint (the “SAC”).¹

5 Acts and omissions on the part of the individual director defendants that give rise to the
6 foregoing claims include the following:

- 7 • The threat by Adams, Kane and McEachern to terminate Plaintiff if he did not resolve
8 trust disputes with his sisters on terms satisfactory to them (which included giving EC and
9 MC control of RDI) (which also is asserted to independently give rise to or constitute
10 breaches of fiduciary duties)
- 11 • Termination of Plaintiff by them when he failed to acquiesce (after choosing not to
12 terminate him when they understood that he had acquiesced) (which also is asserted to
13 independently give rise to or constitute breaches of fiduciary duties)
- 14 • Adams and Kane authorizing exercise of the 100,000 share option to protect EC and MC’s
15 control of RDI from a possible proxy contest by non-Cotter shareholders (which also is
16 asserted to independently give rise to or constitute breaches of fiduciary duties)
- 17 • McEachern, Adams and Kane forcing director Tim Storey to “retire” to accommodate EC
18 and MC as controlling shareholders
- 19 • Adding Coddington and Wrotniak, neither of whom has any relevant experience and both of
20 whom are close family friends, to the RDI Board of directors (the “Board”), to
21 accommodate EC and MC as controlling shareholders
- 22 • MC, McEachern and Gould aborting the CEO search and selecting EC, who lacked the
23 most critical qualifications sought in a CEO of RDI, to which the other director defendants
24 readily agreed in order to accommodate EC and MC as controlling shareholders (which
25 also is asserted to independently give rise to or constitute breaches of fiduciary duties)

26

27 ¹Plaintiff concurrently is submitting four supplemental oppositions, one with respect to each of so called Summary
28 Judgment Motion Nos. 1, 3 5 and 6. Because each addresses issues relating to Summary Judgment motion No. 2 and
 to Gould’s separate summary judgment motion, each also is submitted as a supplemental brief with respect to those
 motions, as well.

- Hiring MC as EVP RED NY, even though she had no prior experience for such a position, which is of vital importance to the Company and its prospects, to accommodate EC and MC as controlling shareholders (which also is asserted to independently give rise to or constitute breaches of fiduciary duties)
- Responding to the Patton Vision offer(s) in a manner intended to satisfy the wishes and protect the interests of EC and MC controlling shareholders (which also is asserted to independently give rise to or constitute breaches of fiduciary duties)

As the Court understands, all of the foregoing acts and omissions must be considered in determining whether any particular complained of act or omission, or some combination of some or all them, entails or constitutes one or more breaches of fiduciary duties. Thus, and contrary to the manner in which Defendants have attempted to artificially frame the issues for the purposes of their so-called summary judgment motions, none of the individual sets of acts or omissions (which themselves are mischaracterized in the “Supplement To Motions For Partial Summary Judgment Nos. 1, 2, 3, 5 and 6” (the “Supplement”)) are properly viewed in the evidentiary vacuum Defendants assume. That said, for the reasons demonstrated previously and in this and Plaintiff’s other supplemental Oppositions to the so-called summary judgment motions, which in reality are premature briefing regarding special interrogatories to the jury, Plaintiff has raised disputed material facts which, at a minimum, require denial of the pending motions, including with respect to the response of the director defendants to the Patton Vision offer(s), which is the focus of this brief.

II. PROCEDURAL HISTORY AND STATEMENT OF FACTS

A. What the Individual Director Defendants Did and Failed to Do in Response to the Offer

1. The May 31, 2016 Offer

On or about May 31, 2016, Patton Vision and certain other companies (the “Offerors”) made a written offer to purchase all of the outstanding stock of RDI at a price of \$17 per share, subject to due diligence (the “Offer”). (Ex. 3, Email from Paul Heth to Ellen Cotter dated May 31,

1 2016 with letter dated May 31, 2016 attached). The Offer represented a 33% premium over the
2 price at which RDI (class A) stock was trading at that time. (Id.)

3 4 **2. The June 2, 2016 Board Meeting**

5 At a previously scheduled Board meeting on June 2, 2016, the RDI Board briefly
6 addressed the Offer, concluding as follows:

- 7 • RDI management should “prepare background information” to enable Board members
8 to determine “whether it would be in the best interests of the Company and its
9 stockholders to continue with its current business plan as an independent company or
10 to consider a process that could include negotiations regarding the [Offer].”
- 11 • “It would not be cost effective at this point in time for the Company to ... retain[]
12 outside financial advisors...”
- 13 • **“Inquiry should be made of the controlling stockholders as to their view of the
14 [Offer]: would they support the pursuit of the [Offer] at the current time”**
- 15 • Ellen Cotter should respond to the May 29 letter, acknowledging receipt and advising
16 that the Board will address it later in June.

17 (See Ex. 4, (June 2, 2016 RDI Board minutes) at p.4.) (Emphasis supplied.)

18 What the minutes of the June 2, 2016 board meeting makes clear is that, at the very outset,
19 the non-Cotter directors (and Gould in particular) wanted to know whether Ellen and Margaret
20 Cotter as controlling shareholders " would... support the pursuit of the [Offer]." D. (Id.)

21 **3. The Time Between the June 2 and June 23 Board Meetings**

22 After the June 2, 2016 board meeting and prior to June 23, 2016 board meeting, Mr.
23 Cotter requested that management provide RDI directors with any business plan in advance of the
24 June 23 meeting. (Ex. 5, Email from James Cotter to Ellen Cotter dated June 7, 2017.) He
25 received no response that email.

26 Prior to the June 23 board meeting, the only communications with the Offerors was the
27 May 29 letter and an abbreviated telephone call received without knowing the purpose of it. (Ex.
28 3, p. 1.)

1 After the June 2 Board meeting and prior to the June 23 Board meeting, RDI management
2 at the direction of EC provided no materials whatsoever to Board members to review in
3 anticipation of discussing the Offer on June 23. (See Ex. 6 (Minutes of the Meeting of the Board
4 of Directors of Reading International, Inc. June 23, 2016)). Between June 2 and June 23, no
5 Board member did anything to inform themselves about the Offer, the Offerors or the Company.
6 For that reason, the Individual Director Defendants cite to no evidence in their Motion that they
7 did anything to inform themselves in connection with the Offer prior to the next Board meeting.
8 That is because they did nothing. Nothing.

10 **4. The June 23, 2017 Board Meeting**

11 The RDI Board convened a telephonic board meeting on June 23, 2016, at which time the
12 Offer was discussed. (See Ex. 6.) No materials were distributed to individual RDI board members
13 prior to and in connection with the June 23 board meeting. (*Id.* at page 2.) The meeting was
14 telephonic, not in person, and lasted less than an hour and a half. (*Id.* at pp. 1 and 14.)

15 Mr. Cotter stated that Board members should have been provided written materials in
16 advance of the Board meeting and that no decision should be made in the absence of a business
17 plan approved by the Board. (*Id.* at p. 2.) Ellen Cotter responded that the Board had been provided
18 (not approved) a preliminary business plan in February 2016. (*Id.*)¹ In fact, at February 2016
19 Board meeting, Ellen Cotter had shown a PowerPoint presentation, but not provided it to the
20 Board beforehand or even at that February 2016 Board meeting. (See section II.A.5 below.) The
21 Minutes of the February 18, 2016 meeting state that Ellen Cotter called the PowerPoint
22 presentation a “work in progress...intended to provide the Board with an overview[,]” and “she
23 further advised the Board that no action on the part of the Board was being requested by
24 Management [because] the [Powerpoint] [p]resentation was totally informational...” (Ex. ,
25 Minutes of the Board of Directors of Reading International Inc. February 18, 2016.)

26 At the June 23 board meeting, Ellen Cotter framed the question or decision before the
27 Board as whether:

- 28 • “to commence a process to further evaluate [the Offer]; or

- “determine to continue to pursue our current strategy as an independent company, which in the opinion of Management, over the long term, be in the best interest of the company and its stockholders.”

(See Ex. 6 at pp. 3-4.)

Although the management presentation made and led by Ellen Cotter at the June 23 Board meeting acknowledged that RDI class A stock closed at \$12.14 per share the day prior, as compared to the Offer price of \$17 per share (which was subject to revision based on due diligence, including upward), she concluded that \$17 per share was woefully inadequate. The explanation for that conclusion was that the management team led by Ellen Cotter had valued the cash flow of RDI’s cinema businesses at a multiple of 7 to 10 times the cash flow, resulting in a value in the range of [REDACTED] added to that amount to the Company’s real estate holdings at their collective appraised value of approximately [REDACTED] (Ex. 6, pages 6-11) and subtracted what she described as the Company’s outstanding debt of [REDACTED] creating a supposed total “asset value” in the range of [REDACTED]

As to the real estate assets, Ellen Cotter’s presentation provided no indication as to which if any of those properties were properties they thought could be sold or developed and sold over any particular period of time. (*Id.*) Instead, the management team at Ellen Cotter’s direction merely used appraised values, some of which admittedly were dated, and implied that all of the properties were then salable at the appraised values, in order to reach the so-called “asset value” of the real estate owned by the Company. (*Id.*)

Ellen Cotter during her oral presentation also acknowledged that the Company then had approximately [REDACTED] in debt. (*Id.* at page 11.) [REDACTED]
[REDACTED]
[REDACTED] (See Ex. 4 (Minutes of the Meeting of the Board of Directors of Reading International Inc. June 2, 2016) at p.8.)

Ellen Cotter concluded that the Offer placed a value of less than \$400 million on the Company and “is woefully inadequate” based on the presentation described above. (*Id.* at page 11.)

1 The June 23 Board meeting minutes reflect that no individual director defendant observed
2 that management's analysis and conclusion was largely if not entirely based upon the appraised
3 value of real estate holdings. (*Id.*) Likewise, none observed that, if the Company's then
4 outstanding debt [REDACTED]
5 [REDACTED] were subtracted from the value of
6 the cinema operations using the lowest multiple management suggested, that would give RDI a
7 value of only [REDACTED], plus the actual value of its real estate assets. As to the range of
8 multiples used, McEachern testified that it should start with 6, not 7, which would produce a
9 value of the Company's cinema business of [REDACTED]. (McEachern Dep. Tr. at 552:2 19.)
10 Thus, merely valuing the real estate assets at 50% of the value ascribed to them by management
11 would result in the offer reflecting full value of the Company. (*Id.* at pages 6-11.) [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 After Ellen Cotter's presentation, attorney Craig Tompkins explained "the corporate
16 structure of the Company and the practical implications of that structure on a sale of the Company
17 or its assets." (*Id.* at pages 3 and 11.) In other words, he explained that no change of control could
18 occur, and as a practical matter the Board could not agree to pursue the Offer or any offer,
19 without the agreement of Ellen and Margaret Cotter, because Ellen and Margaret Cotter
20 controlled a majority of the voting stock of the Company.

21 Next, one or more individual director defendants asked questions. According to the June
22 23 board minute meetings:

23 "Several directors asked Ellen Cotter, Margaret Cotter and James J. Cotter
24 Jr. as to their views on the [Offer] from their point of view as stockholders,
25 [Ellen and Margaret Cotter as] co-executors of the Cotter Estate and [all
three] as trustees of the Cotter Trust, as applicable."

26 (*Id.* at page 11.) (Emphasis supplied.)
27
28

1 According to the minutes of the June 23 board meeting, the director defendants discussed
2 the Company's (supposed) business plan, the "potentially adverse impact [of pursuit of a change
3 of control transaction] on [unidentified] executive morale," "the nonbinding and contingent
4 nature of the [Offer]," "[t]he woefully inadequate price specified in the [Offer]" and:

5 **"[t]he opposition of certain controlling stockholders [Ellen Cotter and**
6 **Margaret Cotter,] to a change of control transaction at this time..."**

7 (*Id.* at p.12.) (Emphasis supplied.)

8 After the foregoing discussion, the Board resolved as follows:

9
10 "... The Board of Directors believes, based on management's presentation, its own
11 familiarity with the Company, its assets, operations and opportunities... that the interests of the
12 Company and its stockholders would be best served by the continued independence of the
Company,

13 "... The Board of Directors believes that the value proposed for the Company in the
14 [Offer] was woefully inadequate,

15 **"... The Board of Directors does not believe that a change of control transaction**
16 **would be supported by the Company's controlling stockholder, and**

17 "... Based on all of the above, the Board of Directors strongly believes that
18 transaction described in the [Offer] is not in the best interest of the Company or its stockholders[.]"

19 (*Id.* at p. 11.) (Emphasis supplied.)

20 Notwithstanding the foregoing, what exactly the individual director defendants decided on
21 June 23, 2016 is less than perfectly clear to them. Director defendant Judy Coddington testified that
22 the Board had determined that the Company would not be sold. (See Ex. 1 (March 1, 2017
23 deposition transcript of Judy Coddington) at 178:8 179:1.) Director defendant McEachern
24 apparently concluded only that no further action would be taken because the price mentioned in
the offer was inadequate. In particular, he testified that [REDACTED]

25 [REDACTED] (See Ex. 2, McEachern
26 4/19/17 Dep. Tr. at 558:12-17.)

1 At no point during a June 23, 2016 board meeting did any individual director ask that
2 Ellen and Margaret Cotter (or that all of the Cotters) be excused so that the non-Cotter directors
3 could have discussions outside of the presence of the controlling shareholders. (*Id.*) There was no
4 discussion of, much less the creation of, a special committee of the board of directors comprised
5 of non-Cotter directors to ensure that the interests of minority or non-controlling shareholders
6 were protected. *Id.* (That stands in contrast to the creation of a (supposed) special committee in
7 2017, of which no Cotter family member is a member, to (supposedly) assess whether and how
8 the Company should respond to the appointment by the court in the California Trust Action of a
9 trustee *ad litem* to handle the possible sale of the controlling block of RDI Class B voting stock
10 held and to be held by the Trust.) (See Form 10-Q August 9, 2017²)

11 None of the individual director defendants sought the advice of independent counsel to
12 understand, much less fulfill, their fiduciary duties in response to the Offer. (See Ex. 1
13 (McEachern 4/19/17 Dep. Tr. at 512:1 7 and 514:18 515:4.)) Instead, they relied solely on
14 Craig Tompkins (who then was special counsel to Ellen Cotter as CEO) and outside counsel
15 previously retained by Company management, meaning Ellen Cotter.

16 No individual director defendant interviewed or consulted with, much less employed, any
17 outside financial advisor, whether investment banker, real estate professional or other such
18 person, to assess the value (whether as an operating company, collection of assets or otherwise) of
19 RDI and/or the ability and/or willingness of the Offerors to pay more than \$17 per share.

20 None of the individual director defendants took any action to perform or have performed
21 any investigation, analysis or diligence, to learn about the Offerors, including their intentions for
22 the Company, their willingness and/or ability to pay more than \$17 a share, or anything else at all.
23 None of the individual director defendants even suggested having communications with the
24 Offerors or having any such investigation, analysis or diligence performed.

25 What the minutes from the June 23, 2016 board meeting make clear is that:
26

27
28 ² Available at <https://www.sec.gov/Archives/edgar/data/716634/000071663417000025/rdi-20170630x10q.htm>