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 WROTNIAK, and nominal defendant READING INTERNATIONAL, INC., A NEVADA CORPORATION

Respondents.

Supreme Court Case No. 75053
Consolidated with 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 XXIII
JA5559 – JA5808

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JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

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FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

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FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

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FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

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FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

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):

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Judge Elizabeth Gonzalez
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Clark County, Nevada
Regional Justice Center
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By: /s/ Gabriela Mercado

EXHIBIT 1

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF MYRON STEELE
Philadelphia, Pennsylvania
Wednesday, October 19, 2016

Reported by:
Susan Marie Migatz, RMR, CRR
JOB No. 2463323

PAGES 1 - 185

then skimming his deposition, I reached the conclusion that I could find insufficient facts to suggest to me there was a reasonable doubt about his independence or his disinterestedness. So his deposition as a result became less important to me.

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

A. I am not.

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

In terms of your report -- and I first thought it was an oversight, but now from your testimony, I'm beginning to think it was intentional -- on Page 2, if you look at 441, you define "defendants" to be the various individuals stated there, but it doesn't include Mr. Gould.

A. It does not.

Q. And that was on purpose.

A. Yes.

Q. All right. And then in terms of each of the opinions that you provided in this report, those opinions only apply to the defendants as you defined them and they do not apply to Mr. Gould.

A. That's correct.

Q. All right. This could be shorter than I thought.

A. I knew I was answering that question correctly.

Q. I thought -- I honestly did think it might have been an oversight, but I'm glad you corrected that for me.

Now, hang on.

And to be clear, and this is what I -- I think you did cover this with Mr. Searcy -- that based on your review of the Complaint, based on the various depositions you reviewed, you saw no evidence that supports the conclusion that, in fact, Mr. Gould was not independent and was interested?

A. Yeah. And -- and let --

Q. Is that true?

A. Well, the way you phrased it causes me difficulty in answering it because what I've tried to do both in the report and here today is develop the Delaware two-step analysis.

In the first step, if there are no facts sufficiently pleaded to suggest a lack of independence and interest -- in -- interestedness, then you get -- don't go to the next inquiry and

reach any decision about whether there was a breach of fiduciary duty because they get the benefit of the business judgment rule.

So there's no reason for me to carry the analysis of Mr. Gould any farther than that. So I reached no opinion about whether he breached his fiduciary duty or not. I just say the pleadings don't support the second step.

Q. Okay. And so -- and when you say "the pleadings," what you did is you accepted each of the pleadings -- I'm sorry -- you accepted the allegations of the pleadings as true in forming your opinion about Mr. Gould.

MR. KRUM: Well, objection; mischaracterizes the testimony.

THE WITNESS: I -- I don't accept the pleadings as true or false. It's sufficiency to give rise to whether or not there is a reasonable doubt about an individual's independence or disinterestedness. That's all I say.

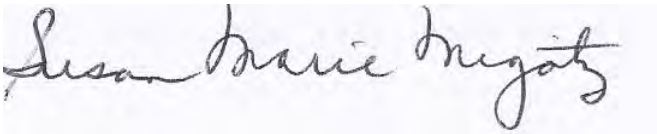
BY MR. RHOW:

Q. Okay. All right. Now, one of the things that was mentioned earlier was this concept of preventing familial disputes. I don't know if

C E R T I F I C A T E

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

WITNESS my hand and official seal this 2nd day of November, 2016.



_ _ _ _ _ _ _ _ _ _

Susan Marie Migatz

Notary Public

EXHIBIT 2

1 EIGHTH JUDICIAL DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 JAMES COTTER, JR., derivatively
on behalf of Reading International,
5 Inc.,
Plaintiff,
6
vs. Case No.
7
MARGARET COTTER, ELLEN COTTER, A-15-719860-B
8 GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
9 WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTNIAK, and DOES 1
10 through 100, inclusive,
Defendants.
11
and
12
READING INTERNATIONAL, INC.,
13 a Nevada corporation,
Nominal Defendant.
14 _____
15 (CAPTION CONTINUED ON NEXT PAGE.)
16
17 VIDEOTAPED DEPOSITION OF JONATHAN GLASER
18 Los Angeles, California
19 Wednesday, June 1, 2016
20
21
22 Reported by:
23 JANICE SCHUTZMAN, CSR No. 9509
24 Job No. 2312217
25 Pages 1 - 293

Reading -- "of RDI."

Does that refresh your recollection that that's, in fact, what you're still asking for?

A. It is still in there.

Q. But is it your understanding that you're not actually seeking that? 01:42PM

A. That's correct.

Q. Was that a decision that was made by you and Mr. Tilson that that was not something you were seeking? 01:42PM

A. Yes.

Q. Describe for me how that decision was made.

A. I don't recall exactly. It's a body of thought that's emerged over the course of the last few months. 01:42PM

Q. And what was that decision based on, generally? Why did you originally think that was something you wanted but now you think that that's not something you want?

A. I guess I'd just say it's not a high priority, that I'm personally comfortable with Ellen as CEO or a third party. It's not -- it's just not a high priority to put Jim, Jr. back. And I'm not opining on whether he's a good CEO or not a good CEO. I don't know. But in the scope of what we're 01:42PM 01:43PM

what was going on.

Q. Bill Gould, is he independent?

A. I believe so.

Q. And why do you believe Bill Gould was independent? 02:34PM

A. I believe I've -- well, relying on counsel. From what I understand, he also seems to be -- have had, you know, a level head in this mess.

Q. Okay. Can you think of specific instances that exhibited what you're describing as a level 02:34PM head?

A. At the moment, I can't.

Q. Judy Codding, do you believe she was -- she's independent?

A. No. 02:34PM

Q. Why not?

A. Because I believe she was appointed at a time when they couldn't -- because of all -- what's called the noise going on, that it was probably difficult to find the best possible directors. I'm 02:35PM not sure anybody would want to step into this mess.

I believed Judy Codding is a personal friend of either Ellen or Margaret's, and so I don't think she's independent. I'm not saying she's not qualified. I don't think she's independent. 02:35PM

cover.

Q. Okay. And then, just so we're clear, looking at pages, say, 117 and 118, after each line there's a number which indicates -- I believe on these pages at least, indicates the number of 04:17PM options or shares.

A. Yes.

Q. Then there's the code name for the company, RDI.

A. Yeah. 04:17PM

Q. And what's the number --

A. That's prob- --

Q. -- and the letters that follow?

A. That's probably a security ID number. So that's -- that, I'm guessing, is an ID number for 04:17PM the contract, for the specific options contract.

Q. And does that include all the way into the letters that end --

A. Yeah. And then they -- where you see PCMJ or JMG or Glaser, that would be the account that it 04:17PM goes into.

Q. You said at one point that you would not fire Ellen Cotter. Why not?

A. I don't have any evidence that she's not a good CEO. I -- in fact, I told -- when the 04:18PM

search -- CEO search was concluded and they announced Ellen was becoming the permanent CEO, one, I was not in the least bit surprised and, two, I told Andrzej in the conversation I had with him that I was not necessarily troubled by that either. 04:18PM

Q. Did you say to Andrzej, the CFO, why you were not troubled by that?

A. I don't recall, no.

Q. Why weren't you troubled by that?

A. I recognize, one, the difficulty of finding 04:18PM anybody else, particularly with the circus going on; and, two, I think she knows the company pretty well, has been there a long time, probably learned the business from her dad.

So I'm not convinced that there's some 04:18PM knight in shining armor out there to come in and be, you know, a great -- you know, a much better CEO of this company. I'm okay with Ellen.

Q. Did you -- I believe you indicated that you spoke to someone on behalf of Pico -- 04:19PM

A. Yes.

Q. -- Pico Holdings?

A. Yeah.

Q. Do you recall -- you don't remember who the name was? 04:19PM

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

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

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

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

JANICE SCHUTZMAN

CSR No. 9509

EXHIBIT 3

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF ANDREW SHAPIRO
San Francisco, California
Monday, June 6, 2016
Volume I

Reported by:
CARLA SOARES
CSR No. 5908
Job No. 2324228
Pages 1 - 322

I don't have a problem with the Cotter 17:44:14
family having a say in a mutual agreement as to who
gets appointed to the board. I just think the
shareholders who have been abused in the past and
have risk of abuse in the future get a say in the 17:44:26
matter to protect their interests.
BY MR. UYENO:
Q You're touching upon what was going to be
my next question, Mr. Shapiro, which is, when you're
referring to these Cotter family cronies, is your 17:44:37
criticism of them that they're not independent?
MR. SEARCY: Objection. Lacks foundation.
MR. SWANIS: Join.
THE WITNESS: Yes, my criticism of them is
that while they may be defined as technically 17:44:49
independent under stock exchange rules, they don't
come anywhere close to being socially independent
but for Bill Gould.
McEachern potentially; but Ed Kane
definitely not; Guy Adams certainly not in terms of 17:45:07
all of his financial dependence on all the various
Cotter largesse that's been bestowed upon him.
Michael Wrotniak, as I may have mentioned
in my earlier testimony, is classmates and good
friends with Margaret Cotter and the husband of 17:45:25

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [X] was [ ] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 6/17/2016

Carla Soares

CARLA SOARES

CSR No. 5908

EXHIBIT 4

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs. Case No.

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

A-15-719860-B

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF WHITNEY TILSON
Los Angeles, California
Wednesday, May 25, 2016
Volume I

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2312209
Pages 1 - 217

BY MR. SEARCY:

Q. All right. Okay. We were talking before the break about the motion for preliminary injunction. I want to come back to a couple of items on that. 02:11PM

Again, assuming that the motion for preliminary injunction was successful, I think you indicated that you'd want to get rid of a couple members of the board of directors?

A. A majority, I said. 02:11PM

Q. Okay. Which members of the board of directors would you seek to take off the board?

A. Probably the two sisters, Kane, and Adams would be the first four.

Q. Anyone else? 02:11PM

A. I don't know. I'd have to consult with other shareholders, but they would be the top of my list.

Q. What about Doug McEachern?

A. I have less strong feelings about him. 02:12PM

Q. How about Bill Gould?

A. Same. More positive feelings towards him.

Q. Judy Codding?

A. I'd like to meet her and talk to her. I've -- I actually know someone who knows her just 02:12PM

personally and heard she's a smart and respected person. Not sure what she brings to the table as it relates to RDI's business, but I'd want to give her a fair hearing.

Q. Other than the conversation that you had with someone who knows her, have you done anything else to investigate or look into Judy Codding? 02:12PM

A. I read her bio.

Q. Anything else?

A. No. 02:12PM

Q. And when you say that you weren't sure what she brings to the table as it relates to RDI's business, is that because she doesn't have a background in --

A. In either real estate or cinema.

THE REPORTER: I'm sorry. In?

THE WITNESS: I'm sorry. He said "cinema," question mark.

THE REPORTER: Did you say "cinema"?

MR. SEARCY: I did.

BY MR. SEARCY:

Q. And you went ahead and answered my next question to boot.

THE WITNESS: Did you get my answer?

THE REPORTER: I did not.

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

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

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

IN WITNESS WHEREOF, I have subscribed my name this 31st day of May, 2016.

JANICE SCHUTZMAN

CSR No. 9509

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,	)	
Plaintiff,	)	Case No.
vs.	)	A-15-719860-B
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive,	)	VOLUME IV
Defendants.	)	
READING INTERNATIONAL, INC., a Nevada Corporation;	)	
Nominal Defendant.	)	

CONFIDENTIAL

DEPOSITION OF JAMES COTTER
LOS ANGELES, CALIFORNIA
TUESDAY, JULY 11, 2017

Job No. 2656312
Reported by:
RICKI Q. MELTON, RPR
CSR No. 9400
PAGES 839 - 1260

1 EXAMINATION 02:32:42
2 02:32:45
3 BY MR. RHOW: 02:32:45
4 Q Good afternoon. Mr. Cotter, Jr., it's 02:32:46
5 been awhile. Actually, it's been never since I've 02:32:49
6 gotten to question you. My name is Ekwan Rhow. I 02:32:51
7 represent Bill Gould. 02:32:54
8 Let's go back in time, and I know you 02:32:56
9 covered this -- some of this in the morning, but 02:32:58
10 I -- just in terms of a time marker, June 12th, 02:33:01
11 2015, is when there was a vote by the board of 02:33:04
12 Reading on your termination; right? 02:33:08
13 A Correct. 02:33:09
14 Q And you recall that Mr. Gould voted 02:33:09
15 against your termination? 02:33:13
16 A Correct. 02:33:14
17 Q And I take it that you have no issue with 02:33:14
18 the way that Mr. Gould voted that day? 02:33:17
19 A I have no issue with his vote, no. 02:33:22
20 Q You believe his vote was in the best 02:33:24
21 interest of the company; right? 02:33:26
22 A Correct. 02:33:29
23 Q And certainly on that day you do not 02:33:29
24 believe that Mr. Gould was acting under any 02:33:32
25 improper conflict of interest. 02:33:35

1 Q And I'm focused obviously on the 02:42:04
2 "disinterested" part of that phrase. 02:42:06
3 What does that mean to you, if anything? 02:42:08
4 A That a director has no interest in the 02:42:10
5 outcome of a transaction that would sway his 02:42:16
6 behavior. 02:42:22
7 Q And on the day that Mr. Gould voted on 02:42:23
8 your termination, did you believe he was interested 02:42:28
9 or disinterested based on the definition you just 02:42:31
10 provided? 02:42:34
11 A Well, again, I think that his behavior 02:42:34
12 leading up to my termination suggested to me that 02:42:38
13 there was something else afoot in his behavior for 02:42:45
14 all of the reasons that I had enumerated earlier 02:42:53
15 where he was acting with a purpose to advance Ellen 02:42:57
16 and Margaret's interests. And so am I aware of any 02:43:05
17 financial relationships? No, but I -- I feel as 02:43:12
18 though his behavior suggested that he was acting to 02:43:20
19 advance their personal interests, not the interest 02:43:22
20 of the company. 02:43:25
21 Q But not his personal financial interests; 02:43:26
22 right? 02:43:26
23 A Well, I mean to the extent that he curried 02:43:29
24 favor with Ellen and Margaret once he was told that 02:43:34
25 they controlled the voting stock, that would 02:43:38

1 continue his service on the board of RDI. 02:43:41
2 Q Other than that -- 02:43:48
3 A Other than that -- 02:43:48
4 Q -- you're not aware of any other 02:43:50
5 financial -- let me -- let me get the question out. 02:43:50
6 MR. KRUM: Let him finish. 02:43:51
7 BY MR. RHOW: 02:43:53
8 Q Other than what you just described, you're 02:43:54
9 not aware of any other financial interests that 02:43:55
10 Mr. Gould had with respect to that vote or any 02:43:57
11 other vote; fair? 02:44:00
12 A Correct. 02:44:01
13 MR. KRUM: Objection. Foundation. 02:44:01
14 BY MR. RHOW: 02:44:03
15 Q All right. Now, this may sound obvious to 02:44:03
16 you, but if he had voted -- strike that. 02:44:19
17 Given that he voted against your 02:44:24
18 termination, do you think he was favoring your 02:44:26
19 interest? 02:44:28
20 MR. KRUM: Objection. Foundation. 02:44:32
21 THE WITNESS: If -- if he voted against my 02:44:33
22 termination, was he favoring my interest? 02:44:35
23 BY MR. RHOW: 02:44:38
24 Q Yeah. 02:44:39
25 A Well, I mean -- I mean, I was the 02:44:39

1 believes it's in the best interest of the company; 03:10:20
2 true? 03:10:22
3 A It is not inappropriate, did you say? 03:10:22
4 Q It is -- you know what? I'm saying these 03:10:24
5 double negatives. 03:10:26
6 It's okay for a board member to consider 03:10:27
7 board harmony if he or she believes it's in the 03:10:31
8 best interest of the company -- 03:10:34
9 MR. KRUM: Same objection. 03:10:35
10 BY MR. RHOW: 03:10:36
11 Q -- right? 03:10:36
12 MR. KRUM: Same objection. 03:10:36
13 THE WITNESS: As one factor of -- of many, 03:10:37
14 it might not be inappropriate. 03:10:42
15 BY MR. RHOW: 03:10:44
16 Q Good. Let's stop. I'll take that. 03:10:44
17 All right. My -- my instinct tells me to 03:10:47
18 not ask this, but I'm going to ask this. 03:11:02
19 MR. KRUM: Go on. Follow your instinct. 03:11:05
20 BY MR. RHOW: 03:11:06
21 Q It is possible that prove -- two board 03:11:07
22 members will vote -- will vote differently on an 03:11:09
23 issue while both fulfilling their fiduciary duties; 03:11:10
24 fair? 03:11:14
25 MR. KRUM: Same objection. 03:11:14

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, RICKI Q. MELTON, CSR No. 9400, RPR No. 45429, do hereby certify:

That the foregoing deposition testimony of JAMES COTTER, JR., was taken before me at the time and place therein set forth, at which time the witness was placed under oath and was sworn by me to tell the truth, the whole truth, and nothing but the truth;

That the testimony of the witness and all objections made by counsel at the time of the examination were recorded stenographically by me and were thereafter transcribed under my direction and supervision, and that the foregoing pages contain a full, true, and accurate record of all proceedings and testimony to the best of my skill and ability.

I further certify that I am neither counsel for any party to said action nor am I related to any party to said action, nor am I in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name this 17th day of July, 2017.

RICKI Q. MELTON, C.S.R. No. 9400

EXHIBIT 6

ELECTRONICALLY SERVED
09/29/2016 01:39:05 PM

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., an individual and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. / Reading International, INC., a Nevada corporation; Nominal Defendant.	Case No. A-15-719860-B Dept. XI Coordinated with: Case No. P-14-082942-E Dept. No. XI Case No. A-16-735305-B Dept. XI *Jointly Administered* **DR. ALFRED E. OSBORNE, JR.'S REBUTTAL TO THE EXPERT REPORT OF MYRON STEELE AND DR. ALFRED E. OSBORNE, JR.'S REBUTTAL TO THE EXPERT REPORT OF RICHARD SPITZ**

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

Plaintiffs,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARDS KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, AND DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Dr. Alfred E. Osborne, Jr.'s Rebuttal to the Expert Report of Myron Steele is attached hereto as **Exhibit A**. Dr. Alfred E. Osborne, Jr.'s Rebuttal to the Expert Report of Richard Spitz is attached hereto as **Exhibit B**.

DATED this 29th day of September, 2016.

MAUPIN, COX & LeGOY

By _____
DONALD A. LATTIN, ESQ., #693
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2016, I caused a true and correct copy of the forgoing to be electronically served to all parties of record via this Court's electronic filing system to all parties listed on the E-Service Master List.

Kaitlin Arnosh
Employee

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TABLE OF CONTENTS

EXHIBIT A

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

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

I, ALFRED E. OSBORNE, JR., Ph.D., declare as follows:

I. ASSIGNMENT AND QUALIFICATIONS

1. Justice Myron Steele was retained by counsel for the plaintiff James J. Cotter, Jr. ("JJC"), to provide his expert opinion on the conduct of the Director Defendants as alleged in the Second Amended Complaint ("SAC") in the above-referenced matter. I have been jointly retained by counsel for William Gould ("WDG") and counsel for Ellen Cotter ("EC"), Margaret Cotter ("MC"), Ed Kane ("EK"), Douglas McEachern ("DM"), Judy Codding ("Codding"), and Michael Wrotniak ("MW") for the purpose of responding to Justice Myron Steele's opinion as it pertains to: (1) the conduct of the Defendants in creating and acting through the Executive Committee comprised of EC, MC, EK, and Guy Adams ("GA"); (3) the conduct of the Defendants regarding the process used to appoint EC as President and CEO; (4) the conduct of Defendants regarding the process to appoint MC as Executive Vice President-Real Estate Management and Development-NYC; (5) the award of revised compensation to EC, MC, and GA; and (6) the response of the Defendants to an offer from a third party to purchase all of the outstanding shares of the Company's stock.

2. My qualifications are set forth in my August 25, 2016 Expert Report in this matter. In formulating my opinions, I have relied on my knowledge, prior experience, and formal training in economics, finance, and business management. As a member of several boards of directors for more than

30 years, I have developed considerable experience in the hiring of CEOs and the use of executive search firms in that process. My board service is broad and extensive, so I am knowledgeable about the use of board committees, compensation of directors and executives, appointments of executives, and purchase offers.

3. In performing my analysis, I have examined a variety of materials, including legal pleadings, RDI's Bylaws and Articles of Incorporation, RDI's Board or Committee Minutes, and the Agenda and supporting materials established for the various meetings, RDI's filings with the SEC, deposition exhibits, and deposition testimony. In forming my opinions, I considered the materials attached as Exhibit 3 to my August 25, 2016 Report. Attached as Exhibit A is a list of additional materials I relied on.

II. SUMMARY OF OPINIONS

4. Justice Myron Steele (hereafter "Justice Steele" or "Steele") is a former Chief Justice of the Delaware Supreme Court. He offers no opinions as to the custom and practice regarding the various challenged corporate actions. Instead, his expert "opinion" is merely a legal argument about what he thinks a Delaware court would hold as a legal matter if (and only if) a fact-finder made various factual findings. His conditional assumptions about what a fact-finder may do are a qualifying precedent to each legal opinion rendered. Steele notes that IF the Defendants were not disinterested and independent, and IF entire fairness applies, and IF the Defendants acquiesced to the wishes of the controlling stockholders, then

the Defendants breached their duty of loyalty. Steele's final conclusion relies on stringing together several assumptions that, when taken together, ignore the actual conduct and processes followed by the Board of Directors and its delegated committees in real time, all of which, based on my experience on boards and educating and working with directors and officers, and my knowledge of corporate governance, were appropriate and consistent with good governance practices.

5. From the outset, I note that I am not a lawyer, and I am not opining on the law or what a finder of fact would find or not find. Instead, I will focus on rebutting the assumptions that Judge Steele relies upon based on my expert knowledge of the custom and best practice of boards of directors and board members.

6. The evidence does not support Justice Steele's conditional opinion that the Defendants all put their individual economic interests and/or friendships ahead of all shareholders and the corporation. As discussed below in detail, when taking into account the context and dynamics of the RDI Boardroom and taking a pragmatic approach towards relationships in the Boardroom, it is my opinion (based on my extensive knowledge of boards of directors) that decisions were made by a majority of independent directors in each of the above-listed transactions examined by Justice Steele.

7. Justice Steele does not discuss and does not opine on whether any of the directors engaged in intentional misconduct with respect to: (1) the

third-party offer, (2) the repopulation of the executive committee, or (3) the payments to EC, MC, and GA. As to Justice Steele's suggestion that a finder of fact could find that the CEO Search Committee's ("CEOSC") actions constituted intentional misconduct and a finder of fact could find that directors' actions in appointing MC as EVP-RED-NYC constituted intentional misconduct (Steele at 31), I find that opinion speculative and reaching. In any event, as discussed in detail below, because my analysis of the events and the specific facts considered in the decision-making processes established by the Board of Directors and its standing and special committees finds that the CEO search and the appointment of MC were appropriate, and consistent with good governance practice and the obligations of an independent director, there was no misconduct and therefore no intentional misconduct.

8. Stated simply, Justice Steele's assumptions are incorrect, and his conclusions vague and speculative. In particular, Justice Steele's analyses of: (1) the CEO search process, (2) the appointment of EC and MC to their executive positions, (3) the reorganization of the Executive Committee, and (4) the Board's response to the unsolicited offer are flawed and simply incorrect, when considered in their total context. Overall, I find that the processes used by the Board with respect to each of the specific challenged actions were fair, appropriate, and consistent with good governance practices. In particular:

a. The conduct of the CEOSC was consistent with good governance practice in the search for a CEO, the selection of EC by the CEOSC was reasonable and appropriate in the judgement of an independent and disinterested CEOSC, and the CEO search was conducted to the satisfaction of the Board, which was fully informed as to the activities of the CEOSC by memorandum and presentation;

b. The appointment of MC to a senior position was appropriate and consistent with good governance practice given the recommendation by EC, the CEO of the Company, because the Board should support the CEO in her choice of team;

c. The Board's approval of the Executive Committee was appropriate and consistent with good governance practice, because such committees are a useful way to streamline decision making and, for this reason, many boards use executive committees. The conduct of the Executive Committee to date in apprising the Board of all of its actions and the types of actions it has taken does not suggest that it is being used to minimize the involvement of any directors;

d. The Board appropriately relied on its independent committees and experts to approve compensation to EC and MC and payments to MC related to the termination of her Consulting Agreement with the Company, and the process used by these committees in determining the fact and amount of such payments and

compensation was fair and appropriate, as was the process used to determine the one-time payment to Adams; and

e. The Board's decision to reject the conditional, unsolicited third-party offer without first incurring the expense of hiring outside experts to value the Company was reasonable, consistent with the duties the Directors owed to the Company and its shareholders, and consistent with good corporate governance practice, given that, following a detailed presentation by the CEO (which summarized earlier presentations by the CEO and CFO of the Company's strategic direction and current financials), among other reasons, the offer appeared to be grossly undervalued. There was no obligation in this situation to do any more.

9. In sum, Justice Steele's "IFs" and "COULDs" are all incorrect assumptions given the facts in this case and the standards of good governance practice. In particular, I find that the RDI Board is independent and disinterested because directors EK, DM, WDG, MW, and Codding as individuals are independent and disinterested. Simply being a friend or a friend of a relative (or a relative of a friend) to JJC, MC, and EC does not a *priori* make that individual not independent. As to each of the individual challenged actions, I find the members of the Board of Directors acted reasonably and consistent with appropriate governance practice at a Controlled Company, and that the processes employed by the Board

and each of the relevant committees with respect to each challenged action were fair.

III. DIRECTOR INDEPENDENCE, GENERALLY

10. **Ed Kane:** Justice Steele opines that "***if*** a finder-of-fact finds that [Ed Kane] is beholden to EC and MC as a result of their relationship, he would not be considered independent of EC and MC under Delaware law." Steele Rep. at 25 (emphasis added). Justice Steele bases that opinion on his claim that EK is very close to EC and MC, who refer to him as "Uncle Ed."

11. In my opinion, EK is independent for each of the challenged actions enumerated above. EK's long-standing relationship with the Cotter siblings is open and transparent to all of the other members of the Board. His primary relationship was his friendship with Cotter, Sr. Kane Dep. at p. 29. His relationship with all three Cotter children is substantially similar—he has known them all since birth, and they have all called him "Uncle Ed" at one time or another. Kane Dep. at pp. 36-37. EK's non-business relationship with the Cotter siblings, which appears in recent years to consist of occasional dinners, does not seem any more significant than many relationships between directors or between directors and officers that I have observed on boards that I have served on or advised over the years, and many of those directors were considered independent for decision-making purposes.

12. My opinion that the relationship between EK and the Cotter siblings does not interfere with his independent decision-making is also based on the fact that EK had a long-standing relationship with all three Cotters, and JJC on the one hand, and EC and MC on the other hand, advocated for different positions for all of the challenged actions. As such for each of the challenged transactions, a relationship with the Cotters would not necessarily influence EK in one direction as opposed to the other. I do not see any evidence that EK sided only with EC and MC. I note that EK supported appointing JJC as CEO in the first instance, and supported many of JJC's positions during his tenure as CEO. See, for example, JJC Dep. at 178-180-183; 350-53; 369-370; Dep. Exh. 187. And EK has said that as a "director of this company ... I do what I think is in the best interest of the shareholders and the employees of the company. I don't mix my personal feelings for [the Cotter siblings] with my decisions." Kane Dep. at 37-38.

13. In addition, I see potential benefits to shareholders from EK participating in voting on the challenged actions. Because EK was friends with Cotter, Sr. he knew all three Cotter siblings well, and may therefore be a better judge of the temperament and character for leadership and fair dealing of JJC, EC, and MC.

14. **Guy Adams:** Justice Steele states that "Adams derives a substantial portion of his income from entities that are currently controlled by EC and MC as co-executors of JJC, Sr.'s estate." Steele Rep. at 30. Based on

this alleged fact, Justice Steele opines that "***if*** a finder of fact finds that [Adams] is beholden to EC and MC, then he was not independent at the time the challenged actions were made." Steele Rep. at 26 (emphasis added). None of the decisions at issue that involved GA's vote expressly benefitted him. While I have reviewed testimony indicating that GA received income from Cotter-controlled entities, I have not seen any evidence that EC or MC—either explicitly or implicitly—threatened GA's income from any source if he did not vote to their liking. However, based on my opinion on the independence of the other directors (discussed below), I do not need to reach an opinion on GA's independence in order to determine that the relevant decisions were made by an independent and disinterested majority on the Board and the committees. Therefore, I have not, as part of my work on this matter, formed an expert opinion as to GA's independence.

15. **Other Directors:** Justice Steele does not opine on the other directors' independence generally, so I will discuss the independence of WDG, DM, Codding, and MW below in the specific context of the CEO search, because Justice Steele appears to assert that they may not be independent with respect to only that particular action. For the reasons, discussed below, however, I find all four directors are generally independent with respect to the challenged actions enumerated above.

IV. THE CEO SEARCH PROCESS

16. Justice Steele concedes that there is no Delaware case law that governs the fiduciary duties and standards applicable to the appointment of officers. Steele Rep. at p. 29. Despite this fact, Justice Steele's "opinions" regarding the CEO search consist entirely of what a Delaware Court would find if a fact-finder made various factual findings. As discussed below, Justice Steele's hypotheticals are all invalid because they are inconsistent with the facts, the basic tenets of good corporate governance, and the practicalities of CEO searches.

17. With respect to Justice Steele's specific "opinions" regarding the CEO search process, Justice Steele **first** concludes that if a finder of fact found that a majority of the CEOSC, in recommending that EC be appointed as CEO, or the Board itself, in appointing EC as CEO, was not disinterested and independent, then entire fairness would apply. Steele Report at p. 30. Steele appears to contend that a fact-finder may find that the CEOSC or Board was not interested or independent because of the relationship between EC and certain members of the Board and the fact that EC and MC had demonstrated in the past that as controlling stockholders, they would remove members of the Board if they did not approve of their actions. Steele Report at p. 30. This assertion is not supportable. Both a majority of the CEOSC that voted to recommend EC and a majority of the Board that voted to appoint EC as CEO were disinterested and independent with respect to appointing EC as CEO.

a. **Independence and Disinterest of CEOSC.** At the time that the CEOSC recommended that EC be appointed as CEO, the CEOSC was comprised of MC, DM, and WDG. Dep. Exh. 416. MC recused herself from the vote and both DM and WDG voted to recommend EC as CEO. Dep. Exh. 313. In my opinion, both DM and WDG are disinterested. Neither DM nor WDG personally received any benefit or suffered any detriment, let alone one of a subjective material significance, as a result of the CEO search. And Steele does not appear to contend otherwise. Steele Rep. at 23-24. Further, in my opinion, both DM and WDG are also independent. Both WDG and DM are independent under NASDAQ rules. NASDAQ Listing Rule 5605(a)(2). Neither DM nor WDG had any relationship with EC apart from serving on the RDI Board with her.

i. Steele contends that a fact-finder could rely on "the fact that EC and MC had demonstrated in the past that as controlling stockholders they would remove members of the Board if they did not approve of their actions." This is wrong both as a principle of corporate governance and as a factual matter. As a factual matter, Steele relies exclusively on testimony from GA. Steele Rep. at p. 30 (citing Adams at p. 274). But the cited GA testimony does not say that EC and MC had in the past removed members of the Board if they did not

approve of their actions. Rather, GA testified that the three people on the nominating committee were unanimous in a decision not to re-nominate Director Timothy Storey, and that, while the controlling stockholders were not going to support Storey's re-nomination and vote for him, each person had their own reasons not to support Storey's nomination. Adams Dep. at 272-277. Nowhere does GA state that the controlling shareholders did not support Storey because they disagreed with his prior votes. In any event, as a matter of corporate governance, by definition a controlling shareholder can always decide not to vote for a director, if the shareholder does not like the director's action. If knowledge of this possibility caused a director to not be independent, it would mean that a controlled company could not have an independent board, and that is certainly not the case.

ii. But even more importantly, Steele does not explain why WDG—a name partner in a law firm—or DM—a former Deloitte & Touche partner—would abdicate their fiduciary duties to the Company merely to ensure that they stayed on the Board. That is especially true, where, as here, 2015 director payments were only approximately $85,000,

including a special one-time $25,000 payment.[1] RDI 2015 Proxy Statement. And there is no evidence that such an amount is material to WDG's or DM's net worth. Indeed, the Plaintiff himself does not believe that WDG and DM's independence is compromised. He has conceded that both WDG and DM are independent. JJC Dep. at 79-80, 84-86.

iii. In addition, Justice Steele recognizes that a director is independent if his decision is based on the merits of the matter at hand, rather than extraneous influences. As discussed in detail below, WDG and DM both made the decision to recommend EC because they thought that she was the best choice for CEO, based on attributes that are typically taken into account in choosing a chief executive. In short, based on my extensive experience with boards of directors, by every measure, I conclude that WDG and DM were independent. Because both WDG and DM were independent and disinterested, the decision to recommend EC was made by a majority of independent and disinterested members of the CEOSC.

b. **Disinterested and Independent Board of Directors:** At the time that the Board voted to appoint EC as permanent CEO, the Board of Directors was comprised of JJC, EC, MC, WDG, DM, EK,

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[1] WDG made $85,000 in director compensation in 2015; DM made $81,000. 2015 RDI Proxy Statement.

Codding, and MW. The Board voted 7-1 to appoint EC permanent CEO, with EC not participating and JJC voting against. JCOTTER008369-8372. As discussed above, EK, WDG, and DM were independent. Codding is also independent. While she is friends with Mary Cotter, the Cotter siblings' mother, she does not appear to have a close relationship with any of the Cotter siblings. EC Dep. at 307-308. Similarly, MW is married to a friend of MC. MW does not appear to have any significant independent relationship with MC. They see each other about once per year, and he contacts her if he wants theater tickets. MC at 320-321. Again, this minimal type of relationship does not cause any concern about director independence. There is no reason to believe that either Codding or MW would be so interested in maintaining their recent Board positions that they would abandon their fiduciary duties and do what the controlling shareholder wanted. This is especially true because there is no evidence that the director fees were significant in light of Codding or MW's overall net worth. With EK, WDG, DM, Codding, and MW all independent, that means that EC was appointed by an independent and disinterested majority.

18. **Second**, Justice Steele concludes that "***if*** a finder of fact finds that EC was not appointed by an independent and disinterested majority, a Delaware court would likely find that the process used to appoint EC as CEO was not entirely fair." Steele Rep. at 30 (emphasis added). I

disagree. As discussed above, based on my extensive experience serving on boards and in training directors, officers, and future directors and officers on how to avoid conflicts, it is my opinion that EC was appointed by an independent and disinterested majority, and as a result, under Justice Steele's articulation of Delaware law, entire fairness is not the correct standard. But even if entire fairness did apply, based on my experience with executive searches, for the reasons discussed below, I conclude that the process used to appoint EC as CEO was fair and consistent with good governance practices.

a. Attached as Exhibit B is a timeline for the CEO search process. This timeline diagrams the key activities and communications that occurred during the process, which lasted some six months. In my opinion, the CEOSC and the RDI Board conducted a transparent and even-handed process. I discussed this process extensively in August 25, 2016 Declaration, and I incorporate paragraphs 45-48 here.

b. As noted in the search process timeline, the CEOSC received assistance from Korn Ferry International ("KFI") an executive search firm retained in August 2015. The CEOSC worked with KFI in September and October to develop position specifications based on their initial views of the desired experience areas. After KFI recommended candidates for interviews, but before the interviews began, EC resigned from the CEOSC. The CEOSC then

conducted most of the interviews in November. The CEOSC interviewed EC and another candidate in December. After EC's resignation, the CEOSC was comprised of MC, DM, and WDG. With DM and WDG both independent and disinterested, the CEOSC had a majority of independent and disinterested directors to consider the final five candidates, and at the same time to consider EC's candidacy relative to the capabilities of all finalists in context of RDI's total needs. WDG assumed the leadership of the CEOSC and led the search to its conclusion. After interviewing the KFI-recommended candidates and EC, and discussing the pluses and minuses of the EC candidacy and her qualifications (both objective and subjective skills), the majority of disinterested and independent directors on the CEOSC (WDG and DM), voted 2-0 to recommend EC to the Board of Directors. As WDG explained:

> [A]fter listening to Ellen, thinking about it, and looking at the prior candidates, even though they were all good, that she probably made the most sense for where we were at this time. Because she had a great reputation, the people liked her at the company ... we all thought highly of her, every one of us. She is intelligent. She has the kind of personality that could help get through some of these difficulties dealing with other people. And she had theatrical experience. She was willing to bring in real estate help. And that this was a very tough time to bring in somebody from the outside given the fact that nobody knew who would actually control this company a year down the line. And for all those reasons, you know, it just became apparent to me -- I just said, 'This makes the most sense for the Company.'

Gould Dep. at 368.

c. In my experience, the reasons stated by WDG recommending EC over the other candidates that were interviewed are acceptable, legitimate reasons to prefer a candidate and are consistent with good corporate governance practices. Even if an outside candidate has superior technical skills, where an inside candidate knows the culture, the people, a deep understanding of corporate history, already commands respect from employees, officers, and directors of the Company, will support continuity, and is aligned with the controlling shareholder and shareholder interests generally, the selection of an inside candidate is a reasonable business decision. That is because such an inside candidate is most likely able to mitigate the risk inherent in a company with significant controlling shareholders embroiled in litigation. Any gap in technical skills (such as EC's alleged lack of real estate development experience) can be readily dealt with by hiring an employee or consultant with that skill set to advise the CEO. In my opinion, hiring an outsider into the uncertain situation at RDI represents a larger risk to shareholder value.

d. The full Board, which, as discussed above is composed of a majority of independent and disinterested directors, provided oversight to the search process. After a discussion that all of the Directors participated in, the Board accepted the recommendation of its independent and disinterested committee and appointed EC

CEO, voting 7-1 with JJC casting the sole negative vote (and EC not participating in the voting).

e. I conclude that the CEOSC and the RDI Board conducted a transparent and even-handed process. While different candidates may display differing capabilities relative to the Position Specification and the total demands for the job, including both hard and soft skills, a subjective element which has to be taken into account, is the fit with the existing RDI culture and experience with the key elements of the business. Based on my experience and my review of the deposition testimony, deposition exhibits, and other documents, I believe that the decision of the CEOSC is reasonable and prudent, and that the CEOSC and the RDI Board fully complied with all of their obligations as directors to the Company and the shareholders.

19. **Third**, Justice Steele opines that a finder of fact could find that EC and MC intentionally manipulated the search for a new CEO in order to ensure that EC be appointed to the position. Steele Rep. at 31. Based on my experience with CEO searches, it is my opinion that the search was not manipulated in order to ensure that EC was appointed. Both EC and MC, along with WDG and DM, were interviewed by KFI regarding their views on the desired qualifications and characteristics for the CEO. EC, MC, WDG, and DM all initially emphasized that they were looking for a CEO with experience in real estate development. Mayes Dep. at 15:25-16:3;

71:10-16. As a result, the Position Specification emphasized real estate development experience. Dep. Ex. 308 (noting that specific qualifications will include "minimum of 20 years of relevant experience with the real estate sector" and a "proven track record in the full cycle management of development investments from planning and entitlement through infrastructure development, land sales, joint ventures and vertical construction with a proven record of value creation."). It is my understanding from reviewing documents and deposition testimony that, while EC had some real estate experience, she did not have the level of experience described in the Position Specification. Mayes Dep. at 68. If EC and MC had intentionally manipulated the search for a new CEO to ensure that EC was appointed, as Steele suggests, they would have helped to develop an original position specification that closely matched EC's qualifications. But EC and MC did not do so.

20. Nor can I conclude that the change in direction to put an increased emphasis on operating the company was part of an effort by EC and MC to intentionally manipulate the search. After interviewing candidates with real estate development experience, the CEOSC realized that those skills may have been overemphasized. Mayes Dep. at 15-16. Gould Dep. at 321-322. The members of the CEOSC were not the only directors who believed that real estate development experience had been overemphasized. JJC also opined that the original Position Specification was too focused on real estate development experience, and JJC was

clearly not trying to ensure that EC was appointed CEO. JCOTTER016893-95 ("This is not a CEO specification. That is a specification for a glorified director of real estate position.") The fact that the CEOSC changed the position requirements does not indicate that the search was manipulated. To the contrary, in my experience, it is not unusual that what a company is looking for would change during the process of the search. Mr. Mayes' testimony on this point is consistent with my experience that these changes can occur for any number of reasons, including changes in the nature of the business or a realization that the focus was slightly off during the course of trying to fill the role. Mayes Dep. at 52-53.

21. Mr. Steele also opines that a fact-finder could conclude that "through their control of the Board, [EC and MC] prevented the other directors from making an informed independent decision." Based on my experiences serving on boards that have conducted CEO searches and training directors on how to responsibly carry out their duties, it is my opinion that both WDG and DM made an informed, independent decision. Both WDG and DM behaved in a thoughtful and effective manner. They were fully engaged, careful, attentive, informed, deliberate, loyal, and obedient in the exercise of their responsibilities in the interview sessions with potential candidates, in the CEOSC deliberations, and in recommending EC as CEO. Indeed, as KFI's Robert Mayes testified, he had sophisticated conversations with both WDG and DM. Mayes Dep. at 73:4-14. WDG

and DM met with several high-quality external candidates, then carefully thought through what the Company needed at this point in time and concluded that EC was a better choice than any external candidate. Gould Dep. at 368; McEachern Dep. at 458:23-460:4; 472:5-12. The decision of the CEOSC, and in turn of the Board in accepting the recommendation of the CEOSC, was reasonable and prudent, and reflected informed, independent decision-making.

22. Justice Steele also opines that a finder of fact could find that "these actions" constituted "intentional misconduct, given the CEO Search Committee's affirmative decision not to have Korn Ferry perform any of its proprietary assessments and to revise the qualifications necessary for the CEO." Justice Steele does not specify which or whose actions a finder of fact could find constituted intentional misconduct. But as I previously explained, based on my experience, I find that the CEO search was conducted adequately and with due care, and that both WDG and DM's actions on the CEOSC were consistent with good corporate governance and their obligations as independent directors, and, as such, there was no misconduct, let alone intentional misconduct.

    a. I have already discussed the fact that the revised qualifications are not unusual for CEO searches and that it is a practical reality of a search that directors who are trying to make the best decision for the Company will continue to revise and update position specifications as the need becomes apparent.

b. Similarly, there is nothing wrong with the CEOSC's decision not to have KFI perform any of its proprietary assessments. In my experience with CEO searches, the plan established by the executive search firm does not always proceed as planned, nor does it go to some expected conclusion. The CEOSC can alter the agreed plan with KFI as it sees fit, in deciding what activities to pursue in carrying out its responsibilities. In this instance the CEOSC supported aspects of the initial KFI plan, then changed some proposed activities later in the process, but still interviewed all of the recommended candidates, plus EC who was given very careful scrutiny. In the end, the CEOSC decided to recommend EC to the Board, which meant that it did not require a proprietary assessment, given the CEOSC's and the Board's long history with EC and the fact that she had already been acting as CEO for six months. Even the KFI witness conceded that the assessment would not be useful as an evaluation tool for EC. Mayes Dep. at 67.[2]

In sum, I conclude that the CEO search process, as conducted by the CEOSC composed of a majority of independent and disinterested directors, was even-handed and entirely fair. The Board reviewed and concurred in their recommendation by voting to elect EC CEO.

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[2] By not proceeding with the assessment, the CEOSC saved RDI $35,000. Dep. Exh. 373; RDI0058287-58297.

JCOTTER008369-8372 (referring to Dep. Exh. 313). The Steele IFs string together a scenario that is speculative and simply wrong.

V. THE APPOINTMENT OF MC TO AN EXECUTIVE POSITION

23. In March 2016, MC was appointed EVP-RED-NYC. RDI0054790-54807; March 15, 2016 RDI Form 8-K. Justice Steele opines that "a finder of fact may conclude that the Board intentionally selected a less qualified candidate in order to acquiesce to the wishes of the controlling stockholders, notwithstanding the fact that the Board knew that she was less than qualified." Steele Rep. at 30. As an initial matter, once again, Justice Steele is not opining that the Board did intentionally select a less-qualified candidate. Rather he is merely offering an opinion that a ***fact-finder may*** find that the Board intentionally selected a less-qualified candidate. As discussed below, based on my experiences on Boards and in teaching corporate governance, I find that the Board acted appropriately and consistent with good governance practices in approving EC's recommendation of MC for the role of EVP-RED-NYC. Because the Board acted reasonably and appropriately, there is no basis to conclude that they intentionally selected a less qualified candidate.

24. As CEO, EC appointed MC to an executive vice president role with the advice and consent of the Board of Directors (which, as discussed above, is composed of a majority of disinterested and independent directors). RDI0054790-54807. The Board voted 6-0 in favor of the appointment, with EC and MC not participating, and JJC abstaining. *Id.* The

appointment of MC to a senior position is entirely within EC's prerogative as CEO. EC is entitled to choose the employees that she believes will allow her to best carry out her work. This is her choice to make, and all Board members should support her decision and endeavor to help her succeed for the company and all of its shareholders. Then, as events unfold, the Board, in its oversight function, has the responsibility to hold EC accountable for the performance of the company and its key units.

25. Ignoring this division of responsibility between CEO and Board with respect to the appointment of senior executives, Steele's opinion appears to rest exclusively on his contention that "[b]efore JJC's removal from the Board, the majority of the Board found MC to be unqualified to serve in that role." Steele Rep. at 31. I note that Steele does not cite any documents or testimony for this assertion whatsoever. And my understanding is to the contrary.

    a. GA testified that he hadn't initially formed an opinion as to whether or not MC was qualified to serve as head of NY Real Estate but over time, after viewing her success with landmarking and her deep knowledge of the properties themselves, was convinced that she was qualified. Adams Dep. at 150-51; 178-79.

    b. Similarly, EK testified that by the time of JJC's termination, he was persuaded by MC's handling of the landmarking process, her handling of Stomp, and the pre-development of the New York

properties that MC was qualified to lead the New York real estate development. Kane Dep. at 57; 72-3.

c. EC testified that she had confidence in MC's ability to lead New York real estate development. EC Dep. at 55-60.

d. There is no evidence that DM ever thought that MC was unqualified; he did testify that he was impressed with her work in the landmark process and believed MC created an enormous amount of value. McEachern Dep. at 262-3.

e. Both Codding and MW, who voted in favor of MC's appointment, were not on the Board at the time JJC was terminated, and I am not aware of any evidence that either Codding or MW ever thought MC was not qualified for the role.

f. While WDG did testify that, at one point, he did not view MC as being qualified to lead a major real estate project (Gould Dep at p. 64), it was before MC demonstrated her competence through her handling of the landmarking process, the Stomp litigation, and her work on the pre-development phase of the NY project. I find it reasonable that a director would change his mind about someone's abilities over time, especially where, as here, MC hired a consultant, Michael Buckley, who does have significant real estate experience.

26. Based on all of the above, Justice Steele's unsupported factual assertion appears to be erroneous.

27. While I have no opinion on whether MC was in fact qualified to be EVP-RED-NYC, I find that taking into account: (1) MC's team that she would work with; (2) her willingness to hire people to help her with areas where she was less experienced; and (3) MC's other highly developed skills, including project specific knowledge, was appropriate and it was an adequate basis on which a director could approve the CEO's choice of senior team. I find that the Board of Directors acted responsibly and consistent with good corporate governance and complied with their obligations as independent directors when they approved EC's choice of MC for a senior position in New York real estate.

VI. COMPENSATION OF EC AND GA; PAYMENT TO MC

28. Justice Steele also addresses what he deems are "substantial bonus" payments to MC and GA, and EC's "revis[ed] compensation." Steele Rep. at 31. Steele opines that "[w]hile an independent compensation committee can be used to award salaries and bonuses to officers, ***if*** a finder of fact determines that the directors who decided EC's, MC's, and Adams' compensation and bonuses were not independent, including by the directors, other than EC and MC acquiescing to EC and MC's wishes as controlling stockholders, entire fairness will apply." Steele Rep. at 32 (emphasis added). As an initial matter, I disagree that the directors who decided these compensation and other payments are not independent.

29. All three payments were approved in March 2016. March 2016 Form 8-K.

30. The Compensation Committee recommended EC's executive compensation. RDI0054790-54807. At the time, the Compensation Committee consisted of Codding, EK, and GA. RDI 2016 Proxy Statement. As discussed above, both Codding and EK were independent and disinterested, and therefore the Compensation Committee was independent.

31. The Compensation Committee along with the Audit and Conflicts Committee recommended MC's payment. RDI March 15, 2016 Form 8-K. The Audit and Conflicts Committee consisted of DM, EK, and MW. RDI 2016 Proxy Statement. DM, EK, and MW are independent and disinterested for the reasons discussed above.

32. Moreover, as discussed above, the larger Board of Directors that approved the executive compensation, director compensation, and other payments at issue was also independent.

33. Next Justice Steele opines that if a finder of fact finds that the process used to revise EC and MC's compensation and to determine the bonuses for MC and GA was not entirely fair; the Defendants have breached their duty of loyalty under Delaware law. Steele Rep. at 32. I note that this is irrelevant because these decisions were all made by a majority of disinterested and independent directors on the relevant committees and the full Board. I further note that, once again, Justice Steele himself is not opining that the process used for the challenged payments was not entirely fair. And, in my opinion, based on my experiences with such

payments, there is no basis to so find. For the following reasons, it is my opinion, based on my experiences on boards in awarding compensation and approving payments and my knowledge of corporate governance, that the process used to approve the challenged payments was appropriate, consistent with good governance practice, and fair.

34. With respect to the executive compensation of EC (and MC) that was recommended by the Compensation Committee and approved by the full Board, it was entirely appropriate for the Board to accept the recommendation of the independent and disinterested Compensation Committee. The Compensation Committee evaluated compensation considerations with the assistance of experts who indicated that the total compensation that had been paid to EC was below the 25th percentile in a comparison to similar companies. RDI March 15, 2016 Form 8-K. Based on the information provided by these experts, the amounts approved to be paid EC and MC was well within the range of what similarly situated executives earn. RDI March 15, 2016 Form 8-K. At the full Board Meeting, WDG asked the directors present if there were any questions about EC and MC's proposed executive compensation, and there were none. RDI0054790-54807. No one voted against EC and MC's proposed executive compensation, including Plaintiff. *Id.*

35. With respect to the $200,000 payment to MC in March 2016, Justice Steele characterizes that payment as "a substantial bonus." Steele's characterization is inaccurate. The $200,000 was compensation for work

outside her existing consulting agreement and in consideration for certain releases and waivers granted by her company as part of the termination agreement between RDI and MC's company. RDI March 15, 2016 Form 8-K. In my opinion, it is consistent with good corporate governance to pay a contractor for additional work and in consideration for releases and waivers. The particular amount paid - $200,000 - was discussed, considered, and recommended by two separate committees of the Board—both the Compensation Committee and the Audit and Conflicts Committee. RDI March 15, 2016 Form 8-K; RDI0054871-54875; RDI0054871-54786; RDI0054787-54789. The Board was entitled to rely on the recommendation of either or both of these independent and disinterested committees. Based on my experience, the directors who accepted these recommendations and voted to approve the payments acted appropriately, acted consistently with good government practices, and consistently with their obligations as directors.

36. Finally, with respect to the extra payment of $50,000 to GA in March 2016, EC proposed the payment at a Board Meeting. RDI0054790-54807. EC explained that GA had rendered extraordinary services and devoted significant amounts of time beyond what was typical for a director. *Id.* His services included assisting EC during her transition to interim and then permanent CEO, advising on investor relations, traveling to New York to assist in the evaluation of the Union Square Project, assisting with other potential transactions, and significant time spent on the Compensation

Committee and the Executive Committee. *Id.* Based on my experience with executives' and directors' compensation, it is not unusual to reward a director with an additional payment when the director has spent an extraordinary amount of time on Company business. The payment is also consistent with the general practice of the RDI Board, which previously approved one-time payments for significant time spent on RDI business above and beyond what was typically expected of RDI directors. Kane Dep. at p. 487-498; RDI 2015 Proxy Statement. The Board voted 7-1 in favor, with GA not participating, and JJC voting against. RDI0054790-54807. Codding, MW, WDG, DM, EK, MC, and EC all voted to approve the payment. *Id*. Here, because the one-time payment was at the recommendation of the CEO who worked closely with GA, was based on specific projects that required increased expenditures of time, and was within the range of other one-time payments made by the Company to the Board members, the Directors' approval was rational, appropriate, and consistent with their obligations as directors.

VII. THE REORGANIZATION OF THE EXECUTIVE COMMITTEE

37. With respect to the Executive Committee, Steele opines,

> If a finder of fact finds that the EC Committee was repopulated and reactivated in order to minimize the involvement of JJC and the other directors who voted not to terminate JJC, then those actions likely constitute a breach of … duty of loyalty … of the other Defendants, who acquiesced to the controlling stockholders personal wishes.

Steele Rep. at 33 (emphasis added).

38. Boards often establish an executive committee to act on behalf of the board between meetings and/or to vet or to serve as a sounding board for emerging issues, strategies, or transactions. The substance of those conversations would subsequently be presented to the full board for further discussion and final action.

39. An executive committee works under delegated authority from the board, which is ultimately responsible for the resolution of matters which are placed on its agenda. The authority granted to the RDI Executive Committee was "to take any and all actions that the Board may take (other than as restricted by Nevada law and the Bylaws of the Company) between the regular and special meetings of the Board of Directors." Dep. Ex. 348. There is nothing unusual about the authority granted to the RDI Executive Committee, and it is consistent with the authority of other executive committees I have seen and/or have served on myself.

40. Here, it appears that the RDI Executive Committee acted consistently within the scope of the appropriate authority delegated to it. The RDI Executive Committee, which did not meet in 2014, was reconstituted in 2015 with four directors: EC, MC, EK, and GA, with GA acting as Chair. The Executive Committee met at least four times in the relevant time period. The record demonstrates that these meetings occurred in the period between Board Meetings, and the actions taken at the Executive Committee Meetings were all reported to the full Board, and the minutes of

Executive Committee Meetings were accepted by the full Board. JCOTTER 11389-11393.

41. Steele does not opine that the Executive Committee acted beyond its charter or took actions that were improper under Nevada law or RDI's Bylaws. Instead, Steele contends that the Executive Committee was problematic, because the purpose of the Executive Committee was to minimize the involvement of JJC and the other directors who voted against his termination. Steele Rep. at 33. But WDG, who voted against terminating JJC, was asked by EC to join the Executive Committee. Gould Dep. at p. 25. WDG declined because he could not allocate the time that such a commitment might require. Gould Dep. at p. 25. That fact alone suggests to me that the purpose of the Executive Committee was not to exclude JJC, Storey, and WDG.

42. And I find no other real evidence of any effort by the Executive Committee to minimize the involvement of JJC, Storey, and WDG in the business affairs of the company. On the contrary, there is evidence that Board members not on the Executive Committee had access to the Executive Committee members. In addition, there are rational business reasons to not include a director, like Storey, on an executive committee because he lives in New Zealand, which could impede quick decision-making—one of the primary purposes of an executive committee. Finally, replacing the former CEO (JJC) with the current CEO (EC) is sensible and also

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

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

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

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

a. First, I have created a timeline of the various communications, meetings, and related information and events which can be framed in a time period associated with the unsolicited offer, beginning with May 31, 2016, and ending with the final public rejection of the offer on July 18, 2016, shown here as Exhibit C.

b. Because the SAC and Steele's Expert Report contend that the RDI Board was not adequately informed about RDI's value and business strategy, management presentations of RDI's financial condition, and/or business strategy at various investor presentations, board meetings, and annual meetings of shareholders between November 15, 2015, and June 9, 2016, are also positioned on the timeline noted in (i) above.

c. Second, I have reviewed the events and communications reported above which can be summarized as follows:[3]

   i. On November 10, 2015, at the Annual Stockholders Meeting, EC and Dev Ghose made a presentation about the financial condition and business strategy of RDI.

   ii. On February 18, 2016, EC and CFO Dev Ghose made a presentation to the full Board about the financial condition and business strategy of RDI.

[3] These events are compiled from the following documents: RDI0058012; RDI0058013-58014; RDI0058015-58028; RDI0058029-58042; RDI0058043-58070; RDI0058071-58116; RDI0058172-58207; RDI0058208-58243; RDI0058244-RDI58279; RDI0058298-58299.

iii. EC as CEO of RDI received an unsolicited offer from Paul Heth on May 31, 2016, for $17 a share to purchase 100% of the common stock of the company.

iv. EC shared the offer letter with the entire RDI Board of Directors in advance of the June 2 Board Meeting.

v. On June 2, 2016, at the Annual Stockholder's Meeting, EC and Dev Ghose once again made a presentation about RDI's financial condition and business strategy, noting its core values and guiding principles inspired by founder James Cotter, Sr. proposing interactions guided by integrity (the E's)[4] and the synchronization of its cinema and real estate operations.

vi. RDI Board met on June 2 with their advisors to review the offer letter. Minutes from that meeting indicate a robust discussion of the pluses and minuses of a sale of the company at $17/share.

vii. RDI made a presentation on its business plans at the Gabelli Conference on June 9, 2016. The Gabelli presentation appears to build upon earlier strategic plans, such as those reviewed at recent annual meetings, the B. Riley Conference on May 26, 2016, and the February 18, 2016 Board Meeting, among other management presentations.

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[4] RDI0058123

viii. RDI Board met again on June 23 with their advisors and after further review and discussion, determines that the Heth offer is inadequate.

ix. RDI issued public press release on July 18.

x. On August 3, JJC filed motion to amend complaint, noting the offer in the proposed amended complaint.

xi. B. Riley issued an initial coverage investor report with a BUY rating and a target price of $26 per share.

45. After an examination of the Minutes of the June 2 and June 23 Board Meeting (including the suggested revisions of JJC), and a review of the timeline and activities, which occurred during the offer time period, and after further analysis of the various RDI plans and presentations designed to unlock the synergistic value of RDI properties, it is my opinion that the RDI decision to reject the Heth offer was reasonable and appropriate.

46. Based on my experience as a director having been in similar circumstances as those described herein, is my opinion that rejecting the offer is rational business strategy. It is perfectly reasonable to just say "no" and wait to see what, if anything, a potential suitor decides to do next, particularly if you know that the initial offer is woefully inadequate.

47. Justice Steele's "opinion" relies on his contention that the "Board did not receive the information management informed the Board that it would receive, which may have permitted the Board to adequately evaluate the offer." Steele Rep. at 32. Relying exclusively on allegations in Plaintiff's

Second Amended Complaint, he contends that "[t]he Board determined that it would meet the week following the receipt of the Offer to determine its response to the Offer, after receiving a business plan and valuation material from the Company's management. The business plan and valuation materials were never submitted to the Board." Steele Rep. at 17. But after a thorough examination of the Minutes of the June 2, 2016 Board Meeting and JJC's comments to the Minutes of the June 2, 2016 Board Meeting, I cannot find any support for Justice Steele's assertion that management informed the Board that it would provide a business plan and valuation material, specifically.

a. Instead, the Board Minutes reflect that

> Management should over the next couple of weeks, prepare ***background information*** in preparation for a Board Meeting at which the Board could make a further evaluation of the Share Purchase IOI and consider in greater detail whether it would be in the best interests of the Company and its stockholders to continue with its current business plan as an independent company or to consider a process that could include negotiations regarding the Share Purchase IOI.

RDI0058015-RDI0058028 (emphasis added). Relevant background information was provided as promised by way of EC's presentation at the June 23 Telephonic Board Meeting. In particular, EC presented an overview of the cinema and real estate assets and operations, including the worldwide adjusted cash-flow for cinema and appropriate multipliers, and the appraisal value of

the current real estate portfolio. RDI0058029-58042. These numbers, taken together, greatly exceeded the Heth offer. *Id.*

b. In any event, on numerous recent occasions, EC has presented to the Board RDI's current business strategy, including at the Stockholders Meeting held the same day as the June 2 Board Meeting. RDI58013-58014; RDI0058117-58171.

48. Justice Steele's "opinion" also rests on his suggestion that it was improper to vote on the offer without seeking the advice of independent legal or financial advisors. Steele Rep. at 32. But even JJC's comments to the June 2 Board Minutes reflect the fact that the Board resolved that "it would not be cost effective at this point in time for the Company to incur the cost and expense of retaining outside financial advisors (banker or valuation experts), and that Management should, for now, look to information readily available to Management at the Company." RDI0058244-58279. Based on my experience as a director having been in similar circumstances to those described above, I find it reasonable and consistent with good governance practice that the Directors did not undertake the cost of retaining outside financial advisors at this point in time, given the fact that the offer was not only inadequate, but also conditional.

49. Justice Steele's "opinion" also relies on his partial suggestion that members of the Board who voted to reject the Offer did so out of either a personal interest in retaining their management positions or out of deference to the wishes of the controlling shareholder. Steele Rep. at 33.

But I have seen neither any evidence indicating a desire on the part of the Board mounting a campaign to keep EC and MC in office through its rejection of the offer nor any evidence that EC or MC acted out of personal interest. To the contrary, as RDI's largest stockholders, EC and MC stood to make a substantial amount of money—far more than they would through their executive compensation. And, while my opinion that the Board relied on rational and legitimate business matters to reject the offer (as opposed to Steele's suggestion that they acted solely to keep EC and MC in management positions) does not rely on the opinion of independent investment analyst B. Riley that RDI's stock was worth $26/share, it suggests that regardless of whether B. Riley's conclusion is right or wrong, rational, independent thinkers who are not beholden to EC or MC could and would view $17/share as undervalued. September 9, 2016 Article from B. Riley, entitled "Leading Theater Circuit Poised to Unlock Meaningful Shareholder Value in Coming Years with Global Property Development Strategy; Initiating with a Buy and a $26.00 PT."[5]

50. In sum, it is my opinion that the process used by the Board in deciding to reject the offer, was appropriate and consistent with good corporate governance. The decision is the product of a majority of independent and disinterested directors. Justice Steele provides an "opinion" that fails to take into account reasonable, rational business considerations and that is based on solely on the allegations of the Second Amended Complaint,

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[5] Indeed, another of JJC's own experts in this litigation contends that the "stock price of the Company was depressed." Spitz Rep. ¶ 11.

which blatantly mischaracterizes the actual facts as demonstrated by the relevant documents.

IX. CONCLUSION

Stated simply, Justice Steele's speculative and contingent "opinion" is based on incorrect assumptions given the facts in this case and the standards of good governance practice. In particular, I find that the RDI Board is independent and disinterested because directors DM, WDG, MW, EK, and Codding as individuals are independent and disinterested. Independence is not compromised by mere friendship without more, and here there is no more. As to each of the individual challenged actions, I find the members of the Board of Directors acted reasonably and consistent with appropriate governance practices at a controlled company, and that the processes employed by the Board and each of the relevant committees with respect to each challenged action were fair.

Executed on September 28, 2016

ALFRED E. OSBORNE, JR.

Exhibit A

List of Additional Materials Considered By Dr. Albert E. Osborne, Jr.

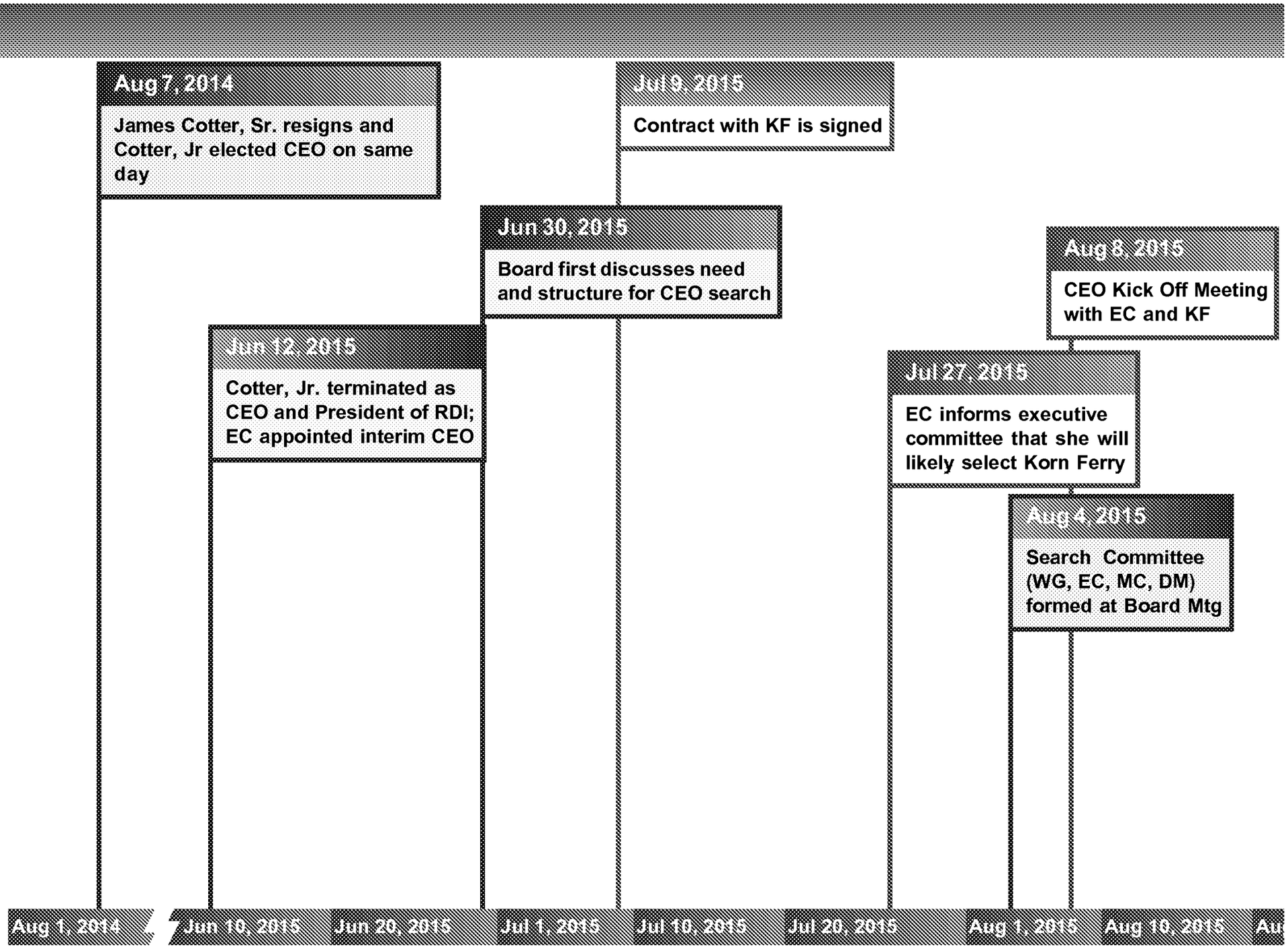
JCOTTER016893-95

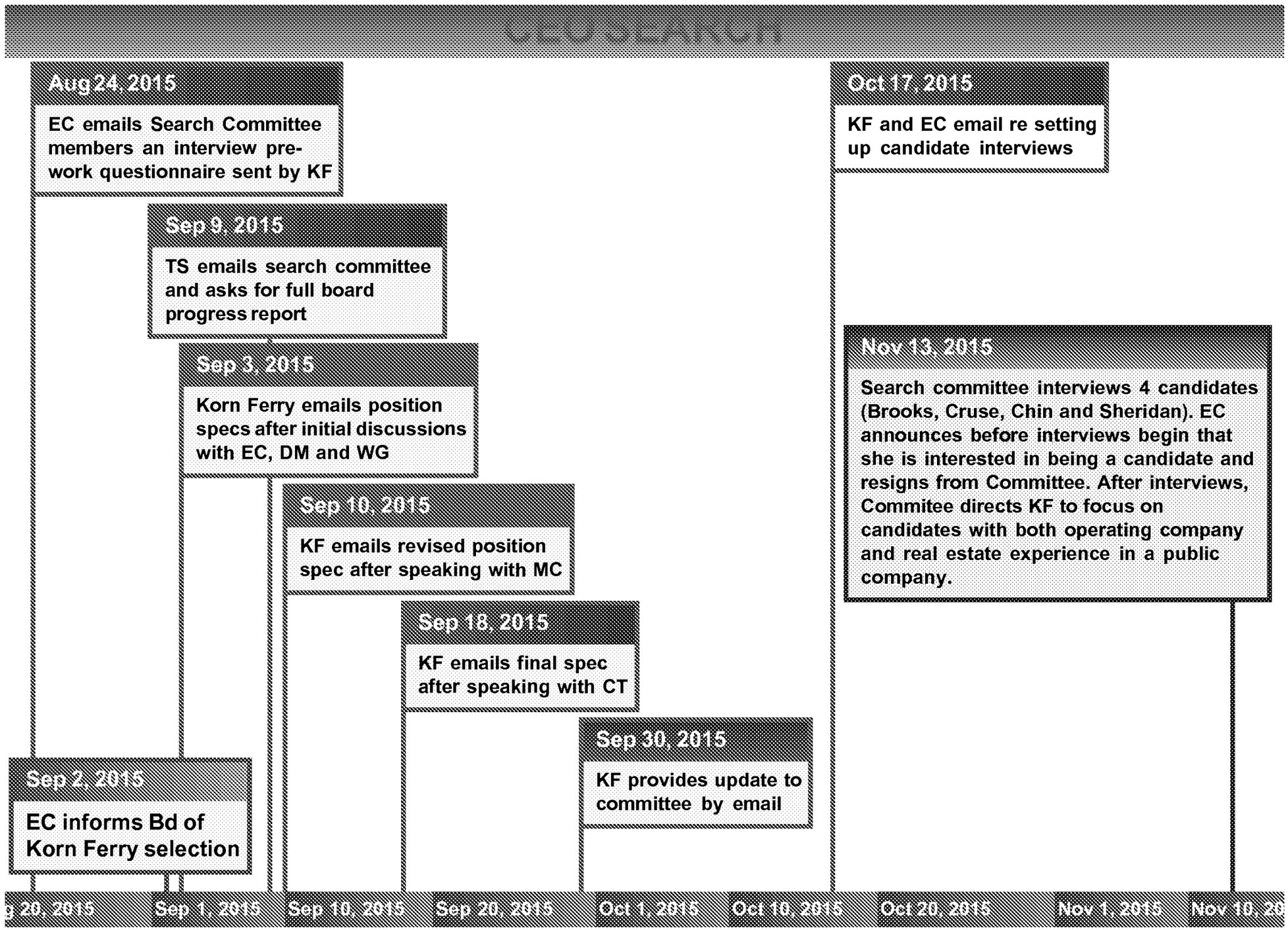
September 9, 2016 Article from B. Riley entitled "Leading Theater Circuit Poised to Unlock Meaningful Shareholder Value in Coming Years with Global Property Development Strategy; Initiating with a Buy and a $26.00 PT."

RDI0058012
RDI0058013-58014
RDI0058015-58028
RDI0058029-58042
RDI0058043-58070
RDI0058071-58116
RDI0058172-58207
RDI0058208-58243
RDI0058244-RDI58279
RDI0058298-58299

EXHIBIT A

Exhibit B


Aug 7, 2014
James Cotter, Sr. resigns and Cotter, Jr elected CEO on same day
Jun 12, 2015
Cotter, Jr. terminated as CEO and President of RDI; EC appointed interim CEO
Jun 30, 2015
Board first discusses need and structure for CEO search
Jul 9, 2015
Contract with KF is signed
Jul 27, 2015
EC informs executive committee that she will likely select Korn Ferry
Aug 4, 2015
Search Committee (WG, EC, MC, DM) formed at Board Mtg
Aug 8, 2015
CEO Kick Off Meeting with EC and KF
Aug 1, 2014
Jun 10, 2015
Jun 20, 2015
Jul 1, 2015
Jul 10, 2015
Jul 20, 2015
Aug 1, 2015
Aug 10, 2015


Aug 24, 2015
EC emails Search Committee members an interview pre-work questionnaire sent by KF
Sep 9, 2015
TS emails search committee and asks for full board progress report
Sep 3, 2015
Korn Ferry emails position specs after initial discussions with EC, DM and WG
Sep 10, 2015
KF emails revised position spec after speaking with MC
Sep 18, 2015
KF emails final spec after speaking with CT
Sep 30, 2015
KF provides update to committee by email
Oct 17, 2015
KF and EC email re setting up candidate interviews
Nov 13, 2015
Search committee interviews 4 candidates (Brooks, Cruse, Chin and Sheridan). EC announces before interviews begin that she is interested in being a candidate and resigns from Committee. After interviews, Commitee directs KF to focus on candidates with both operating company and real estate experience in a public company.
Sep 2, 2015
EC informs Bd of Korn Ferry selection
g 20, 2015
Sep 1, 2015
Sep 10, 2015
Sep 20, 2015
Oct 1, 2015
Oct 10, 2015
Oct 20, 2015
Nov 1, 2015
Nov 10, 20

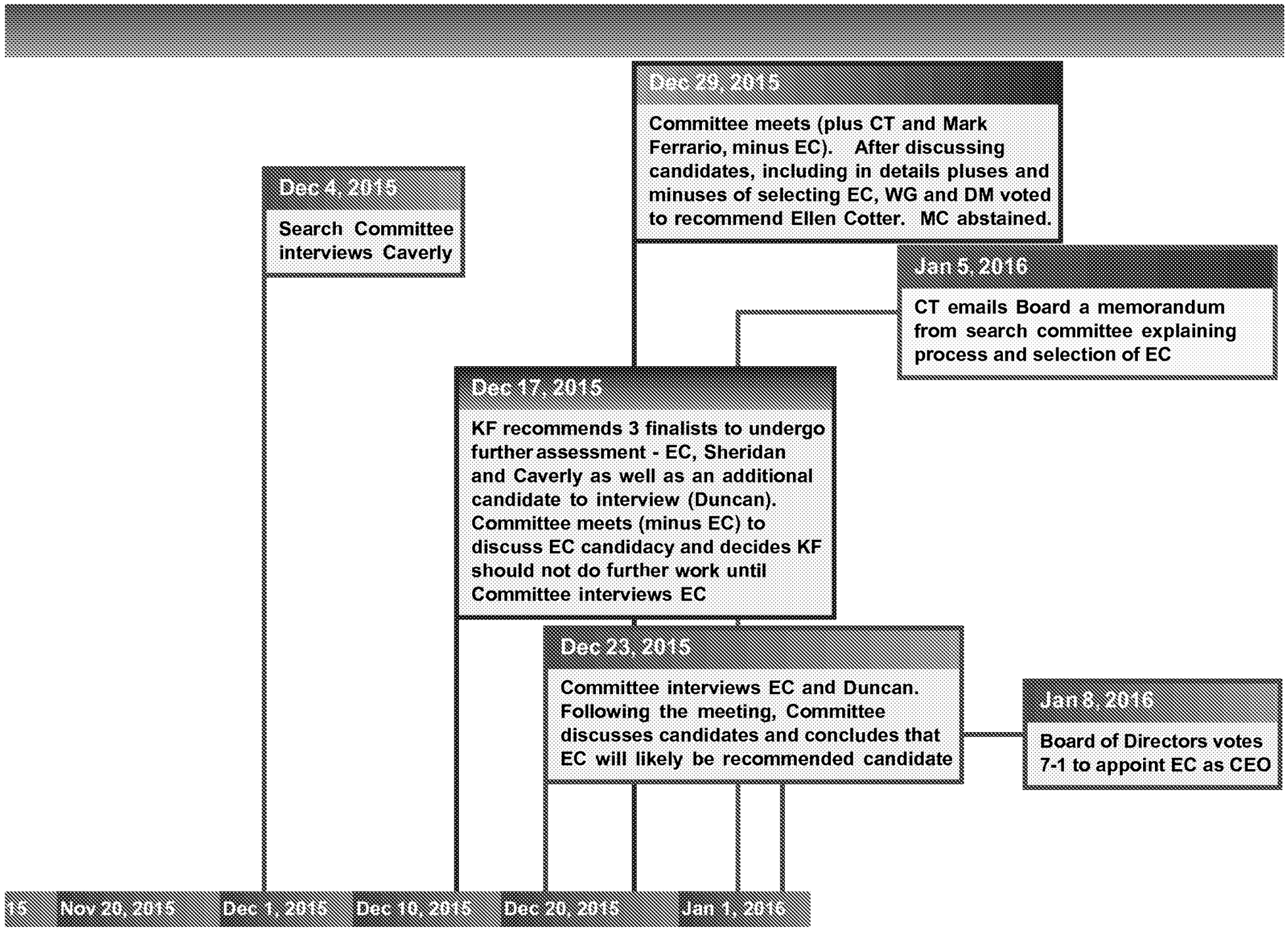
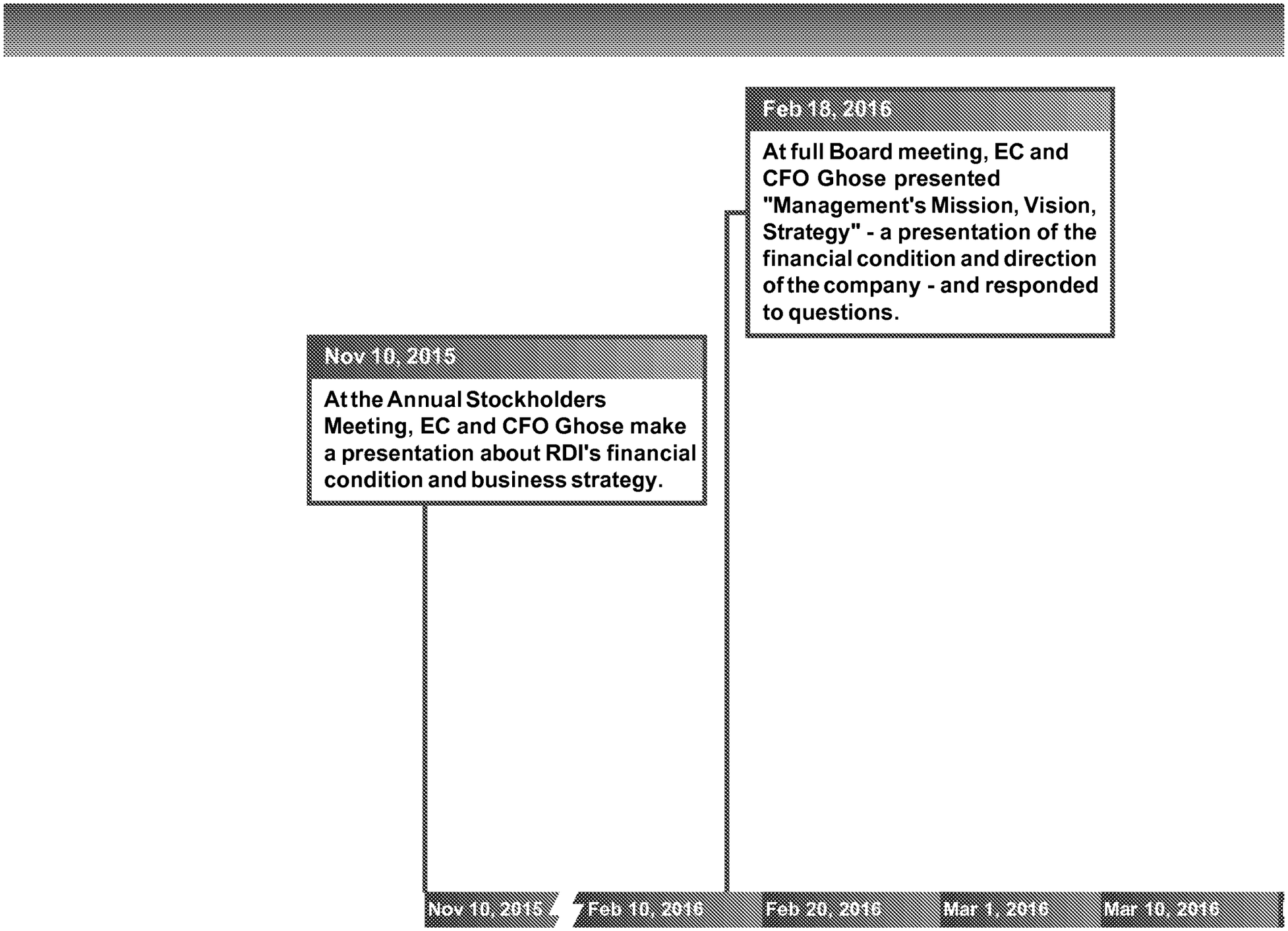
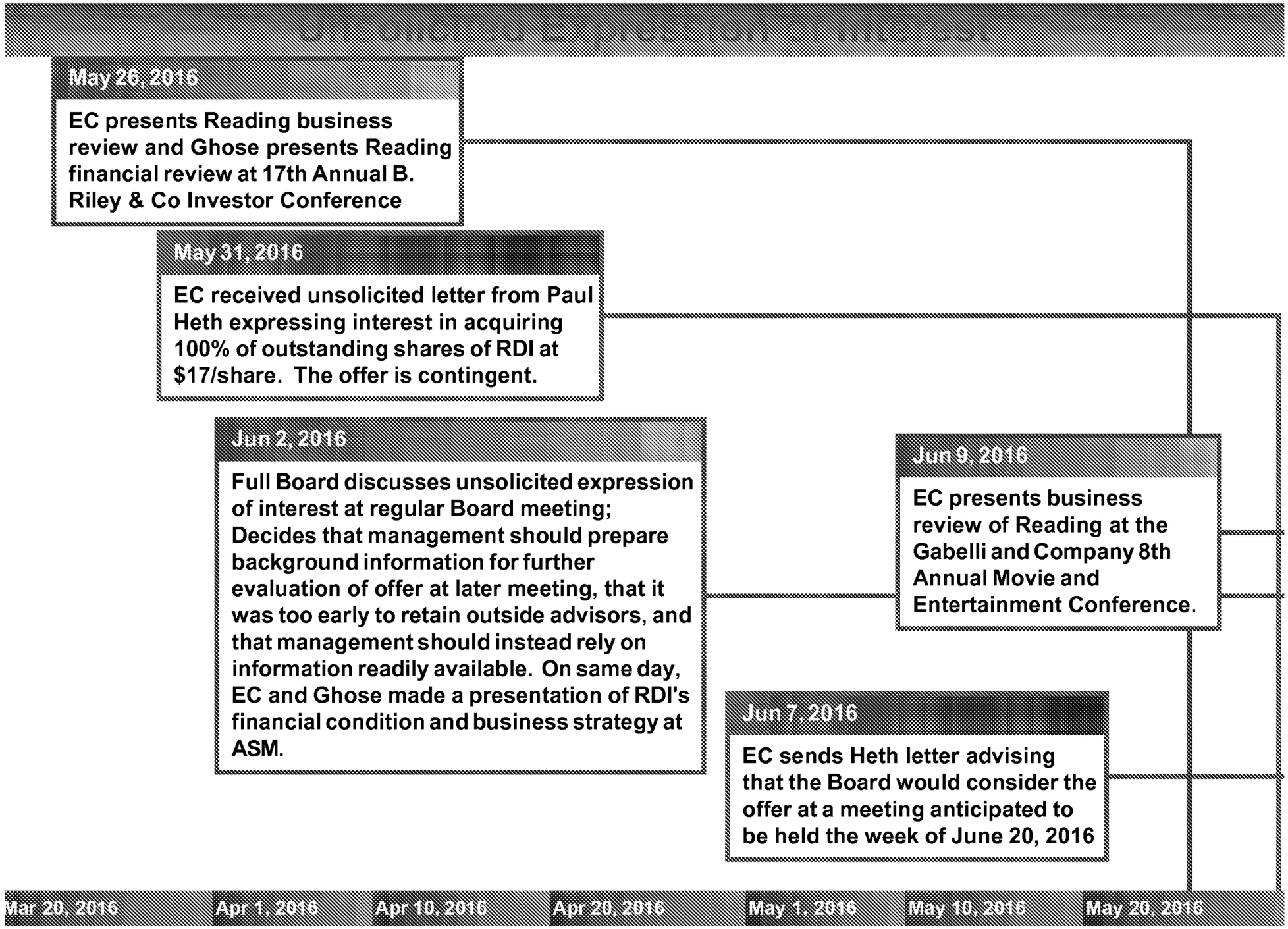

Dec 29, 2015
Committee meets (plus CT and Mark Ferrario, minus EC). After discussing candidates, including in details pluses and minuses of selecting EC, WG and DM voted to recommend Ellen Cotter. MC abstained.
Dec 4, 2015
Search Committee interviews Caverly
Jan 5, 2016
CT emails Board a memorandum from search committee explaining process and selection of EC
Dec 17, 2015
KF recommends 3 finalists to undergo further assessment - EC, Sheridan and Caverly as well as an additional candidate to interview (Duncan). Committee meets (minus EC) to discuss EC candidacy and decides KF should not do further work until Committee interviews EC
Dec 23, 2015
Committee interviews EC and Duncan. Following the meeting, Committee discusses candidates and concludes that EC will likely be recommended candidate
Jan 8, 2016
Board of Directors votes 7-1 to appoint EC as CEO
15
Nov 20, 2015
Dec 1, 2015
Dec 10, 2015
Dec 20, 2015
Jan 1, 2016

Exhibit C


Feb 18, 2016
At full Board meeting, EC and CFO Ghose presented "Management's Mission, Vision, Strategy" - a presentation of the financial condition and direction of the company - and responded to questions.
Nov 10, 2015
At the Annual Stockholders Meeting, EC and CFO Ghose make a presentation about RDI's financial condition and business strategy.
Nov 10, 2015
Feb 10, 2016
Feb 20, 2016
Mar 1, 2016
Mar 10, 2016


May 26, 2016
EC presents Reading business review and Ghose presents Reading financial review at 17th Annual B. Riley & Co Investor Conference
May 31, 2016
EC received unsolicited letter from Paul Heth expressing interest in acquiring 100% of outstanding shares of RDI at $17/share. The offer is contingent.
Jun 2, 2016
Full Board discusses unsolicited expression of interest at regular Board meeting; Decides that management should prepare background information for further evaluation of offer at later meeting, that it was too early to retain outside advisors, and that management should instead rely on information readily available. On same day, EC and Ghose made a presentation of RDI's financial condition and business strategy at ASM.
Jun 9, 2016
EC presents business review of Reading at the Gabelli and Company 8th Annual Movie and Entertainment Conference.
Jun 7, 2016
EC sends Heth letter advising that the Board would consider the offer at a meeting anticipated to be held the week of June 20, 2016
Mar 20, 2016
Apr 1, 2016
Apr 10, 2016
Apr 20, 2016
May 1, 2016
May 10, 2016
May 20, 2016

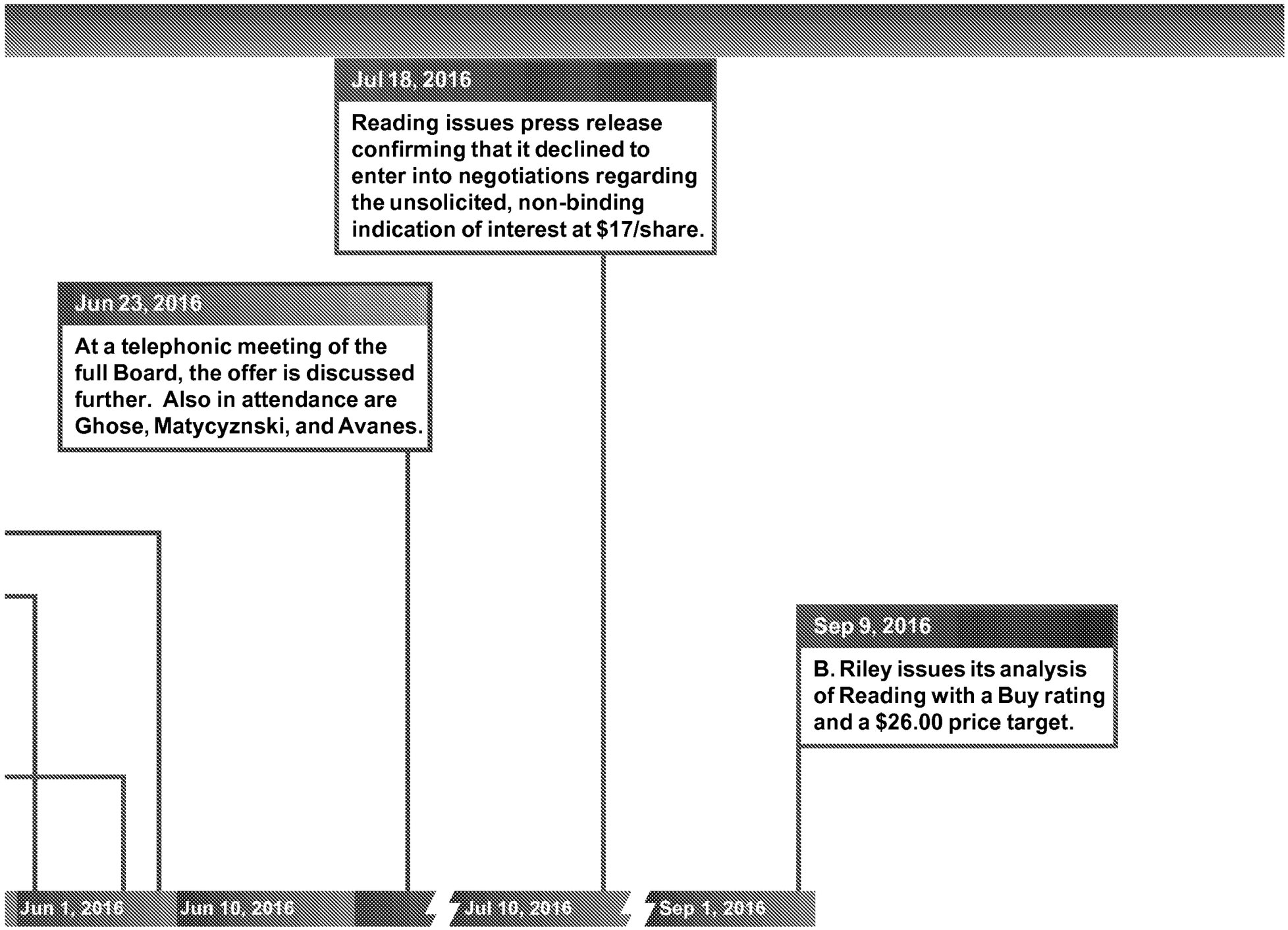

Jul 18, 2016
Reading issues press release confirming that it declined to enter into negotiations regarding the unsolicited, non-binding indication of interest at $17/share.
Jun 23, 2016
At a telephonic meeting of the full Board, the offer is discussed further. Also in attendance are Ghose, Matycyznski, and Avanes.
Sep 9, 2016
B. Riley issues its analysis of Reading with a Buy rating and a $26.00 price target.
Jun 1, 2016
Jun 10, 2016
Jul 10, 2016
Sep 1, 2016

EXHIBIT 7

Minutes of the
Board of Directors
of
Reading International, Inc.

March 10, 2016

A duly noticed meeting of the Board of Directors of Reading International, Inc. was held on March 10, 2016, in the third floor conference room of Pepperdine University, located at 6100 Center Drive, Los Angeles, California, 90045. Chair Ellen Cotter called roll and verified the following: participating in person were Chair Ellen Cotter, Vice Chair Margaret Cotter, and Directors Guy Adams, Judy Codding, James Cotter, Jr., Edward L. Kane, Doug McEachern, and William Gould; participating by telephone conference call was Director Michael Wrotniak; participating at the invitation of the Chair and present in person were Dev Ghose, Chief Financial Officer and Treasurer, William Ellis, General Counsel, Robert Smerling, President of Domestic Cinemas, and Craig Tompkins, Recording Secretary; and participating at the invitation of the Chair by telephone conference call were Andrzej Matyczynski, Corporate Advisor, Wayne Smith, Managing Director, Australia and New Zealand, Steve Lucas, Principal Accounting Officer and Controller, and Matthew Bourke, Director of Real Estate, Australia and New Zealand; participating for the discussion of management's endeavors with respect to the leasing of the Company's Union Square property were Michael Buckley from Edifice Real Estate Partners and Jeff Roseman from Newmark Grubb Frank Knight.

Chair Cotter reminded the Board that the Board's proceedings were confidential and verified that no one was recording the meeting and that no one other than the persons responding to the roll call were on the phone. She confirmed that should anyone join the call, that their presence would be announced to the meeting.

Chair Cotter called the meeting to order at approximately 12:30 PM.

Union Square Redevelopment Project

Chair Cotter advised the Board that the first order of business was to receive a report from Margaret Cotter concerning the status of management's endeavor to lease the Company's Union Square property.

Ms. Cotter first displayed the video prepared by Newmark. Thereafter Mr. Roseman discussed marketing efforts to date, and the results of those efforts. He stated that they had received ten indications of substantial interest from credit tenants who were interested in utilizing all of the available retail space; that they were talking with some smaller users as well (Pottery Barn and William Sonoma type tenants); and that they are not looking at this time to local retailers, but rather focusing on major credit tenants.

Mr. Roseman advised the Board that it was still early days in the marketing process, and that the email blast to the market had only gone out the prior day. He further advised that retail rents were continuing to rise in applicable markets. Mr Roseman responded to various questions from the Board as to the

strength of the market and his confidence that the building would be substantially leased up by the time that major financial commitments were made by the Company. Mr Roseman noted that there were trade-offs in leasing immediately, as opposed to letting a competitive market develop, but that he was confident that the construction would not be a speculative venture from a leasing point of view. He noted that the timeline for renting the office space was likely longer than the time line for the retail, as office tenants were typically seeking more immediate occupancy than major retail tenants.

Michael Buckley stated that the project was continuing to progress on time and on budget, and volunteered to address such questions as might be presented by the Directors. There were no questions for Mr. Buckley.

Vice Chair Cotter reviewed with the directors the materials included in the Board book, and responded to questions.

At this point, Messrs. Buckley and Roseman terminated their conference call connection.

Thereafter, the Directors further discussed the project with management, and asked that management prepare for consideration at the next meeting a presentation of developer's anticipated profits and a buy/sell analysis (i.e. was it better to sell now or to redevelop the property and take the risks of redevelopment).

Report on Status of Annual Report on Form 10K

Following this discussion, Chair Cotter advised the Board that the next order of business was an update on the status of the Company's Annual Report on Form 10K and the report of the Audit and Conflicts Committee.

Dev Ghose, the Company's Chief Financial Officer and Treasurer, updated the Board on the status of the Company's Annual Report on Form 10K.

Mr. Ghose reported that there was still work to do on the audit. He advised the Board that, in response to the determination with respect to the 2014 Audit that there was a material weakness in internal controls related to the accounting for income taxes with respect to Australia and New Zealand, the Company had retained Deloitte to review and revise as to these tax accounting matters. In the course of this work other tax accounting issues had been identified.

To date, Deloitte had identified seven issues, six of which had been resolved. At this point in time, these adjustments appear to cancel out, so as to have no material impact on after tax earnings. However, the work was ongoing, and there still remained one unresolved item. Mr. Ghose stated that the issues all related to non-cash accounting items, not to the tax returns, and did not impact items above the net income after taxes level.

Audit and Conflicts Committee Chair Douglas McEachern next presented the Audit and Conflicts Committee (the "Committee") Preliminary Report. Committee Chair McEachern reiterated the

information presented by Mr. Ghose. He advised that the Committee had reviewed the Draft Annual Report on Form 10K with Management, and had met and heard the preliminary report of the Company's auditors, Grant Thornton. He stated that the Committee was prepared to sign off on the draft Annual Report on Form 10K, subject to the completion of the audit by Grant Thornton, and that the Committee had delegated to him authority to review any proposed changes to the Draft Annual Report on Form 10K, and to approve any changes which, in his judgment were not material. Any material changes would need to be brought back to the full Committee.

Director James Cotter, Jr., complained that he had only received a draft of the Annual Report on Form 10K on Tuesday evening (March 8, 2016) and, accordingly, had not had time to review the same. Chair Cotter noted that the filing deadline for the Annual Report on Form 10K was March 15, and requested that Mr. Cotter, Jr. provide any comments that he might have directly to Committee Chair McEachern in writing. Director James Cotter, Jr., also complained that he had not been permitted to participate in the Committee meeting. Chair McEachern responded that he had been advised by outside counsel [redacted] Ellen Cotter had participated in the meeting but both in her capacity as Chair of the Board and as the Company's President and Chief Executive Officer. Committee Chair McEachern noted also that the responsibility for the audit and for dealing with and interfacing with the auditors had been delegated to the Committee and that he had confidence in the ability of the Committee to discharge its duties and responsibilities. He further noted, that the open issues were accounting driven, rather than tax driven.

A motion was made and seconded to accept the report of the Committee and to delegate to management responsibility for the finalization of the Annual Report on Form 10K, subject to obtaining the approval of Committee Chair McEachern of any immaterial changes from the form previously distributed and subject to a review and approval of the Committee of any material changes. Mr. Tompkins noted that the Form 10K did not require execution by all of the directors, and that only execution by a majority of the Board was required. So, as a matter of mechanics, the Form 10K could be filed so long as it was approved by the Committee, the Chair and the Vice Chair.

The motion passed 8 in favor and one (James Cotter, Jr.) abstaining.

Chair Cotter thanked the Committee for its work, and the Directors for reviewing the 10K on relatively short notice. She urged any director having comments to forward them to Committee Chair McEachern as soon as possible.

Earnings Release

Chair Cotter stated that the next order of business was a review of the earnings release. She apologized for the fact that it had only been circulated the previous evening, and asked that Directors give Mr. Ghose any comments they might have as soon as possible. She advised that after collecting comments, Mr. Ghose would work with Committee Chair McEachern to finalize the release.

Debt Obligations Review

Chair Cotter advised that the next order of business was the review of the Company's debt situation and turned the floor over to Mr. Ghose.

Mr. Ghose reviewed the materials in the board package, and responded to questions.

Domestic Cinemas Report

Chair Cotter advised that the next order of business was the review of the Company's Domestic Cinema Operations and turned the floor over to Mr. Smerling. Mr. Smerling referred directors to the materials in the Board Book regarding the results of operations for the Company's domestic cinemas and discussed the anti-trust implications of the potential AMC/Carmike merger and the state of clearance issues. He advised that, while no assurance could be given, it appeared that the old clearance system was breaking down, which would provide both opportunities and challenges for the Company. At Mr. Smerling's request, Mr. Tompkins gave a brief update of the pending anti-trust litigation brought be iPic and Landmark against AMC and Regal. Messrs. Smerling and Tompkins responded to questions for the Board.

Australia and New Zealand Cinema Operations

Chair Cotter advised that the next order of business was the review of the Company's Australia and New Zealand Cinema operations and turned the floor over to Mr. Smith. Mr. Smith referred the Board to the Board Book regarding the results of operation. At the invitation of Chair Cotter, Mr. Smith discussed his value pricing initiatives in Australia and New Zealand, and the results being achieved, and responded to questions.

Live Theater Operations

Chair Cotter advised that the next order of business was the review of the Company's live theater operations and turned the floor over to Vice Chair Margaret Cotter. Vice Chair Cotter referred the Board to the Board Book regarding the results of operation, and invited questions from the Board. There were no questions.

Australia and New Zealand Real Estate Operations

Chair Cotter advised that the next order of business was the review of the Company's real estate operations in Australia and New Zealand and turned the floor over to the Company's Head of Real Estate for Australia and New Zealand, Matthew Bourke. Mr. Bourke reviewed with the Board the materials in the Board book and invited questions from the Board. There were no questions.

Potential Purchase of 5995 Sepulveda Boulevard Office Building

Chair Cotter advised that the next order of business was the consideration of a possible purchase of the office building located at 5995 Sepulveda Boulevard to house the Company's corporate headquarters.

Mr. Matyczynski reviewed the materials included in the Board Book with the Directors, concluding that it was management's recommendation that the Board approve the purchase of the property and authorize management to proceed with the transaction.

There followed a discussion among the directors during which a variety of points were considered by the Directors, including the following:

- The projected impact on the Company's headquarters occupancy costs, and the benefits of being an owner/occupier as opposed to a tenant,
- The comparative benefits of the alternative allocation of the capital need to purchase the building to acquire other operating assets,
- The potential long term value of the property as an investment asset,
- The potential domestic demands for cash in the near to medium term,
- The limited amount of cash available in the US, and the issues involved in bringing cash into the United States from Australia and/or New Zealand, and
- Possible rental or purchase alternatives.

Following discussion, in which management responded to a variety of Director questions a motion was made by Director Adams and seconded by Director McEachern that management be authorized and directed to acquire the Sepulveda Property on terms substantially similar to those presented to the meeting, and to take all such actions necessary or convenient to carry out the intentions of these resolutions.

The motion passed 7 to 2, with Directors Wrotniak and Cotter, Jr. voting no.

Legal Update

Chair Cotter advised the Board that the next order of business was the litigation update, and turned the meeting over to Mr. Tompkins. Mr. Tompkins referred the committee to the materials in the Board Book and made himself available to respond to questions. There were no questions.

Stockholder Annual Meeting

Chair Cotter advised the Board that the next order of business was to fix the stockholder proposal date, the record date and the meeting date for the 2016 Annual Meeting of Stockholders, to select an inspector of elections and to appoint secretaries for the meeting. Chair Cotter advised that it was her anticipation that all of the current directors would be renominated.

On motion made and seconded, the following dates and appointments were approved.

- Stockholder Proposal Deadline: April 8, 2016

- Broker Search Date: March 25, 2016
- Record Date: April 22, 2016
- Stockholder Meeting: June 2, 2016
- Inspector of Elections: First Coast Results, Inc.
- Meeting Secretary: Craig Tompkins
- Meeting Assistant Secretary: Susan Villeda

Following discussion, during which Mr. Cotter Jr. stated his view that Mr. Tompkins should not be secretary due to the fact that he had been named as a defendant in the T2 litigation, the above motion was passed unanimously, but with Mr. Cotter Jr. voting no on the appointment of Mr. Tompkins as Meeting Secretary, abstained as to the fixing of the annual meeting date.

Executive Session

At this time the Chair excused all of the members of management other than Mr. Tompkins, Recording Secretary, advising that the remainder of the meeting would be held in executive session.

Review and Approval of Minutes

Chair Cotter advised the Board that the next order of business was the review and approval of the minutes for the Board meeting held on February 18, 2016:

In the discussion that followed, Mr. Cotter Jr. objected to the preparation of minutes by Mr. Tompkins on the basis that Mr. Tompkins had been named as a defendant in the T2 litigation. No motion was made on this topic. Several directors questioned the propriety of allowing directors to include, in essence, dissenting views in the Company's Minute Books. Following discussion, on motion made and seconded, the Directors approved the minutes in the form submitted to the Board and the inclusion in the Minute Book of Director Cotter's comments, by a vote of 8 to 1, with Mr. Cotter, Jr. voting no.

Review and Approval of Compensation and Stock Option Committee Charter

Chair Cotter advised the Board was the review of a proposed Compensation and Stock Option Committee Charter. She noted that the Company did not currently have a formal charter, and that the proposed charter included in the Board materials [redacted] was being recommended for adoption by the Compensation and Stock Option Committee. Chair Cotter advised that, in the view of management, the proposed charter was consistent with current best practices.

Following discussion it was determined that with respect to the compensation to be paid to Ellen Cotter, Margaret Cotter and/or James Cotter, Jr., the Compensation and Stock Option Committee should make its recommendation to the Board, but that the approval of such compensation should be determined ultimately by the Board and not by the Compensation and Stock Option Committee. Management was directed to amend the proposed charter to reflect this change. Subject to the making of this change, on

motion made and seconded, the proposed Compensation and Stock Option Committee Charter was approved by an 8 to 1 vote, with Mr. Cotter, Jr. abstaining.

Amended and Restated Audit and Conflicts Committee Charter

Chair Cotter advised the Board that the next item of business was the review of a possible amended and restated Audit and Conflicts Committee Charter. Chair Cotter advised that the draft was a work in process, as it had not yet been reviewed by Dev Ghose or Grant Thornton. Management had taken input from Frank Reddick of Akin Gump and Mike Bonner of Greenberg Traurig and believed that it was in conformity with best practices. It was anticipated that a final draft would be presented to the Board at its next Board meeting. Committee Chair McEachern explained that the proposed charter was substantially longer than the current charter but this was due, in part, to the inclusion within the Audit and Conflicts Committee of responsibility for tax oversight, cyber security, risk assessment, and the inclusion in the charter of the Audit and Conflicts Committee's responsibility for oversight of the Company's management of Shadow View Land & Farming, LLC.

Mr. Cotter Jr., raised again the issue of director attendance at meetings of the Audit and Conflicts Committee, expressing his view that such meetings should be open to all directors. Committee Chair McEachern said that while he would look into the matter further, he believed that best practices was for the Audit and Conflicts Committee to have control over attendance at its meetings, and that based on his discussions with counsel, this was completely consistent with applicable Nevada Law.

Review and Acceptance of Committee Meeting Minutes

Chair Cotter advised the Board that the next order of business was the review and acceptance of the following committee minutes:

(a) Compensation Committee Meeting: January 25, 2016
(b) Compensation Committee Meeting: January 28, 2016
(c) Compensation Committee Meeting: February 5, 2016
(d) Compensation Committee Meeting: February 17, 2016
(e) Compensation Committee Meeting: February 29, 2016
(f) Audit and Conflicts Committee Meeting: February 29, 2016
(g) Executive Committee Meeting: February 26, 2016

During discussion, Mr. Cotter, Jr. asked that he be permitted to ask questions about and to give comments on the committee minutes.

The sense of the Board was that committee minutes were the responsibility of the applicable committee, that they were basically provided for the information of the Board and that "acceptance" was simply the procedure to allow the minutes to be included in the minute books of the Company. If a director had a question about the minutes, that director was certainly free to discuss the matter with the applicable committee chair, and if such director did not get a satisfactory answer, was likewise free to ask the Chair to place the matter on the agenda for a subsequent Board meeting.

On motion duly made and seconded, the above referenced minutes were accepted for inclusion in the minute books of the Company by an 8 to 1 vote, Director Cotter, Jr. abstaining.

Compensation and Stock Option Committee Report

Chair Cotter advised the Board that the next order of business was the review of the report of the Compensation and Stock Option Committee. At this point, Mr. Tompkins left the meeting, Mr. Bonner being appointed to serve as recording secretary for this portion of the meeting.

At 4:04 pm Mr. Tompkins was excused, and Mr. Bonner was asked to take the minutes until Mr. Tompkins returned.

a. Executive Compensation and Appointments

James Cotter, Jr. expressed his objections to not having been provided with more detail supporting proposed 2016 executive compensation along with the individual goals and benchmarks to be used for each executive's short-term incentive bonus opportunity.

Ellen Cotter responded that each director had been provided in advance of the meeting with the schedule showing each senior executive officer's proposed 2016 compensation package and that she was happy to respond to any questions any director had on the recommendations. Ellen Cotter had presented detailed schedules and proposed individual goals and benchmarks to be used for the senior level executives to the Company's Compensation and Stock Options Committee (the "Compensation Committee") which had thoroughly reviewed and vetted such recommendations. Ms. Cotter reminded the Board that the intent is to utilize the Compensation Committee to review and give input on the specific compensation components for the senior executive officers. The Compensation Committee gave its unanimous approval to the executive compensation recommendations.

Mr. Cotter, Jr. repeated his objection on not having had the opportunity to review the detailed back up information or the detailed individual goals and benchmarks for short term incentive bonuses that had been used by the Chief Executive Officer and the Compensation Committee. Ms. Cotter acknowledged the objection and asked if Mr. Cotter had any specific questions or concerns.

Questions were asked about the Dev Ghose compensation recommendations. Ms. Cotter noted that unlike the other senior management members, Mr. Ghose's compensation was set in his April 10, 2015 employment contract. Mr. Ghose's contract had been entered into when James Cotter, Jr. was the Chief Executive Officer and the terms had been negotiated and approved by Mr. Cotter. James Cotter, Jr. pointed out that Mr. Ghose's contract had been negotiated under the supervision of Mr. Gould, the Lead Independent Director.

Ms. Cotter asked if there were any other comments or questions. Mr. Cotter, Jr. stated that he objected to the employment and appointment of Craig Tompkins as General Counsel. Mr. Cotter, Jr. stated that he had seen a memo written by his father, James Cotter, Sr., in 2007 that made several negative statements

about Mr. Tompkins, including a statement by James Cotter, Sr. that Mr. Tompkins should not serve in a position of trust for the Company or in a position under which he could bind the Company.

Ellen Cotter questioned Mr. Cotter about his assertions and stated that she (Ellen Cotter) had never heard of this before. Margaret Cotter also expressed surprise and agreed with Ellen Cotter. Other directors were not aware of these allegations and observed that James Cotter Jr. was referring to matters that were nine years old (2007). Further, it was noted that Mr. Tompkins had continued to provide extensive consulting and legal services to the Company after 2007, including services authorized by and which involved reporting directly to James Cotter, Sr.

James Cotter, Jr. stated that he had this information in his possession. He once again expressed his objections.

After further discussions, the Board decided that James Cotter, Jr.'s allegations were of such a nature that justified a prompt investigation. The Board instructed that this investigation be commenced immediately and that Mr. Cotter, Jr., as the person making the allegations, would be expected to cooperate and provide whatever materials he claims to have. The Board's intention was that Mr. Tompkins's employment would be considered following such inquiry.

After further discussion, and upon motion duly made and seconded, the following resolution was adopted (on a vote of eight votes in favor and James Cotter, Jr. abstaining):

> It Is Hereby Resolved that the schedule of proposed 2016 executive compensation as set forth on Exhibit A to these minutes, excluding Ellen Cotter, Margaret Cotter and Craig Tompkins, as unanimously recommended by the Compensation Committee, be approved.

The Board also discussed the appointment of certain executives to certain offices. Ms. Cotter discussed with the Board the various appointments and the reasons therefor. Ellen Cotter recommended the new titles be given as below:

> Dev Ghose – Executive Vice President, Chief Financial Officer & Treasurer
> Andrzej Matyczynski – Executive Vice President – Global Operations
> Matthew Bourke - Managing Director – Real Estate – Australia & New Zealand
> Gilbert Avanes – Vice President – Finance, Planning & Analysis
> Mark Douglas – Director of Property Development – Australia and New Zealand
> Terri Moore – Vice President – Cinema Operations (US)
> Doug Hawkins – Vice President – Construction and Facilities Management (US)
> Ken Lee – Vice President – Food & Beverage (US)

After further discussion, and upon motion duly made and seconded, the following resolution was adopted (on a vote of eight votes in favor and James Cotter, Jr. abstaining).

> It is hereby Resolved that the above executives be appointed to the offices listed above, as unanimously recommended by the Compensation Committee, be approved.

Next, Margaret Cotter was asked to leave. Ellen Cotter gave a summary of her assessment of the reasons for Margaret Cotter's new position as Executive Vice President, as well as a summary of the factors she had used in recommending the compensation package for her. Directors asked questions. Ellen Cotter was then excused.

William Gould, as Lead Independent Director, asked if there were any further questions about the proposed compensation for 2016 for Ellen Cotter or Margaret Cotter or the title designation for Margaret Cotter. There was none. Upon motion duly made and seconded, the following resolution was adopted (Ellen Cotter and Margaret Cotter not participating; James Cotter, Jr. abstaining):

> It Is Hereby Resolved that the schedule of proposed 2016 executive compensation for Ellen Cotter and Margaret Cotter and the title of Executive Vice President – Real Estate Management and NYC Development be given to Margaret Cotter, as set forth on Exhibit A to these minutes, as unanimously recommended by the Compensation Committee, be approved.

Ellen Cotter and Margaret Cotter returned to the meeting.

b. Directors Compensation

The next item of business was to consider the 2016 compensation to be paid to outside directors, as recommended by the Compensation Committee. The Board briefly discussed the materials provided to it; was advised that the proposal was based upon the recommendations of Willis Towers Watson and such proposal represented an effort to bring the Company's outside director compensation practices in line with best practices with a view to peer and competitor outside director compensation. The Compensation Committee had approved (subject to personal abstentions for each director's own compensation) the recommendation for outside director compensation. James Cotter, Jr. expressed his objection to the process of changing outside director compensation.

After further discussion, upon motion duly made and seconded, the following resolution was approved (each director abstaining as to his or her own compensation, and James Cotter, Jr. voting against):

> It is Hereby Resolved that compensation for outside directors of the Company starting with calendar year 2016 shall be as follows:
>
> (i) maintaining the annual board retainer at $50,000;
> (ii) increasing the annual lead director fee to $10,000;
> (iii) increasing the annual Audit and Conflicts Committee Chair and Executive Committee Chair fee to $20,000;
> (iv) increasing the annual Compensation Committee Chair fee to $15,000;
> (v) increasing the annual committee member fees to $7,500 for the Executive and Audit and Conflicts Committee and $5,000 for the Compensation Committee; and

(vi) establishing annual grants of $60,000 of restricted stock units to board members (vesting 12 months following the award of the restricted stock units) based on the closing stock price on NASDAQ on today's date, subject to the approval of the recommended amendment to the 2010 Stock Incentive Plan.

Next, the Board considered possible additional compensation for extraordinary services rendered by certain directors. Ellen Cotter made a presentation to the Board with respect to her recommendation for special one-time compensation to be paid to three directors.

Ms. Cotter first expressed a request that the Board consider extraordinary compensation to Director Guy Adams. Mr. Adams was excused. Ms. Cotter summarized the extraordinary services and time devoted by Mr. Adams above and beyond the usual role of a director in the past year. Ms. Cotter noted that Mr. Adams had provide the following extraordinary services: assisting Ms. Cotter in a variety of support services as the Company underwent the stresses and controversies of the last year; assisting Ms. Cotter in an advisory capacity in her transition of roles into interim CEO and permanent CEO; advice on investor relations; personal travel to New York to assist in the evaluation of the Union Square project; assistance with evaluation of certain potential transactions; significant commitment of time in evaluating potential new executive compensation practices before the same was considered by the Compensation Committee; and extraordinary services on the Executive Committee.

James Cotter, Jr. expressed his opposition to consideration of extra board compensation.

After further discussion, upon motion duly made and seconded, the following resolution was adopted (Guy Adams not participating, and James Cotter, Jr. voting against):

> It Is Hereby Resolved that Guy Adams be compensated $50,000 in recognition of extraordinary services to the Board of Directors.

Mr. Adams returned to the meeting, and Mr. Kane was excused. Ms. Cotter provided a summary of the extraordinary services provided by Ed Kane, particularly in the area of overseeing the complete overhaul of executive compensation which had required additional time and work outside of his regular duties for the Compensation Committee. After further discussion, upon motion duly made and seconded, the following resolution was adopted (Ed Kane not participating, and James Cotter, Jr. abstaining):

> It Is Hereby Resolved that Ed Kane be compensated $10,000 in recognition of extraordinary services to the Board of Directors.

Mr. Kane returned to the meeting, and Mr. McEachern was excused. Ms. Cotter provided a summary of the extraordinary services provided by Douglas McEachern, particularly in the area of additional time beyond the typical requirements of the Audit and Conflicts Committee in tax and related matters. After further discussion, upon motion duly made and seconded, the following resolution was adopted (Douglas McEachern not participating, and James Cotter, Jr. abstaining):

It is Hereby Resolved that Douglas McEachern be compensated $10,000 in recognition of extraordinary services to the Board of Directors.

Amendment to the 2010 Stock Incentive Plan

Next, the Board considered an amendment to the 2010 Reading International, Inc. Stock Incentive Plan (the "Plan"). The Board had been briefed that the principal reason for the amendment is to allow the grant of restricted stock units under the Plan, in accordance with recommendations of Willis Towers Watson.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

It is Hereby Resolved that the amendment to 2010 Reading International, Inc. Stock Incentive Plan in the form of Exhibit B to these minutes is approved.

Mr. Tompkins returned and resumed as Recording Secretary.

Conclusion of Meeting

The meeting was adjourned at approximately 6:00 PM, Pacific Standard Time.

S. Craig Tompkins, Recording Secretary

Exhibit A

READING INTERNATIONAL, INC.

FIRST AMENDEMNT TO THE

2010 STOCK INCENTIVE PLAN

This First Amendment (the "Amendment") to the Reading International, Inc. 2010 Stock Incentive Plan (the "Plan"), is made and shall be effective as of this [_____] day of [___], 2016 (the "Effective Date").

RECITALS

WHEREAS, the stockholders of Reading International, Inc. (the "Company") approved the Plan on May 13, 2010 at the annual meeting of stockholders in accordance with the recommendation of the board of directors; and

WHEREAS, the Plan provides for awards of stock options, restricted stock, bonus stock, and stock appreciation rights to eligible employees, directors, and consultants;

WHEREAS, the Company believes that it would be be in the best interests of the Company and its stockholders to permit awards of restricted stock units;

WHEREAS, NASDAQ rules do not require stockholders to approve an amendment to an equity incentive plan if the amendment relates to adding restricted stock units as long as the Plan provides for the award of restricted stock;

WHEREAS, the Plan provides for the award of restricted stock;

NOW, THEREFORE, in accordance with Section 12 of the Plan, the Plan is amended as follows as of the Effective Date:

AMENDMENTS

1. Section 2(y) the definition of "Rule 16b-3" is hereby renumbered as Section 2(z).
2. Section 2(z) the definition of "Securities Act" is hereby renumbered as Section 2(aa).
3. Section 2(aa) the definition of "Stock Award" is hereby renumbered as Section 2(bb).
4. Section 2(bb) the definition of "Service" is hereby renumbered as Section 2(cc).
5. Section 2(cc) the definition of "Stock Award Agreement" is hereby renumbered as Section 2(dd).
6. Section 2(dd) the definition of "Ten Percent Stockholder" is hereby renumbered as Section 2(ee).
7. Section 2(y) the definition of "Restricted Stock Units" is hereby added.

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LV 420611046v4

"Restricted Stock Units" means a Stock Award which may be earned in whole or in part upon the passage of time or the attainment of performance criteria established by the Board and which may be settled for Common Stock, other securities or cash or a combination of Common Stock, other securities or cash as established by the Board.

8. Section 2(bb) of the Plan is hereby deleted and replaced in its entirety by the following:

"Stock Award" means any right granted under the Plan, including an Option, a stock bonus, a right to acquire restricted stock, a restricted stock unit and a stock appreciation right granted under the Plan, whether singly, in combination or in tandem, to a Participant by the Board pursuant to such terms, conditions, restrictions and/or limitations, if any, as the Board may establish.

9. Section 7(d) is hereby added to the Plan as follows:

Restricted Stock Units. Each restricted stock unit agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of the restricted stock unit agreements may change from time to time, and the terms and conditions of separate restricted stock unit agreements need not be identical, but each restricted stock unit agreement shall include (through inclusion or incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

i. **Consideration.** A restricted stock unit may be awarded upon the passage of time, the attainment of performance criteria or the satisfaction or occurrence of such other events as established by the Board.

ii. **Vesting Generally.** At the time of the grant of a restricted stock unit, the Board may impose such restrictions or conditions to vesting, and/or the acceleration of the vesting, of such restricted stock unit as it, in its sole discretion, deems appropriate. Vesting provisions of individual restricted stock units may vary.

iii. **Termination of Service.** In the event that a Participant's Service terminates, any or all of the restricted stock units held by the Participant that have not vested as of the date of termination under the terms of the restricted stock unit agreement shall be forfeited to the Company in accordance with the restricted stock unit agreement, except as otherwise provided in the applicable restricted stock unit agreement.

iv. **Transferability.** A restricted stock unit shall be subject to similar transfer restrictions as awards of restricted stock, except that no shares are actually awarded to a Participant who is granted restricted stock units on the date of grant, and such Participant shall have no rights of a stockholder with respect to such restricted stock units until the restrictions set forth in the restricted stock unit agreement have lapsed. Restricted stock units may be transferred to any trust established by a Participant for the benefit of the Participant, his or her spouse, and/or any one or more lineal descendants.

v. **Voting, Dividend & Other Right**. Holders of restricted stock units will not be entitled to vote or to receive the dividend equivalent rights in respect of the restricted stock units at the time of any payment of dividends to stockholders on Common Stock until they become owners of the Common Stock pursuant to their restricted stock unit agreement. If the applicable restricted stock unit agreement specifies that a Participant will be entitled to dividend equivalent rights, (i) the amount of any such dividend equivalent right shall equal the amount that would be payable to the Participant as a stockholder in respect of a number of shares equal to the number of vested restricted stock units then credited to the Participant, and (ii) any such dividend equivalent right shall be paid in accordance with the Company's payment practices as may be established from time to time and as of the date on which such dividend would have been payable in respect of outstanding shares of Common Stock (and in accordance with Section 409A of the Code with regard to awards subject thereto); provided that no dividend equivalents shall be currently paid on restricted share units that are not yet vested.

10. Except as modified hereby, the provisions of the Plan shall remain in full force and effect, and the Plan may be restated, as amended hereby, in its entirety.

LV 420611046v3

LV 420611046v4

Exhibit B

Proposed Executive Compensation and Appointments – Recommended by Compensation Committee
Board of Directors Meeting – March 10, 2016

Name	*Proposed or Existing Executive Title*	*Proposed 2016 Base Salary*	*Proposed 2016 Short Term Incentive Bonus Potential*	*Proposed 2016 Long Term Incentive***	*Potential "Named Executive Officer"*	*Section 16 Officer*
Ellen Cotter	President & Chief Executive Officer*	$450,000Ŧ	$427,500 (95% of Base Salary)	$300,000	X	X
Dev Ghose	Executive Vice President, Chief Financial Officer & Treasurer	$400,000***Ŧ	$200,000*** (50% of Base Salary)	$0	X	X
S. Craig Tompkins	Executive Vice President, General Counsel & Corporate Secretary	$410,000	$102,500 (25% of Base Salary)	$100,000	X	X
Andrzej Matyczynski	Executive Vice President – Global Operations	$336,000Ŧ	$168,000 (50% of Base Salary)	$75,000	X	X
Robert Smerling	President – US Cinemas*	$375,000Ŧ	$112,500 (30% of Base Salary)	$100,000	X	X
Wayne Smith	Managing Director – Australia & New Zealand*	AU$370,000Ŧ	AU$148,000 (40% of Base Salary)	AU$75,000		X
Margaret Cotter	Executive Vice President – Real Estate Management & NYC Development	$350,000	$105,000 (30% of Base Salary)	$100,000		X
Matthew Bourke	Managing Director – Real Estate – Australia & New Zealand	AU$325,000	AU$97,500 (30% of Base Salary)	AU$35,000		X

We are proposing that the Board approve the following Executives' titles:

Gilbert Avanes	Vice President – Finance, Planning & Analysis
Mark Douglas	Director – Property Development – Australia & New Zealand
Terri Moore	Vice President – Cinema Operations (US)
Doug Hawkins	Vice President – Construction & Facilities Management (US)
Ken Lee	Vice President – Food & Beverage (US)

*No proposed change: Existing title reflected in red.
**Proposal includes: 50% Non-Qualified Options and 50% Restricted Share Units
***Required by Employment Agreement
Ŧ The Committee is recommending the elimination of car allowances. Management will work towards this goal in 2016.

EXHIBIT 8

1 DISTRICT COURT
CLARK COUNTY, NEVADA
2

3 JAMES J. COTTER, JR.)
individually and derivatively)
4 on behalf of Reading)
International, Inc.,)
5)
Plaintiff,)
6)
vs.) Index No. A-15-179860-B
7)
MARGARET COTTER, ELLEN)
8 COTTER, GUY ADAMS, EDWARD)
KANE, DOUGLAS WILLIAM GOULD,)
9 and DOES 1 through 100,)
inclusive,)
10)
Defendants.)
11 ----------)
READING INTERNATIONAL, INC.,)
12 a Nevada corporation,)
)
13 Nominal Defendant.)
----------)
14

15

16 VIDEOTAPED DEPOSITION OF ELLEN COTTER

17 New York, New York

18 Thursday, June 16, 2016

19

20

21

22

23

24 Reported by:
MICHELLE COX
25 JOB NO. 316936

1 construction agreement. There's something
2 called an "early start agreement" that dealt
3 with abatement and demolition.
4 I don't know if, at this point, they had
5 actually picked the contractor, but I know that
6 they had worked on evaluating the different
7 contractors, and ultimately selected CNY to
8 pursue the project.
9 I think at this point they were still
10 working on getting the variance done to provide
11 us with the appropriate office and retail
12 zoning. They were working on the plans with
13 BKSK, the architect. And we had obviously
14 started talking to real estate brokers. I'm
15 sure, at this point they had talked to a number
16 of real estate brokers and ultimately selected
17 Newmark.
18 **Q What was the range of anticipated costs of**
19 **all the activities you just described?**
20 A Well, ultimately, the project will cost
21 us -- we're seeking financing for $85 million.
22 **Q Was it your view that -- was it your view**
23 **in July of 2015 that RDI would not benefit from**
24 **the input of someone with the real estate**
25 **development experience and expertise as the --**

1 **as any of the director of real estate**
2 **candidates possessed, in terms of planning and**
3 **executing all these activities with the cost at**
4 **least financed of 85 million?**
5 MR. TAYBACK: Object to the form of the
6 question.
7 You can answer.
8 A I believe at this point I put the search
9 on hold, because we were looking for a
10 permanent CEO, that the specification required
11 somebody with a real estate background. So I
12 thought it would be better if we were hiring a
13 CEO to be able to let him or her choose who
14 they would be working with.
15 At this point, with respect to the real
16 estate projects in New York, I was very
17 comfortable with Margaret and the team that she
18 had been working with. Michael Buckley from
19 Edifice, who's referred to, he's the developer
20 who we were getting the development management
21 agreement done with, is an experienced real
22 estate developer, had built buildings in
23 New York City, understood the process, and
24 probably was the best person because he was on
25 the ground and had a team on the ground to get

1 it done properly.
2 **Q Well, as a practical matter, then, this is**
3 **the -- some of the responsibilities of a person**
4 **holding the position of director of real estate**
5 **at RDI had been mooted or completed, as the**
6 **case may be, in the time that passed between**
7 **July 2015 and the selection of this new CEO in**
8 **January of 2016, right?**
9 MR. TAYBACK: Object the form of the
10 question.
11 You can answer.
12 A Between -- between this period of time and
13 when I became the CEO, I became very
14 comfortable with Margaret and what she was
15 doing in New York, together with the consultant
16 team.
17 MR. KRUM: I'll ask the court reporter to
18 read the question back.
19 **Q It was about, Ms. Cotter, what happened**
20 **during the approximate six-month period from**
21 **July of 2015 to January of 2016, at least**
22 **that's what I think it was, but we'll see when**
23 **the court reporter reads it.**
24 MR. TAYBACK: I'm not sure.
25 If you want to ask her that question, I

1 won't have an objection.
2 (Record read.)
3 MR. TAYBACK: Restate my objection. Vague
4 and confusing. Vague is for a practical
5 matter.
6 You can answer.
7 A Some of the work that a director of real
8 estate would have done was actually -- we
9 couldn't stop the process. So the whole
10 management team was working on moving the
11 projects forward.
12 **Q And the projects moved forward, correct?**
13 A Yes.
14 **Q And insofar as the director of real estate**
15 **might have expressed a view different than the**
16 **view that was accepted and implemented, that**
17 **didn't happen because he or she wasn't hired,**
18 **right?**
19 A Well, we didn't have a new person hired,
20 but all of the work we've done to date,
21 together with Margaret and Edifice and the
22 architects, the contractor, the leasing agent,
23 I think that we've done a very good job
24 positioning this project.
25 **Q The arch- -- excuse me.**

1 **The contractor was CNY, right?**
2 A CNY.
3 **Q The contractor was hired when?**
4 A I don't remember exactly when they were
5 hired. They -- so far, they've been hired
6 under an early start agreement to conduct
7 abatement and demolition, internal demolition
8 work.
9 The actual construction management
10 agreement that will govern the -- you know,
11 broader construction hasn't been signed yet.
12 **Q Has the leasing agent been hired?**
13 A Yes.
14 **Q When was the leasing agent hired?**
15 A I'm not sure exactly when they were hired.
16 I would think sometime during the summer of
17 2015.
18 **Q Was the fact that those activities that**
19 **had been completed in the July through**
20 **December 2015 time period, were now done and**
21 **behind, a consideration in your decision to**
22 **give Margaret, your sister, a job as the senior**
23 **person at RDI responsible for development of**
24 **these New York City real estate projects or**
25 **properties?**

1 A I don't know if that factored into my
2 decision.
3 But as we worked on this project through
4 the year, it was clear to me that she was doing
5 everything that anybody else would have done.
6 So -- and she cared so much about the project
7 and making sure that the project was done, was
8 done correctly, and was done in a way that we
9 would have a satisfactory return.
10 **Q Directing your attention, Ms. Cotter, to**
11 **the July 27 executive committee meeting minutes**
12 **that are part of Exhibit 329, those are the**
13 **pages that are numbered ending in 107 to 110 in**
14 **the lower right.**
15 **Do you have those?**
16 A Yes.
17 **Q Was there any reason that any of the items**
18 **discussed on those minutes of the executive**
19 **committee from July 27, 2015, could not have**
20 **been raised with the full board of directors of**
21 **RDI, rather than simply the executive**
22 **committee?**
23 MR. TAYBACK: Objection. Assumes facts.
24 You can answer.
25 A If you read these minutes, they are really

1 A Prior to June 12th, there was no
2 discussion about me being interim CEO.
3 **Q By the time of the first meeting**
4 **concerning the subject of termination of**
5 **Jim Cotter, Jr. as CEO, by which I'm referring**
6 **to May 21, 2015, did you understand that each**
7 **of Doug McEachern, Ed Kane and Margaret Cotter**
8 **were agreeable to Guy Adams serving as interim**
9 **CEO?**
10 A That's my recollection.
11 **Q That's based on conversations you had with**
12 **each of them, correct?**
13 A Yes.
14 **Q And as you sit here today, it's your best**
15 **recollection that the first time the notion of**
16 **you serving as interim CEO arose was at the**
17 **meeting of June 12, 2015, following the vote to**
18 **terminate Jim Cotter, Jr. as CEO?**
19 A Yes.
20 THE VIDEOGRAPHER: Mr. Krum, sorry to
21 interrupt, but try not to touch the cord,
22 thanks. It's making noise.
23 MR. KRUM: Sorry.
24 **Q Who said what at that time about Guy Adams**
25 **serving as interim CEO or not?**

1 **"At the time" being June 12th.**
2 A My recollection of the board meeting was
3 that we were discussing who would be the
4 interim CEO. I was in New York on a conference
5 call with my sister. People were different
6 places. It was a telephonic meeting. And I
7 don't remember the exact conversation, but
8 somehow it came up that I should take on the
9 role as the interim CEO for a limited period of
10 time so that we can consider this a little bit
11 further, and determine who would be the "real
12 interim CEO."
13 So I was -- I was surprised, but I told
14 the board that I would take on that role.
15 **Q Who raised the subject of you being the**
16 **interim CEO on June 12th?**
17 A I don't recall.
18 **Q You became the interim CEO on June 12,**
19 **2015, correct?**
20 A Yes.
21 **Q And what's the first time on or after**
22 **June 12, 2015, when you thought about the**
23 **subject of a permanent CEO?**
24 A When I thought about hiring a permanent
25 CEO?

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

I, MICHELLE COX, a Notary Public within and for the State of New York, do hereby certify:

That ELLEN COTTER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June 2016.

MICHELLE COX, CLR

EXHIBIT 9

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR.,)
individually and)
5 derivatively on behalf of)
Reading International,)
6 Inc.,)
) Case No. A-15-719860-B
7 Plaintiff,)
) Coordinated with:
8 vs.)
) Case No. P-14-082942-E
9 MARGARET COTTER, et al.,)
)
10 Defendants.)
and)
11 _____)
READING INTERNATIONAL,)
12 INC., a Nevada)
corporation,)
13)
Nominal Defendant)
14 _____)

15

16 DEPOSITION OF: EDWARD KANE

17 TAKEN ON: MAY 2, 2016

18

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23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 **middle of that. So let me actually restate it.**
2 **What experience does Margaret Cotter**
3 **have in predevelopment with respect to real estate,**
4 **if any?**
5 MR. SEARCY: Objection. Vague.
6 THE WITNESS: I don't know all of her
7 experience. I know that she worked with her father
8 in that area. They worked together.
9 And she has been instrumental -- I
10 forgot one other thing that she's been instrumental
11 in is we have a piece of property, the
12 Cinema 1, 2, 3. We've been trying to figure out
13 ways of developing that. It is much more valuable
14 if we make a deal with the owners of the Greek
15 restaurant next door.
16 It went back and forth. Margaret has
17 come to some general understanding with them also on
18 a joint venture with them for that Cinema 1, 2, 3
19 property.
20 I'm very impressed with the work she's
21 done.
22 BY MR. KRUM:
23 **Q. To your knowledge, Mr. Kane, what**
24 **experience does Margaret Cotter have in real estate**
25 **development?**

1 **Q. Then we'll go on.**
2 **Directing your attention, Mr. Kane, back**
3 **to your prior testimony regarding your assessment of**
4 **Margaret Cotter's abilities to handle real estate**
5 **development matters, were you of the view on**
6 **June 12, 2015 when Mr. Jim Cotter, Jr., was**
7 **terminated as president and C.E.O. that Margaret**
8 **Cotter was competent to be the senior executive in**
9 **charge of real estate development activities for**
10 **RDI?**
11 A. Was I confident?
12 **Q. Were you -- in June 12, 2015, when Jim**
13 **Cotter, Jr., was terminated as president and C.E.O.,**
14 **was it your view then that Margaret Cotter was**
15 **competent to be the senior executive at RDI in**
16 **charge of its real estate development activities in**
17 **New York?**
18 A. Yes.
19 **Q. How long before June 12, 2015 did you**
20 **come to that conclusion?**
21 A. It evolved over period of time. I can't
22 say when.
23 I do know that I was very impressed with
24 what she had done with the Landmark Commission,
25 making development of that property possible and

1 work on it. And I was impressed, as I said, with
2 Michael Buckley, and that would be a terrific team
3 going forward.
4 **Q. Did you ever share that view with anyone**
5 **else at RDI including Jim Cotter, Jr.?**
6 MR. SEARCY: Objection. Vague as to
7 time.
8 THE WITNESS: I don't -- I don't know.
9 I don't recall.
10 BY MR. KRUM:
11 **Q. You recall that in and before May 2015 a**
12 **search was being conducted for a director of real**
13 **estate for RDI, right?**
14 MR. SEARCY: Objection. Vague.
15 THE WITNESS: I just don't recall.
16 BY MR. KRUM:
17 **Q. Well, did you -- did you ever hear or**
18 **learn or were you ever told that a search was being**
19 **conducted to hire a person with real estate**
20 **experience or expertise at a senior executive level**
21 **at RDI?**
22 A. I don't recall if there was. There was
23 some talk, but I don't recall anything specific.
24 **Q. So it was your understanding from**
25 **September of 2014 on that Margaret Cotter was going**

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

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

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

PATRICIA L. HUBBARD, CSR #3400

EXHIBIT 10

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,	
Plaintiff,	Case No. A-15-719860-B
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 DOUGLAS McEACHERN

TAKEN ON MAY 6, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

1 Chicago, there were three in New York. One of them
2 in New York was located in the Union Square
3 Building.
4 BY MR. NATION:
5 **Q. Which theater is that?**
6 A. I don't know the name of it. It was the
7 Union Square Theater.
8 **Q. Okay. And Margaret wanted to be in**
9 **charge of developing the Union Square Theater is**
10 **your understanding?**
11 A. My understanding is that Margaret has
12 been involved in the Union Square Building as -- the
13 shows and the theater production activities and
14 acting as our representative, and in addition on an
15 uncompensated basis worked through the process of
16 getting the Union Square Building through the
17 Landmark Commission, which, by the way, was a
18 12-year period for which she was paid no money to
19 get it entitled and get the building expanded by
20 some 25,000 square feet.
21 The mere ability to get that -- and
22 these will be rough numbers -- created enormous
23 value in that building by getting it entitled for
24 redevelopment from the Landmark Commission and
25 getting the -- I think we went from 45,000 square

1 feet to close to 70,000 square feet approval from
2 that Landmark Commission.
3 And then the building and safety
4 group -- somebody else just recently gave us
5 permission to continue and go forward with our
6 plans.
7 So the enormous amount of value that was
8 created in that building was Margaret Cotter working
9 with her father, as I understand it, and getting the
10 entitlements.
11 MR. NATION: Could you please read me
12 the question that started that.
13 (Whereupon the question was read
14 as follows:
15 "Question: And Margaret wanted to
16 be in charge of developing the
17 Union Square Theater is your
18 understanding?")
19 BY MR. NATION:
20 **Q. All right. So, at the time that --**
21 **picking up our narrative here, at the time that Jim**
22 **Cotter came in as C.E.O. --**
23 A. Junior?
24 **Q. Jim Cotter, Jr., came in as C.E.O. --**
25 A. Okay.

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

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

IN WITNESS WHEREOF, I have subscribed my name this 10th day of May, 2016.

PATRICIA L. HUBBARD, CSR #3400

Electronically Filed
12/8/2017 4:40 PM
Steven D. Grierson
CLERK OF THE COURT

JPTM
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Attorneys for Plaintiff
James J. Cotter, Jr.

(See signature page for additional counsel.)

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc.,	Case No. A-15-719860-B Dept. No. XI
Plaintiff,	Coordinated with:
v.	Case No. P-14-0824-42-E Dept. No. XI
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK,	Jointly Administered
Defendants.	**JOINT PRETRIAL MEMORANDUM**
And	**DATE: 12/11/2017** **TIME: 10:30 a.m.**
READING INTERNATIONAL, INC., a Nevada corporation,	
Nominal Defendant.	

The parties, through their respective counsel of record, hereby submit the following joint pre-trial memorandum in accordance with this Court's 1st Amended Order Setting Civil Jury Trial, Pre-trial Conference and Calendar Call dated September 29, 2017and Local Rule 2.67 after counsel for all parties[1] conferred regarding the same on November 15, 2017 and November 20, 2017.

I. MATTER REFERENCED IN OCTOBER 4, 2017 ORDER, PARAGRAPH D

A. Motions in Limine (December 11, 2017)

1. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1 Regarding Advice of Counsel

2. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.

3. Plaintiff James Cotter Jr.'s Motion In Limine No. 3 Regarding After Acquired Evidence

4. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative

5. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority

6. Defendant William Gould's Motion In Limine Exclude Irrelevant Speculative Evidence

---

[1] Counsel participating in the pretrial conference included: Mark Krum and Steve Morris on behalf of Plaintiff; Marshall Searcy and Noah Helpern on behalf of Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Shoshana Bannett on behalf of William Gould; and Kara Hendricks on behalf of Reading International, Inc.

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B. Motions for Summary Judgment (December 11, 2017)

1. Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Codding, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6

2. See also Section II. J.

II. OTHER PRETRIAL MATTER

A. Statement of Facts

Plaintiff's Statement:

In view of the significant prior proceedings in this case, including motions to dismiss and summary judgment motions, as well as the detail in the pending Second Amended Complaint (the particular allegations of which have been or will be admitted or denied in the individual defendants' respective answers), and the Court's resulting familiarity with this case, the parties respectfully provide the following abbreviated, summary statement of facts of the case:

Plaintiff James J. Cotter, Jr. ("Mr. Cotter" or "Plaintiff") was and is a substantial shareholder and a director of nominal defendant Reading International, Inc. ("RDI" or the "Company"), as well as a former President and Chief Executive Officer ("CEO"). Defendants Ellen Cotter and Margaret Cotter were and are members of the RDI board of directors (the "Board") and at all times relevant hereto have purported to be and/or been the controlling shareholder(s) of RDI. Each of the remaining individual defendants was at relevant times and is a member of the RDI Board, as well of certain Board committees.

The facts of this case include and concern acts and omissions of individual director defendants which the Plaintiff claims give rise to entail breaches of fiduciary duties individually and/or together with other acts

and omissions, including with respect to the following matters: the threat to terminate Mr. Cotter as President and CEO of RDI, the termination of Mr. Cotter as President and CEO of RDI, the demand that he resign from the Board, RDI Board governance matters, RDI SEC filings and press releases, the search for a permanent CEO that resulted in Ellen Cotter becoming permanent CEO, the hiring and compensation of Margaret Cotter as EVP RED NY, the payment of certain monies to certain of the individual defendants and the actions and or lack of actions by each of the individual defendants in response to offers or expressions of interest by Patton Vision and others to purchase all of the outstanding stock of RDI.

Director Defendants' Statement:

On June 12, 2015, the Board of Directors of Reading International, Inc. ("RDI") voted to terminate Plaintiff James J. Cotter, Jr. as President and CEO of RDI. Plaintiff claims that this decision was a breach of fiduciary duty. Plaintiff also claims various other breaches of fiduciary duty, including with respect to the search for a new President and CEO of RDI, the hiring of Margaret Cotter as an Executive Vice President for Real Estate -- NYC, the exercise of an option held by the Estate of James J. Cotter, Sr. to purchase 100,000 shares of RDI Class B voting stock, and the response to a third party's indication of interest in purchasing all outstanding shares of RDI. The Director Defendants contend that they acted in the best interests of RDI stockholders at all times and fulfilled their fiduciary duties to the Company.

One of the Director Defendants, William Gould is separately represented. On the central claim that initiated this case—Plaintiff's termination—Mr. Gould voted *against* terminating Plaintiff. Although Mr. Gould is separately represented, there is substantial overlap in his witness list and his responses to other portions of this pre-trial

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memorandum with that of the other director defendants and individual defendants have therefore chosen to present a combined defense position in the pre-trial memorandum.

RDI's Statement:

RDI joins in the Director Defendants' Statement above.

B. List of Claims

Plaintiffs' list of claims for relief is as follows:

A. Breaches of the Duty of Care (SAC 1–179) (First Cause)

1. Process in connection with termination, including aborting ombudsman and lack of process/process failures (SAC 3, 35, 36, 43, 50 – 57, 61 – 94) (EC, MC, GA, EK, DM, WG) (equitable relief)[2]

2. Breach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC (SAC - all), including paragraph A. 1. above and the following:

- Use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams/WG, JC, MW)
- Process/process failures from aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: All)
- Erroneous and/or materially misleading statements in board materials such as agendas and minutes, and in public disclosures including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

[2] Arabic numbered bold typeface paragraphs indicate matters which Plaintiff contends give rise to and/or constitute breaches of fiduciary duty independently, as well as together with other matter.

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- Process/process failures in connection with nomination and retention of directors, including adding Codding and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the $200,000 pre-employment bonus (committees - members) (Board - all)
- $50,000 to Adams (SAC 153, 166) (Committees – members) (Board – all but GA)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)

3. Damages/injury (SAC 163 – 168)

a. injury to RDI's reputation and goodwill (164)

b. impairment of shareholder rights due to SEC filings (165)

B. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EK, DM, EC, MC)

2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EK, DM, EC, MC) (equitable relief also sought)

3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)

4. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: all)

5. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (Committee members) (Board: all)

6. Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)

7. Breach of the duty of loyalty (all) and misuse of their

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position as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- $50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

8. Damages/injury (SAC 163 – 168)

a. diminution in value of RDI (163)

b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

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C. Breaches of the Duty of Candor (SAC 1 – 172, 187 – 192) (Third Cause)

1. SEC filings and press releases (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (EC - all) (WG - Form 8-Ks and press releases about termination and CEO) (each as to disclosures regarding themselves (e.g., proxies))
2. Damages/injury (SAC 163 – 168)
   a. diminution in value of RDI (163)
   b. impairment of shareholder rights due to SEC filings (165)
   c. injury to reputation and goodwill (168)

D. Aiding and Abetting Breaches of Fiduciary Duty (SAC 193 – 200) (Fourth Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)
2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
4. Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
5. Board stacking/adding Codding and Wrotniak (SAC 11, 121-134) (EC, MC)
6. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
7. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying $200,000 pre-employment bonus (EC, MC)
8. Patton Vision offer(s) (SAC 16, 154-162) (EC, MC)

9. Damages/injury (SAC 163 – 168)

a. diminution in value of RDI (163)

b. injury to reputation and goodwill (164)

c. impairment of shareholder rights due to SEC filings (165)

d. other monetary damages (166)

i. $200,000 and job to MC

ii. $50,000 to Adams

iii. duplicate cost of paying consultants to perform MC's position's responsibilities

iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. List of Affirmative Defenses

Plaintiff has not abandoned any purported claims identified in the Second Amended Complaint. Director Defendants therefore cannot abandon any affirmative defenses asserted in its Answer to the Second Amended Complaint. Depending on which particular claims for relief Plaintiff actually pursues at trial, Director Defendants may raise the following affirmative defenses:

- Failure to State a Cause of Action;
- Statute of Limitations and Repose;
- Laches;
- Unclean Hands;
- Spoliation;
- Illegal Conduct and Fraud;
- Waiver, Estoppel, and Acquiescence;
- Ratification and Consent;

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- No Unlawful Activity;
- No Reliance;
- Failure to Plead Fraud with Particularity;
- Uncertain and Ambiguous Claims;
- Privilege and Justification;
- Good Faith and Lack of Fault;
- No Entitlement to Injunctive Relief;
- Damages too Speculative;
- No Entitlement to Punitive Damages;
- Failure to Mitigate;
- Comparative Fault;
- Business Judgment Rule;
- Equitable Estoppel;
- Election of Remedies;
- N.R.S. 78.138;
- Failure to Make Appropriate Demand;
- Conflict of Interest and Unsuitability to Serve as a Derivative Representative.

RDI

- Failure To State A Claim
- Failure To Make Demand
- Corporate Governance
- Irreparable Harm To Company
- Unclean Hands
- Spoliation
- Waiver, Estoppel, And Acquiescence
- Ratification And Consent
- No Unlawful Activity

- Privilege And Justification
- Good Faith And Lack Of Fault
- No Entitlement To Injunctive Relief
- Damages Too Speculative
- Mitigation Of Damages
- Comparative Fault
- Equitable Estoppel
- Nevada Revised Statute 78.138
- Conflict Of Interest And Unsuitability To Serve As Representative

D. Claims or Defenses to be Abandoned

None. However, Plaintiff will not seek equitable relief with respect to historical or past actions relating to the executive committee, to corporate governance of RDI such as misleading or inaccurate meeting agendas and/or minutes, to the addition or removal of persons to and/or from the RDI board of directors and to SEC filings and press releases. Plaintiff will seek equitable relief with respect to the vote to terminate James J. Cotter Jr. as President and CEO and reserves the right to do so with respect to authorization of the exercise of the so-called 100,000 share option.

E. List of Exhibits

The Court has given the parties to and including December 13, 2017 to provide exhibit list(s).

F. Agreements to Limit or Exclude Evidence

None presently.

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G. Witness List

1. Nonexpert Witnesses

For Plaintiff:

1. James Cotter, Jr. (*plaintiff expects to present this witness*)
   c/o Mark Krum
   Yurko, Salvesen & Remz. P.C.
   One Washington Mall, 11th Floor
   Boston, MA 02108
   617.723.6900

2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)
   c/o Mark E. Ferrario, Esq.
   Leslie S. Godfrey, Esq.
   Greenberg Traurig LLP
   3773 Howard Hughes Parkway, Suite 400 North
   Las Vegas, Nevada 89169
   702-792-3773

3. Margaret Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   COHEN | JOHNSON | PARKER | EDWARDS
   375 E. Warm Springs Road, Ste. 104
   Las Vegas, NV 89119
   702-823-3500

4. Ellen Cotter (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   COHEN | JOHNSON | PARKER | EDWARDS
   375 E. Warm Springs Road, Ste. 104
   Las Vegas, Nevada 89119
   702-823-3500

5. Douglas McEachern (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
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6. Guy Adams (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

7. Edward Kane (*plaintiff expects to present this witness*)
   c/o Stan Johnson
   Cohen-Johnson, LLC
   255 East Warm Springs Road, Suite 100
   Las Vegas, Nevada 89119
   702-823-3500

8. William Gould (*plaintiff expects to present this witness*)
   Donald A. Lattin, Esq.
   Carolyn K. Renner, Esq.
   MAUPIN, COX & LeGOY
   4785 Caughlin Parkway
   Reno, Nevada 89519
   775-827-2000

9. Timothy Storey (*plaintiff expects to present this witness*)
   Donald A. Lattin, Esq.
   Carolyn K. Renner, Esq.
   MAUPIN, COX & LeGOY
   4785 Caughlin Parkway
   Reno, Nevada 89519
   775-827-2000

10. John Hunter (*plaintiff may call this witness if the need arises*)
    Milken Institute, Chief Financial Officer
    1250 4th Street
    Santa Monica, CA 90401

11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)
    10488 Eastborne Avenue, Unit #211
    Los Angeles, California 90024
    310-293-7384

12. Eric Barr (*plaintiff may call this witness if the need arises*)
9 Park Street, Brighton, VIC 3186
Southern Melbourne, Australia
011-61-488-096-616
ebarr@optushome.com.au

13. Al Villasenor (*plaintiff may call this witness if the need arises*)
116 – 19th Street
Manhattan Beach, California 90266
Home- 310-546-5193
Mobile- 310-897-0407

14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*)
20100 Wells Drive
Woodland Hills, California 91364
(805) 447-6265

15. Harry P. Susman (*plaintiff may call this witness if the need arises*)
Susman Godfrey, LLP
1000 Louisiana, Suite 5100
Houston, Texas 77002
713-653-7875 (w)
hsusman@susmangodfrey.com

16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)
The Karahan Companies
7200 Bishop Road, Suite 250
Plano, Texas 75024
214-473-9700 (w)
fehmi@karahaninc.com

17. Judy Codding (*plaintiff expects to present this witness*)
2266 Canyon Back Road
Los Angeles, California 90049

18. Michael J. Wrotniak (plaintiff expects to present this witness)
Aminco Resources USA
World Headquarters
81 Main Street Suite 110

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White Plains, NY 10601
914 949 4400
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19. Gil Borok (*plaintiff may call this witness if the need arises*)
3835 Hayvenhurst Avenue
Encino, California 91436
Mobile- 818-0528-3689
Email- gborok@me.com

20. Robert Wagner (*plaintiff may call this witness if the need arises*)
Korn Ferry
1900 Avenue of the Stars Suite 2600
Los Angeles, CA 90067
310-226-2672 (w)
Robert.wagner@kornferry.com

21. John M. Genovese (*plaintiff may call this witness if the need arises*)
7584 Coastal View Drive
Los Angeles, CA 90045
Mobile: 310-245-1760
Email- jmgenovese@yahoo.com

22. William D. Ellis (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

23. Craig Tompkins (*plaintiff may call this witness if the need arises*)
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Leslie S. Godfrey, Esq.
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24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
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310-728-3358

25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the need arises*)
Akin Gump
2029 Century Park East, Suite 2400
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26. Robert Mayes (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
Korn Ferry
c/o Samantha Goodman
1900 Avenue of the Stars, Suite 2600
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310.556.8557

27. Andrew Shapiro (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Jahan Raissi
Shartsis Freise LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
415.421.6500

28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
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29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)
c/o Alexander Robertson, IV
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Westlake Village, CA 91361
818 851 3850

30. Andrez Matycynski (*plaintiff may call this witness if the need arises*)
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, NV 89169

31. Dev Ghose (*plaintiff may call this witness if the need arises*)
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<u>For the Director Defendants</u>:

1. Ellen Cotter (*the director defendants expect to present this witness*)
c/o COHEN | JOHNSON | PARKER | EDWARDS
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And
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2. Margaret Cotter (*the director defendants expect to present this witness*)
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3. James Cotter, Jr. (*the director defendants expect to present this witness*)
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4. Guy Adams (*the director defendants expect to present this witness*)
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5. Edward Kane (*the director defendants expect to present this witness*)
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7. Michael Wrotniak (*the director defendants expect to present this witness*)
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8. Judy Codding (*the director defendants expect to present this witness*)
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10. Timothy Storey (*the director defendants expect to present this witness*)
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11. Craig Tompkins (*the director defendants expect to present this witness*)
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12. Bob Smerling (*the director defendants expect to present this witness*)
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13. Terri Moore (*the director defendants expect to present this witness*)
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14. Andrzej Matyczynski (*the director defendants expect to present this witness*)
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15. Linda Pham (*the director defendants expect to present this witness*)
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16. Debbie Watson (*the director defendants expect to present this witness*)
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17. Laura Batista (*the director defendants expect to present this witness*)
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18. David Roth (*the director defendants expect to present this witness*)
Cecelia Packing Corp.
24780 E South Ave.
Orange Cove, CA 93646
559-626-5000

19. Michael Buckley (*the director defendants may call this witness if the need arises*)
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545 8th Ave.
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20. Derek Alderton (*the director defendants expect to present this witness*)
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El Segundo, CA 90245
310-616-0100

21. Mary Cotter (*the director defendants expect to present this witness*)
2818 Dumfries Road
Los Angeles, CA 90064
310-559-0581

22. Jill Van (*the director defendants expect to present this witness*)
Grant Thornton
515 S. Flower St., 7th Floor
Los Angeles, CA 90071
213-627-1717

23. Whitney Tilson (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
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Westlake Village, CA 91361
818-851-3850

24. Jon Glaser (*the director defendants may call this witness if the need arises*)
c/o Alexander Robertson, IV
Robertson & Associates, LLP
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Westlake Village, CA 91361
818-851-3850

<u>For Reading International, Ind.:</u>

RDI does not intend to call witnesses, but reserves all rights to question witnesses identified by Plaintiff and/or the other defendants in this matter.

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2. Expert Witnesses and Summaries of Opinions

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding proper exercise of directors' fiduciary duties. Among other things, he will offer opinion testimony regarding appropriate corporate governance practices and activities where a board of directors is faced with circumstances in which directors lack or may lack independence and/or disinterestedness, including the appropriate practices and activities to address such circumstances, and to evaluate the success of such practices and activities, including with respect to the following matters (i) the process used to terminate James J. Cotter, Jr. as President and Chief Executive Officer of Reading International, Inc. ("RDI")., (ii) the use of the Executive Committee of RDI's Board of Directors, (iii) the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given and (iv) the rejection of the Offer.[3] Former Chief Justice Steele also will offer opinion

[3] As stated in the Steele Report, it is Justice Steele's understanding that Nevada courts look to Delaware case law when there is no Nevada statutory or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the Nevada Supreme Court frequently looks to the Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on questions of corporation law, this Court often looks to those sources to predict how the Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no Nevada statutory or case law on point or an issue of corporate law, this Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the Model Act relies heavily on New York

testimony to rebut opinions offered by defendants' experts Michael Klausner and Alfred Osborne.

2. Richard Spitz will offer opinion testimony relating to executive and CEO searches and RDI's supposed CEO search. It is anticipated that he will offer opinion testimony that the execution of the (supposed) executive search process undertaken at RDI in 2015 to find a CEO was not conducted properly and that the search failed, including because the selection of Ellen Cotter as CEO was not the product of completing the search process undertaken and was not a result of the search activities conducted. Mr. Spitz also will offer opinion testimony to rebut opinions offered by defendants' expert Alfred Osborne.
3. Albert Nagy will offer opinion testimony in rebuttal to defendants' expert Alfred Osbourne. Among other things, it is anticipated that he will offer opinion testimony that Margaret Cotter's compensation from RDI is not within a reasonable range for a person with her experience and qualifications.
4. Tiago Duarte-Silva will offer opinion testimony about money damages Plaintiff seeks by this action. It is anticipated that his opinion testimony will include opinions that (i) Reading's earnings have declined and underperformed since Ellen Cotter became Reading's CEO, (ii) Reading's value has declined and

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and Delaware case law, we look to the Model Act and the law of those states in interpreting the Nevada statutes.").

Justice Steele is aware that the defendants in this action have filed a motion in limine because the Steele Report stated that the opinions therein were based on what a court that applied Delaware law would find. That phraseology was intended simply to refer to Justice Steele's years of experience in Delaware's well-versed body of law. The Delaware law on which Justice Steele relies neither supplants nor modifies the plain meaning of Nevada law, but only is used to inform Nevada law.

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underperformed since Ellen Cotter became Reading's CEO, and (iii) failing to respond favorably to an acquisition offer impeded an increase in Reading's market value. Mr. Duarte-Silva also will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll.

5. Dr. John Finnerty will offer opinion testimony to rebut opinions offered by defendants' expert Richard Roll. It is anticipated that his opinion testimony will include opinions that Dr. Roll's conclusions that (1) "the news regarding James Cotter, Jr.'s termination did not have an adverse effect on the price of RDI stock;" (2) "the risk adjusted performance of RDI Stock since the termination of James Cotter, Jr. through June 30,2016 does not support Plaintiff's contention that RDI Stock has underperformed and/or suffered irreparable harm;" and (3) "the risk adjusted performance of RDI Stock since the termination of James Cotter, Jr. through June 30, 2016, is not distinguishable from the performance of RDI Stock while he was CEO" are incorrect.

<u>For the Director Defendants</u>:

1. Michael Klausner – Mr. Klausner will offer opinion testimony regarding the Board of Directors' proper exercise of their duties and obligations in connection with their decision to terminate James Cotter, Jr. as President and CEO and their decision not to pursue the third-party indication of interest, including as a rebuttal to Plaintiffs' expert Justice Myron Steele.
2. Jon Foster – Mr. Foster will offer opinion testimony regarding the Board of Directors' decision-making and analysis in connection with their consideration of the third-party indication

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of interest, as a rebuttal to the expected testimony of Plaintiffs' expert Tiago Duarte-Silva.

3. Richard Roll – Dr. Roll will offer opinion testimony about the claimed money damages being sought by Plaintiff in this action based on fluctuations or changes in RDI's stock price, including as a rebuttal to Plaintiffs' purported damages experts.
4. Bruce Strombom – Mr. Strombom will offer opinion testimony to rebut the purported damages analysis set forth by Plaintiffs' exert Tiago Duarte-Silva.
5. Alfred Osborne – Dr. Osborne will offer opinion testimony on matters relating to corporate governance and assess Williams Gould's role, responsibilities and conduct in certain corporate governance processes at RDI. He will also offer opinion testimony to rebut opinions offered by Plaintiffs' experts Justice Myron Steele and Mr. Richard Spitz regrading purported breaches of fiduciary duty by members of the Board of Directors.

For Reading international, Inc.:

RDI joins in the expert designations of the Director Defendants.

H. Issues of Law

Plaintiff's Position:

Plaintiff's position is that any such issues will be raised with the Court in the context of jury instructions.

Director Defendants' Position:

As described in detail in the Director Defendants' pending Motions for Partial Summary Adjudication, the Director Defendants believe that for each purported breach of fiduciary described in the Second Amended Complaint, each of them (1) were subject to the protections and

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presumptions afforded by Nevada's business judgment rule, (2) properly exercised their fiduciary obligations, (3) did not engage in any "intentional misconduct, fraud or a knowing violation of law" required by N.R.S. 78.138 to impose individual liability on corporate directors, and, although not relevant under Nevada law, (4) were independent for each relevant decision made by the Board in which they participated. Moreover, as previously argued in the context of the Director Defendants' Motion for Partial Summary Judgment No. 1 and Opposition to Plaintiff's Motion for Partial Summary Judgment, Plaintiff lacks standing to bring this derivative action or to derivatively assert certain claims that are wholly-personal to him, such as his termination claim. Similarly, the equitable relief that Plaintiff seeks—*i.e.*, reinstatement as President and CEO of RDI—is not available as a matter of law.

RDI's Position:

RDI's business decisions challenged by Plaintiff were the result of valid business judgment. Additionally, RDI joins in the position of the Director Defendants.

I. Previous Orders on Motions in Limine

a. Defendants' Motion In Limine to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty

i. Granted in Part. With respect to Chief Justice Steele, he may testify only for the limited purpose of identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. Withdrawn as to Dr. Finnerty. Denied as to all

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other experts. See December 21, 2016 Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion In Limine to Exclude Expert Testimony ("December 21, 2016 Order"), attached as Ex. __.

J. Previous Orders on Motions for Partial Summary Judgement

a. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims

i. Denied. See December 21, 2016 Order.

b. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence

i. Continued. See December 21, 2016 Order.

c. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer

i. Continued. See December 21, 2016 Order.

d. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee

i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.

e. Individual Defendant's Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO

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i. Continued. See December 21, 2016 Order.

f. Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams

i. Continued. See December 21, 2016 Order.

g. Plaintiff James J. Cotter, Jr.'s Motion for Partial Summary Judgment.

i. Denied. See October 3, 2016 Order Denying James J. Cotter Jr.'s Motion for Partial Summary Judgment and Granting RDI's Countermotion for Summary Judgment.

h. Defendant William Gould's Motion for Summary Judgment

i. Continued.

K. Estimated Length of Trial

The parties estimate 15 to 19 days; 80-100 trial hours.

L. Other Issues

Plaintiff's Statement:

Plaintiff is unable to locate an answer from defendant Gould to the Second Amended Complaint, which the individual defendants should have answered long ago.

Director Defendants' Statement:

Plaintiff's list of claims above neither complies with the rules for pre-trial disclosures nor provides *any* clarity about what claims Plaintiff

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actually intends to prove at trial or what damages (money or equitable) he seeks. Eighth District Rule of Practice 2.67(b)(2) requires Plaintiff to provide "[a] list of all claims for relief designated by reference to each claim or paragraph of a pleading and a description of the claimant's theory of recovery with each category of damage requested." The Director Defendants intend to address at trial any purported breaches of fiduciary duty—and will show that Plaintiff's claims are baseless—but must be told which specific actions are at issue in order to properly prepare their defense.

Plaintiff states that he will pursue claims for breaches of fiduciary duty potentially based on each and every allegation in the Second Amended Complaint by, for example, stating his intent to pursue "[b]reach(es) of the duty of care and abdication of fiduciary responsibilities by some or all acts and omissions in SAC." This provides no more information than if Plaintiff had never made his pre-trial disclosures—he may or may not pursue a claim based on any act or omission mentioned or alluded to anywhere in the Second Amended Complaint. Plaintiff's witness list similarly fails to shed any light on the claims Plaintiff intends to pursue—his list strays so far afield that Plaintiff has stated his intent to call Defendant Guy Adams' ex-wife (Lois Marie Kwasigroch) at trial.

Plaintiff also fails to disclose the actual monetary damages or equitable relief he intends to seek at trial. For example, Plaintiff states that his damages resulting from Defendants' alleged breaches of the duty of care are "injury to RDI's reputation and goodwill" and "impairment of shareholder rights due to SEC filings." If these are supposed money damages, Plaintiff does not state his claim for damages, or even explain what shareholder rights are purportedly impacted. With the exception of the equitable relief he seeks in connection with his termination from RDI (*i.e.,* being reinstated as President and CEO), Plaintiff does not link any

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particular claim to any particular category or amount of damages. For example, Defendants have no idea what relief Plaintiff is seeking in connection with the "involuntary retirement of Storey" or "process/process failures in connection with nomination and retention of directors, including Codding and/or Wrotniak." Plaintiff's list of claims/damages is indecipherable and nonsensical; Plaintiff has attempted to reserve the right at trial to pursue any claim he wants and seek whatever damages he wants. Defendants cannot prepare for trial based on these inadequate disclosures, which amount to nothing but gamesmanship and are highly prejudicial.

RDI's Position:

RDI contends the equitable relief sought would result in significant disruption of RDI management and the pursuit of its long term business strategy. Additionally, RDI joins in the statement of the Director Defendants regarding Plaintiff's purported damages.

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.	.	
	.	CASE NO. A 15 719860 B
Plaintiff	.	A 16 735305 B
	.	P 14 082942 E
vs.	.	
	.	DEPT. NO. XI
MARGARET COTTER, et al.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .		

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS IN LIMINE AND PRETRIAL CONFERENCE

MONDAY, DECEMBER 11, 2017

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. STEVE L. MORRIS, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	H. STANLEY JOHNSON, ESQ. MARSHALL M. SEARCY, ESQ. CHRISTOPHER TAYBACK, ESQ. JAMES L. EDWARDS, ESQ. MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ. EKWAN RHOW, ESQ.

LAS VEGAS, NEVADA, MONDAY, DECEMBER 11, 2017, 10:24 A.M.

(Court was called to order)

MR. FERRARIO: Ms. Hendricks has something to take up with you.

MS. HENDRICKS: I just have a question.

THE COURT: On what?

MS. HENDRICKS: On how many drives we each need.

THE COURT: Wait. That's not me. Wait. Don't go there yet.

MS. HENDRICKS: Okay.

THE COURT: Who are you looking for?

MR. MORRIS: I'm so unaccustomed to being on the plaintiff's side.

(Pause in the proceedings)

THE COURT: All right. So moving on. Good morning. We were talking about the pro bono awards at the 8:00 o'clock session this morning, and Mr. Ferrario didn't get one this year, so I was giving him a hard time because nobody from his firm did a lot of work. But apparently they did. It just didn't get reported because it was done with a different agency.

Right, Ms. Hendricks?

MS. HENDRICKS: Yes. We're getting that fixed right now.

THE COURT: Okay. So before we start on your

motions I need to hit some practical problems. As those lawyers who practice here in the Eighth all the time know, as the chief judge I do not have a courtroom. That occurred because when the Complex Litigation Center was investigated for purposes of conducting the CityCenter trial we determined that it had a structural issue and some electrical issues. As a result, we did not renew the lease --

When was that, Mr. Ferrario?

MR. FERRARIO: It was 2013.

THE COURT: In 2013 we did not renew the lease, and since that time we have been down one courtroom. The person who gets screwed is the chief judge. So since 2013 we have had the chief judge be a floater. Unfortunately for you guys, I'm the first judge who kept my docket, because Business Court cases have a lot of history and it's not one of those things you can get rid of and assume somebody else is going to be able to be familiar with it fairly quickly.

So the down side for all of you is that I don't have a courtroom. Which is why sometimes we borrow Judge Togliatti's courtroom when you guys see me, sometimes in this courtroom. And you've been in the two Family Court courtrooms a couple of times here. I also have judges who lend me their courtrooms on a regular basis on the third floor, and sometimes I have courtrooms in other places in the building I borrow.

Recently I learned that I am going to be able on behalf of the court to acquire the seventeenth floor that used to be occupied by the Supreme Court and to build a new Complex Litigation Center, because since 2013 every time we have a complex trial we build out a courtroom, it costs a quarter of a million dollars, and then when we're done with it we take it back down to put it back in regular shape. And so finally the County has realized that's probably not an effective use of the funds, and so we're going to build out the seventeenth floor as a complex litigation, jury, and criminal caseload accommodated. Unfortunately, that's a construction project, and it is in process. And when I say in process it means they're still in the bid evaluation process and it has to now go to something called long-term planning at County management, which means that some day there'll be a courtroom there. In the meantime --

MR. MORRIS: So our trial will start when the construction is complete on 17?

THE COURT: No, no. You're going to start. I just don't know where we're going to be, Mr. Morris. This is the reason for the speech, because Mr. Ferrario says nobody believes me that I don't have a courtroom. I don't have a courtroom. So I will have a courtroom when I end being chief judge. I'll go back to being a regular judge and I'll have a courtroom, and then the new chief won't have a courtroom

unless we finish building out the seventeenth floor by then.

So right now the reason I'm telling you that is it impacts your trial. The trial I am currently in is a bench trial, so it's not a jury trial and we have moved from courtroom to courtroom during our 10 days we've been in proceedings so far. So we've not been in the same courtroom every day. But that's sort of the life of being in this department at the moment. That's the history.

Now let's go to the electronic exhibit part of our problem. Brandi is the head of the Clerk's Office, Mike is the head of IT, so they are the two people who are here to make sure that they are able to interact with you -- and then I'll let them leave while I hear your motions -- about the electronic exhibit protocol. Because when we use the electronic exhibit protocol there's two ways that we have to deal with it, from an IT standpoint and from the Clerk's Office standpoint. So instead of us hauling all the paper volumes from courtroom to courtroom, depending on where we're going to be, the clerk won't have to do that. They will have the drives, as Ms. Hendricks mentioned earlier, for that purpose so that Dulce will then -- after IT has cleared the drives Dulce will then work with the drives, and then we usually keep one that is called golden that we don't mess with, and we have one that's a working drive. But I'll let Mike explain that and Brandi explain it, because not all of

you have been through the electronic exhibit protocol in the past.

Mike, you're up.

MR. DOAN: So this is a jury trial, so a high level. We expect three drives, a working copy, a golden copy, and then a blank for the jury that everything that gets accepted or submitted in a group will be over on that drive.

Depending on the number is drives is just based on the space. So if your teams, whoever's putting these drives together -- we have problems if you get a million exhibits on one drive or even 600,000 on one drive. Not so much even the space, it's just navigating through those files. And so as long as your team can navigate and view the files, that's okay for us. We don't have like a set number. We just ask that the drives be twice as big as the amount of the exhibits, because in theory everything could get accepted, and therefore everything would be stamped and there'd be duplicate on the drive.

THE COURT: And when it's stamped there's a program that goes through and it puts a stamp on each page of the electronic exhibit that says it's admitted so that we have your original proposed copy and then your admitted copy. The one drawback for lawyers is if you decide you want to admit a partial version if an exhibit, we cannot do that with electronic exhibits. We need you to submit a replacement

electronic exhibit that includes only the pages that you are offering. That will then have an exhibit marker placed upon it. But I can't with the electronic exhibits admit pages 6 through 10 of the 25-page document.

So, Mike, what did I miss?

MR. DOAN: That's it.

THE COURT: Okay, Brandi. You're up.

MS. WENDELL: Have you already given them the ranges? Do we have --

THE COURT: No, we have not done ranges yet.

MS. WENDELL: Okay. The protocol is pretty basic. Your paralegals or your IT people that are going to be working on those might have questions. Usually -- a lot of times on all the other trials Litigation Services was used. They're very familiar with this program. I'm not advocating for them or anything, but if anybody's contracted with them, they're pretty familiar with how to do it. It's really important that you pay attention to the naming convention. Make sure there are no letters in it. It has to be strictly numbers and then .pdf. The last time there was a question about whether .tifs worked, and Mike was able to verify that .tifs are -- we're able to use those. But color photos can be done as long as there's a little border up at the top for the stamping program to mark all of the information.

Another thing that we have found useful, it's not in

the protocol, but at least a couple weeks before the trial starts we do like a dry run, because your exhibit list, the templates that Dulce went ahead and emailed to you, you cannot change that, the formatting. It's critical because Mike's team will do a validation, and it validates the exhibit numbers to what is on the drive, each exhibit. And it'll identify if there's something that's missed or skipped that's on the list but it's not actually on the drive. And a lot of times there's been some formatting problems when people try to get creative. So, you know, just a little advice that we found from trial and error that that is an important piece.

What else?

MR. DOAN: That's the biggest thing, is if you can get with us -- and we'll make ourselves available as soon as you're available to do like an initial run before you start all printing and doing all these other things just so everything can be tested for format so there's not a lot of time wasted.

MS. WENDELL: The clerk must have -- the exhibit list must be printed out.

THE COURT: Not in 2 font, Ms. Hendricks.

MS. HENDRICKS: [Inaudible] that was not our office's fault, Your Honor.

MS. WENDELL: That should be in a binder so that the clerk as you're actually offering and admitting the evidence

during the trial, she'll be working on that. Later that day she'll be doing the electronic stuff or we'll have a second clerk that'll be helping her. Antoinette is court clerk supervisor, and so she's here to make sure that, you know, if we have any questions that have to be answered.

A lot of times -- oh. Last trial somebody asked if because the exhibit list itself was going to be like 14 of those big binders, they asked if they could print on the front and the back. That was in Judge Kishner's big trial. We let them do it, and -- but the trial settled, so it wasn't an issue.

THE COURT: It's not a good idea.

MS. WENDELL: It's not ideal, so --

THE COURT: Please don't do a front and back.

MS. WENDELL: Anybody have any idea how many exhibits you're looking at?

THE COURT: We're going to start with them and do our ranges first. But we're not quite there yet.

So if anybody has questions or your staffs have questions, would you like contact information to reach out to either Antoinette, Brandi, or Mike?

MR. TAYBACK: Yes.

MS. HENDRICKS: That would be great, Your Honor.

THE COURT: So tell them or give them business cards.

MS. WENDELL: Okay.

MR. FERRARIO: If you all have cards, then that'd be easiest.

THE COURT: They're County employees. Does that mean they get cards?

MR. DOAN: Yeah.

THE COURT: Oh. Look at that.

MR. DOAN: You know, and it's best to have one point of contact so then we don't get confused.

MS. WENDELL: I'm putting my cards away now.

THE COURT: Who do you guys want to be the person that calls? Do they want to call Antoinette, they want to call you, want call Mike?

MS. WENDELL: Well, Antoinette is -- she's not Dulce's direct supervisor, but I can be the point of contact, and then I can go ahead and let you guys know. My email address and my phone number are both on here. If you could pass some of these out, that'd be great. And then I'll probably hand you off depending on the questions that come up. Most of them are going to be technical questions, but I'll try to help if I can.

THE COURT: All right. So do you have any more questions for the Clerk's Office, the IT folks, in the electronic exhibit protocol? You will notice because of what happened in CityCenter in paragraph 6 it now says the exhibit

list will be font size 12, Times New Roman. So we're very specific on what size, because the clerk's actually have to work with the paper copy. And so although you can blow up the Xcel spreadsheet and see it when it's 2 font, they can't. So we have to have it in a larger font.

Any more questions?

Okay. Mr. Krum, how many exhibits do you think you're going to have so I can set the exhibit ranges?

MR. KRUM: The answer is it's in the hundreds, not in the thousands. So if --

THE COURT: So if I give you 1 to 9999, you will be okay?

MR. KRUM: Yes.

THE COURT: All right. Who wants to have 10000 as their start? Mr. Searcy, how many have you got?

MR. SEARCY: I think our approximation is basically the same. It's in the hundreds, not the thousands. So if we had 10000 to --

THE COURT: 1999 [sic]?

MR. SEARCY: Yeah, that would be perfect.

THE COURT: I have to give you lots of extras, because if you're going to do partial exhibits, we need that space to be able to add those. So if you've got subparts of one exhibit, I need an exhibit number for each one of those. So I'm giving you more than you need.

Mr. Ferrario, how many do you need?

MR. FERRARIO: Your Honor, Your Honor, I would suspect our -- any exhibits we would introduce independent of what Mr. Krum and the other defendants would be nominal. So you can give us a very short range.

THE COURT: 20000 to 2499 [sic].

THE COURT: Who else wants exhibit lists that's not one of those three? Anybody else need --

MR. TAYBACK: Counsel for Mr. Gould is sitting behind me.

THE COURT: So Mr. Gould's counsel, you want about the same range Mr. Ferrario has, 25000 to 30000?

MR. RHOW: That's fine, Your Honor. Just for protocol --

THE COURT: Hold on. They've got to get your name, because otherwise I'm going to get really -- I'm going to screw up.

MR. FERRARIO: Can you let Ekwan speak today? He's been here all -- he hasn't even got to argue one time, Your Honor.

THE COURT: All right, Mr. --

MR. RHOW: I'm actually in this case. Ekwan Rhow, Your Honor. Thank you.

THE COURT: Okay.

MR. RHOW: We can have a separate range for sure,

but is there any problem with incorporating Mr. Gould's exhibits into the exhibits for Mr. Searcy that he presents?

THE COURT: There is absolutely no problem with your exhibits being within their exhibit range, but I need to give you a separate range for your own in case you all don't reach an agreement.

MR. RHOW: I see.

THE COURT: So my exhibit ranges based on what I've heard today is 1 to 9999 for the plaintiffs, 10000 to 1999 [sic] for the Quinn Emanuel folks and their associated, which includes Mr. Edwards; right? Okay. And 20000 to 2499 [sic] for Mr. Ferrario and his team. And, Mr. Krum, we gave you 25000 to 2999 [sic] for Mr. Gould.

Do we anticipate there is anyone else who's going to need more numbers? Anybody else who's going to show up randomly in the case?

All right. Any other stuff I need to do on your part?

MS. WENDELL: No. Based on that, that's very good news. The goal will be for all counsel to prepare your exhibits and then everybody put them one drive. The only reason why we do different drives is because if there's like 10,000 exhibits on one, like Mike said, so if there's any way possible -- and you all have to use the same exhibit list template. Now, if that's a problem to do that, then if your

exhibits are on your own hard drive, then your exhibit list must be what is on that drive. So if two of you get together or three of you get together, everything that's on that drive must be one exhibit list, because it cross-checks and makes sure it validates.

THE COURT: So it's okay for the plaintiffs to have one drive and an exhibit list of 1 through 9999 -- or up to that number, and the defendants to decide jointly they're just going to use the 10000 to 1999 [sic], have one drive, and one exhibit list?

MS. WENDELL: That is okay. But based on the size, you know, we're -- I think that, you know, it's better to always have one --

THE COURT: Yeah. But you're asking for cooperation?

MS. WENDELL: Yes.

THE COURT: Just because you worked for Commissioner Biggar for however many years and you could make them cooperate doesn't make I can as a trial judge.

All right. So anybody else have more stuff?

Yeah. Your history will never die.

MS. WENDELL: I know. It's going to follow me out of here in February.

THE COURT: All right. Anybody else have any more questions for my IT team or my Clerk's Office team so that

they can leave and not have to sit here through your motion practice?

Dulce wants you to set the dry run date today. We have a holiday coming up, and you have asked me to let you go the second week. I'm going to be able to accommodate that request. I found some victim to go the first week.

MR. FERRARIO: So we start on the 8th now?

THE COURT: Plan is for you to start on the 8th. So when do you want your dry run to be with your staff to bring over the lists and the drives? It doesn't have to be you guys. It can be your paralegals.

MR. FERRARIO: But you said you want enough time in case there's glitches. So --

MS. WENDELL: If there's a glitch, then you'll need time to fix it.

MR. FERRARIO: So at least the week before -- we need it two weeks before; right?

THE COURT: Two weeks before is the week of Christmas, so we'll be here the 26th through the 29th working that week.

MR. FERRARIO: And then you guys will be here to do that?

MR. DOAN: We'll make it work.

THE COURT: Some of them will be here.

MR. FERRARIO: I think it has to be that week in

case there's a problem. Because then the following week is short, and then we're right up on trial and won't be able to correct any of the stuff.

MR. KRUM: So why don't we say the 29th?

THE COURT: You guys all okay with the 29th? What time do you want to meet?

MR. KRUM: I think we need to talk to the people who are going to do it.

THE COURT: Okay. I would recommend the morning. And the reason I recommend the morning is typically on the weekend of New Year's Eve they try and get everybody out of downtown by about 2:00 o'clock because of all the things that happen in the streets here on that weekend.

MR. KRUM: Understood.

THE COURT: So -- and we will tell you what courtroom we are able to find. I'm pretty sure on that day I could get a courtroom on this floor. And if you guys want a morning, if you can accommodate that, we'll do that. Otherwise --

MR. FERRARIO: I'm going to tell you, Judge, [inaudible] people are going to be in this trial, I think if you could convince Judge Sturman to let you have this for the length of the trial, that would [inaudible].

THE COURT: She has a trial that I had to vacate when her mom became ill that I think she's going to try and

restart in January. I will know better when she actually gets back to town. But we will talk to her. Her courtroom and Judge Johnson's courtrooms are equipped differently than the other courtrooms, so they are a little bit bigger.

MR. FERRARIO: Yes. This would accommodate [inaudible].

THE COURT: I was thinking of putting you in Potter's courtroom and having a special corner for you.

MR. KRUM: Your Honor, I've just been reminded that it was presumptuous of me to speak for others.

THE COURT: You want to talk to the staff members to see who's taking the week off?

MR. KRUM: Here's the question. And I'm now taking Mr. Ferrario's line. Would it be possible for us to start the following week so we could make --

THE COURT: No. We won't get done. If we do that, we won't get done in time for me to do my February stuff. It's a five-week stack. It starts on the 2nd of January. So if you need to talk to your teams and see if being here on January 2nd at 8:00 o'clock in the morning is a preference for them instead of the 29th, which gives you -- you lose the weekend, but you're here the rest of the time. It gives you almost two weeks to straighten it out.

MR. KRUM: Okay.

THE COURT: And that's okay with me. Even though

Mike would say he needs two weeks before, January 2nd is okay with me.

MR. KRUM: Okay. We will check with our people.

THE COURT: Okay. So any other electronic exhibit lists?

So, Dulce, just mark them down that they are planning to visit with you on January 2nd. I'm fairly certain I can find a courtroom on January 2nd, but there's no guarantees on that day.

All right. 'Bye, guys. Thank you for being here. Antoinette, thank you for being here. I know it's going to be exciting again.

All right. That takes me to the motions. Do you have a preferred order you'd like to argue them in? I usually try and do the summary judgments and then go to the motions in limine.

MR. KRUM: That would be our suggestion, as well.

MR. TAYBACK: That makes sense, Your Honor. You can go numerical order is fine.

THE COURT: Whatever you want to do.

Can I have my calendar. I don't need -- well, I have notes all over the motions, so --

MR. FERRARIO: Are we on the clock?

THE COURT: You have until five till 12:00. So we've got an hour.

(Pause in the proceedings)

MR. TAYBACK: Mr. Krum was just suggesting that I raise the parties' -- both filed joint motions -- or filed motions to seal. We'd ask you to grant them.

THE COURT: Is there any objection to any of the motions to seal? They weren't all motions to seal. Some of them were motions to redact, and that was appropriate. The motions to seal I do have a question for Mr. Morris's office, and so I'll ask you -- hold on, if I can find the one I wrote the page on. Got a question. It was a process question, not a substance question, so let me hit it before we go to the next step.

When you sent me a courtesy copy and the courtesy copy had a sealed envelope in that did you also file the sealed version of the document that has like this sealed envelope that's with the Clerk's Office?

MS. LEVIN: I don't believe, Your Honor.

THE COURT: And we have to do it that way --

MS. LEVIN: Okay.

THE COURT: Because otherwise I can't even grant your motion now, because then it's going to get screwed up.

MS. LEVIN: I understand, Your Honor. And I think that this was based on our conversations with the clerk, who said you cannot submit it until you have the order. And we were saying, but that --

THE COURT: No. You submit it when you file the motion. When you file the motion with it, which is why you have to file them at the counter. You can't efile when you're filing under seal.

MS. LEVIN: Right.

THE COURT: And that's why it gets screwed up.

So I have some process concerns about the plaintiff's filings related to that, and I'm going to let you and Dulce talk about those after we finish the hearing to see, if we can.

I'm going to grant the motion, but it may be that you have to do something different to have a motion that actually goes with it to the Clerk's Office instead of an order. Because having the order will not accomplish what you want.

All right. So to the extent that you asked previously for a motion to seal and/or redact, it appears to be commercially sensitive information related to financial issues, and there's some other sensitive information that relates to individuals' personal information, so I'm going to grant the requests for sealing and redacting that have been submitted.

Okay. You're up. What motion do you want to start with?

MR. TAYBACK: It'll be Summary Judgment Motion

Number 1. And it also -- there's -- relates to Summary Judgment Motion Number 2. So I will argue them jointly. They were at least opposed jointly, and we replied jointly with respect to those two motions.

THE COURT: Okay.

MR. TAYBACK: I'm here on behalf of the director defendants Michael Wrotniak, Judy Codding, Douglas McEachern, Edward Kane, Guy Adams, Margaret Cotter, and Ellen Cotter. As Your Honor will recall and as addressed in the briefing, Your Honor said, and this is a truism, really, for any case, you've got to analyze claims defendant by defendant, in this case director by director, and transaction by transaction. And that's, you know, just basic, basic legal analysis.

On top of that, sort of as an overlay, another thing that I know Your Honor is well aware of is the recent law that clarifies -- I see you chuckling --

THE COURT: I don't know anything about the Wynn-Okada case. You don't know anything about it, because your firm wasn't involved at all, and Mr. Ferrario doesn't know anything, and Mr. Morris I'm sure was involved, too, because he's been involved in some of the appellate process in that case, too.

Right, Mr. Morris?

MR. MORRIS: Yes.

THE COURT: See, so we all know.

MR. TAYBACK: But all I need to know, all I need to know and all I really care about here and all that matters here is the language of the Supreme Court's opinion, because that's really what animates the business judgment rule in Nevada as we stand here now. And I think that combined with the recent clarifications by the legislature regarding the latitude afforded directors work together to set the bar very, very high. I'm sure Your Honor has read the opinion multiple times, applied it in that case, a case I'm not privy to, but it's --

THE COURT: I did. I granted partial summary judgment, which is on a writ.

MR. TAYBACK: And, as you well know --

THE COURT: Are we supposed to be calling somebody?

MR. FERRARIO: No.

THE COURT: I have a call-in number. I'm not in charge of doing this.

(Pause in the proceedings)

THE COURT: Hold on. Apparently someone thinks they're calling in.

MR. RHOW: It's okay, Your Honor. No need. I'm here.

THE COURT: Oh. It was you?

MR. RHOW: Not necessary.

THE COURT: Okay. Good. I'm glad we don't have to

call you.

Okay. Keep going. So I granted partial summary judgment, but I found some directors were not disinterested, so not all of the directors were covered by the summary judgment. I also in that case made a determination the business judgment rule only applies to officers and directors, it does not apply to the corporation itself. Just so you know.

MR. TAYBACK: And I'm aware of that only through having read the pleadings and having read now the court's opinion here. But the question is as it applies to this case. And as it applies to this case collectively that recent guidance and the guidance from the legislature make it clear that it's not really the province of a plaintiff or a court or jury to come in and say the business judgment rule should be overridden in order to second guess a particular decision made by a corporation's directors or its officers. And if you start at that premise, the idea that the applicable Nevada statutes here elevate -- give that sort of latitude to directors in the first instance and then you take it to sort of the next level of analysis, that is to say, even if one could rebut the presumption, even it's rebutted the standard then for imposing liability is even higher, because there remains still a two-prong test for which plaintiffs have to show a material disputed issue of fact to proceed to trial.

Both an individual director on a particular transaction breached their fiduciary duty and, secondly, that that individual director did so with fraud, knowing -- as a knowing violation of the law or engaged in intentional misconduct.

THE COURT: Well, you understand that finding is only needed to make a determination as to whether the individual officer or director is insulated from -- for personal liability purposes, as opposed to derivative liability, which would be funded through the corporation.

MR. TAYBACK: Correct.

THE COURT: Okay.

MR. TAYBACK: Though they are seeking personal liability. Their complaint makes that clear.

THE COURT: I understand they are. But your motion seemed to take the position that unless I found fraud they need to be dismissed. And that's not how it works.

MR. TAYBACK: Well, but they do need to rebut the presumption with respect to the business judgment rule.

THE COURT: That's a different issue, Counsel.

MR. TAYBACK: It is a different issue. And it's a multiple-hurdle test.

THE COURT: Yes.

MR. TAYBACK: And with respect to that second hurdle even the issue comes down to Your Honor's adjudicating their claim for personal liability, then that's also part of the

motion.

But you don't need to get there, because they have not established the evidence necessary to rebut the initial presumption. And that's clear because when you look at what governs the decision here by these individual directors on termination, which I'm going to take that transaction because that's the subject of our first motion for summary judgment, if you look at that, what governs that decision are the bylaws. And the bylaws which we've submitted are amply clear that the board was given complete discretion, that officers, including the CEO, serve at the pleasure of the board and can be terminated with or without cause at any time.

With the bylaws being the operative rules of the road, so to speak, and the law being what it is with respect to the deference afforded boards and individual board members, plaintiff's efforts to try to get around the idea that that presumption should be applied here are based on generalized allegations of disinterestedness. But you don't see specific evidence in the record anywhere that any of the three directors who voted to terminate Mr. Cotter, Jr. --

THE COURT: And you're including Mr. Adams in that, are you?

MR. TAYBACK: I am including Mr. Adams in that.

THE COURT: Just checking. So what happens if I make a determination that Mr. Adams is not disinterested? You

then do not have a majority of disinterested directors; correct?

MR. TAYBACK: If you made that finding that would be true. But it wouldn't change the liability, the claim against Mr. McEachern or Mr. Kane.

THE COURT: You mean for personal liability?

MR. TAYBACK: I mean whether -- not whether or not you can say we need to revisit that action, but whether or not they were disinterested, whether they breached their fiduciary duty. That would be adjudicated in their favor even if you found against Mr. Adams on a particular transaction -- but I would say you should not find against Mr. Adams on this transaction. The evidence isn't that his -- that the decision to terminate had any connection to his -- the level of his income, the amount of his -- the amount of his income, the amount of his expenditures, his continuity on the board. There's no connectivity, which is required in order to find disinterestedness even if disinterestedness was the standard. Because I will say the standard in Nevada is not independence for -- unless it's a transaction in which the director is on both sides of the transaction or it's a change of control circumstance. The termination of a CEO is an operational matter where you don't get to the independence question unless and until you have established a basis, a legitimate basis in the law to show that the presumption should not apply.

In light of the law, in light of the bylaws, in light of the undisputed evidence with respect to Mr. Adams, Mr. Kane, Mr. Wrotniak, the Cotter sisters, and Ms. Codding -- and, of course, Mr. Wrotniak and Ms. Codding weren't even on the board at the time of this transaction -- the fact is that there's no basis upon which to allow plaintiff's claim to proceed.

The last point that I want to make with respect to Summary Judgment Motion Number 1 and 2 as it relates to that point is the plaintiff has tried to really muddy the law. And I think whatever you ultimately decide on this motion for summary judgment -- and I absolutely believe that these defendants are entitled to summary judgment on this record, but whatever you decide the parties will be well served by understanding Your Honor's view of the law. Because we do not see eye to eye with the plaintiffs on the law. They strive to import this Delaware entire fairness test.

THE COURT: I rejected that in Wynn, because that was the part that the Okada parties argued once the writ came back on [inaudible].

MR. TAYBACK: And notwithstanding that, I believe the plaintiffs are still advocating for it. It shows up in their papers.

THE COURT: I understand it's in their briefing.

MR. TAYBACK: And the law at least in Nevada with

respect to that is that it doesn't apply here. Independence for the same reasons is not required for the benefit of the business judgment rule where, as here --

THE COURT: You don't think the Shoen case says that independence is required for application of business judgment rule?

MR. TAYBACK: In Shoen to the extent it says that at all it says it in the context of demand futility. It's not the presumption that we're talking about here. And in fact that's -- I believe that's exactly what certainly the Wynn Supreme Court --

THE COURT: There's two Shoen cases; right?

MR. TAYBACK: Yes.

THE COURT: There's the first Shoen case and the second one that they gave a different name to.

MR. TAYBACK: Independence is not required unless you have a director who's on both sides of a transaction.

THE COURT: Okay.

MR. TAYBACK: I believe the law is amply clear on that.

THE COURT: Okay. I think their analysis is slightly broader than that, but okay.

MR. TAYBACK: Given the bylaws, given the fact that entire fairness does not apply, you cannot simply get past or rebut the presumption of the applicability of the business

1 judgment rule by saying a director is biased, a director has
2 some family connection, a director has income that's
3 attributable to the company. And that's really what this case
4 comes down to. Where the facts here are frankly undisputed
5 summary judgment is warranted.
6 That's it for Summary Judgment 1 and 2, Your Honor,
7 unless you have any questions.
8 THE COURT: No. It's okay.
9 Mr. Krum, Mr. Morris?
10 MR. KRUM: Good morning, Your Honor. Thank you.
11 So I have some argument to make about what are
12 pervasive misstatements of the law that were made with respect
13 to Number 1, as well as the other ones. That said, if I'm
14 listening, you're prepared to deny Number 1, just as you did
15 previously, nothing has changed, including the law; and if
16 that's the case, I'll just defer those comments till we get to
17 something else.
18 THE COURT: Well, then let me ask you a question.
19 Because when I read all these I have notes all over them,
20 because some of them are interrelated and the
21 disinterestedness issue is an issue that is involved in some
22 of the motions in limine, as well as this.
23 Can you tell me what evidence, other than what is
24 listed on page -- you had -- in your brief you had a list of
25 all of the company activities that you believe show decisions

that were made by certain of the directors that showed they were interested. Can you tell me, other than that list -- and I can't, of course, find it right now, but I'm looking for it -- is there any other information other than from Mr. Adams that you have that would provide a basis for the Court to determine that they are not disinterested?

MR. KRUM: I'm sorry. That who is not disinterested with respect --

THE COURT: Anyone except Mr. Adams and the two Ms. Cotters. The two Ms. Cotters I think is fairly easy. They didn't even move, from what I can tell. But, for instance, for Mr. Kane.

MR. KRUM: Certainly, Your Honor. In our -- first let me say I think the list to which you're referring is a list that I had understood the Court to request when we last argued summary judgment motions and was intended, Your Honor, to identify the particular matters which we contend give rise to or constitute breaches of fiduciary duty in and of themselves as well as together with other matters. And so --

THE COURT: I don't know that that's the reason you did it. I found it. It is on pages 5 and 6. I'm on the Supplemental Opposition to Motion for Summary Judgment Number 1 and 2 and Gould Motion for Summary Judgment, and there is a list that includes threats of termination if you don't get along with your sisters and resolve the probate case --

MR. KRUM: Yes.

THE COURT: -- exercise of the options, the termination, the method of the CEO search. All of those are company transactions. What I'm trying to find out is, other than for Mr. Adams, is there other evidence of a lack of disinterestedness that you have other than what is included in the list of activities that relate to their work as directors which are on pages 5 and 6 of that brief in the bullet points.

MR. KRUM: Let me answer it this way, Your Honor. 5 and 6 was our effort to do what I just said. And what that is, to try to be clear, is to identify particular activities that we thought would be the subject of, as is appropriate, either instructions or interrogatories to the jury with respect to these particular matters.

So let's take Number 1 bullet point, the first bullet point, the threat by Adams, Kane, and McEachern to terminate plaintiff if he did not resolve trust disputes with his sisters on terms satisfactory to them. That, Your Honor, from our perspective is separate from the termination which is the subject of Number 1. And on this --

THE COURT: I see that. But let me have you fall back, because I certainly understand those may be issues that you may want to submit interrogatories or just to include in jury instructions related to breaches of fiduciary duty by someone who survives this motion, who I don't grant it on

behalf of.

But my question is different. Other than these which you've argued in your brief are evidence of a lack of disinterestedness separate and apart from Mr. Adams, who you have other evidence that is presented related to a lack of disinterestedness, is there any evidence that has been attached to your various supplements and other motions related to a lack of disinterestedness for the other directors known as Mr. Kane, Mr. McEachern, Mr. Gould, Ms. Codding, and Mr. Wrotniak?

MR. KRUM: The answer is yes, Your Honor. So I'm going to try to do it a couple ways.

THE COURT: Tell me where to go. Because I looked through this whole pile of about 2 foot of paper last night trying to find it, and the only one I could find specific allegations of a lack of disinterestedness, besides the two Cotter sisters, was Mr. Adams.

MR. KRUM: Okay. Well, so, for example, with respect to Mr. Kane in the response to MSJ Number 1 and 2 we introduced evidence that showed that Kane was of the view that he knew best what James Cotter, Sr., wanted in his trust documentation.

THE COURT: I see he understood what Mr. Cotter, Sr.'s plan was. How does that make him have a lack of disinterestedness?

MR. KRUM: Well, the answer, Your Honor, is he acted on that. That was the basis on which he decided to vote to terminate the plaintiff. He -- and, for example, the evidence includes an email from Mr. Adams to Mr. Kane in April or early May 2015 in which Mr. Adams says, "This was difficult. We had to pick sides in this family dispute. But we can take comfort that Sr. would have approved our decision." And so the point from our perspective, Your Honor, is Kane, in acting as a director, in fact acted to carry out what in his judgment were the personal interests of Sr. with respect to his trust planning. And on that basis he voted to terminate Mr. Cotter. There are emails from Mr. Kane to Mr. Cotter telling him, I don't know what the sisters' settlement is but I urge you to take it. Well, we think the evidence also shows that he knew what it was, that it entailed Mr. Cotter giving up control of the issues they've been litigating.

THE COURT: Under the Shoen analysis do you believe that that contact and that information is sufficient to show that Mr. Kane is not disinterested?

MR. KRUM: Well, the answer is, yes, we do, Your Honor. And I hasten to add that the way Shoen puts it is that disinterestedness and independence are a prerequisite to having standing to invoke the business judgment rule.

THE COURT: I'm aware of that. Which is why we're having this discussion. So -- but usually we have either a

1 direct financial relationship, even if it's not on both sides
2 of the transaction, or we have a very close personal or
3 familial relationship with the people who are subject to the
4 transaction. And simply believing you understand Sr.'s plan
5 -- estate plan does not, I don't think, rise to that same
6 level to show a lack of disinterestedness; but I'm waiting for
7 you to give me a spin on that argument I may not have thought
8 of.
9 MR. KRUM: Sure, Your Honor. The answer is -- and I
10 say this because I appreciate what the finder of fact -- what
11 the Court has to do now and what the finder of fact has to do.
12 The evidence has to be assessed collectively, not
13 individually. And you understand that. We've cited cases for
14 that. The other side disputes that. There's "The complaint
15 of acts and omissions upon which plaintiff's claims are based
16 must be viewed and assessed collectively, not separately in
17 isolation." That's the Ebix case that we've cited. And there
18 are other cases for that proposition. The point, Your Honor,
19 is "assessing whether a director was independent and in a
20 particular instance acted independently or whether the
21 director was disinterested as required or whether -- and made
22 the decision based entirely on the corporate merits, not
23 influence by personal or extraneous considerations," that was
24 CVV Technicolor, that's the test. And so, Your Honor, in
25 Shoen, just to go back to that, "Independence can be

1 challenged by showing that the directors' execution of their
2 duties is unduly influenced." If Kane made a decision based
3 in any respect on his view that Sr. intended for one or both
4 of the sisters to have something and Jr. was in the way of
5 that, that, Your Honor, at a minimum survives summary judgment
6 so the finder of fact can make a determination after
7 considering all the evidence whether the director acted and
8 decided in that particular instance entirely on the corporate
9 merits. So what is --
10 THE COURT: Let's skip ahead, then. Mr. McEachern.
11 What evidence of disinterestedness do you have for Mr.
12 McEachern? And if you could tell me where in the briefing it
13 is, I will look at it again. But, as I've said, other than
14 Mr. Adams I did not see evidence of disinterestedness as
15 opposed to allegations of breach of fiduciary duty.
16 MR. KRUM: Mr. McEachern attempted to extort Mr.
17 Cotter. Along with Mr. Kane and Mr. Adams he told Mr. Cotter,
18 you need to go resolve your disputes with your sisters and
19 we're going to reconvene at 6:00 o'clock and if you don't
20 you'll be terminated. Now, there's no dispute about that. We
21 have in evidence the testimony --
22 THE COURT: I understand that that's one of your
23 claims of breach of fiduciary duty. But I'm trying to
24 determine if there was any additional evidence, other than
25 those items that are those bullet points you put in the brief,

which are on pages 5 and 6 of your supplemental opposition, that goes to Mr. McEachern. And then I'm going to ask you the same question for Mr. Gould and Ms. Codding and Mr. Wrotniak.

MR. KRUM: Your Honor, as a threshold matter, the presumption can be rebutted by showing conduct in derogation of the presumption. It's not simply a interest or disinterested phenomenon, cite Shoen. Let me be clear. I don't want to talk past you. The other side argues there are only two circumstances in which interestedness matters. Well, that's belied by Shoen. It says, "Business judgment rule pertains only to directors whose conduct falls within its protections. Thus, it applies only in the context of a valid interested director transaction --" that's 138 -- 78.140, excuse me "-- or the valid exercise of business judgment by disinterested director in light of their fiduciary duties." And to be a valid exercise, Your Honor, it has to be made in the interest of the corporation.

So Mr. McEachern -- let me go through the list mentally. He attempted to extort Mr. Cotter to resolve the trust disputes in favor of the sisters, he voted to terminate -- he decided not to terminate after he understood an agreement had been reached to resolve those disputes. And when that didn't come to pass he voted to terminate. He, along with Mr. Gould, chose the wishes of the controlling shareholders. Rather than to complete the process he had set

1 up, they aborted the CEO search. So, Your Honor, that's
2 squarely within the Shoen language of manifesting a direction
3 of corporate conduct in such a way as to comport with the
4 wishes or interests of the person doing the controlling.
5 Now, I heard you. You view that as a fiduciary
6 breach.
7 THE COURT: An allegation of a fiduciary duty
8 breach.
9 MR. KRUM: Allegation of fiduciary duty breach,
10 right. But that's -- if proven, that rebuts the presumption,
11 and off we go.
12 I skipped over Mr. McEachern's role in involuntarily
13 retiring Mr. Storey. Mr. McEachern, together with Mr. Adams
14 and Mr. Kane, in October and November -- September or October
15 I guess it was of 2015 comprised the ad hoc first time one
16 time special nominating committee. That committee had two
17 roles. One was to tell noncompliant director Timothy Storey
18 that he wasn't going to be renominated, and they explained to
19 him that the sisters, who controlled the vote, had told him
20 they weren't going to vote to elect him so he could either
21 resign and get a year's benefits of some sort or just be left
22 off.
23 What else did that committee do? They approved Judy
24 Codding and Michael Wrotniak. Did they undertake to search
25 for candidates? No. Did they do anything that one would do

as a director of a nominating committee to identify and recruit directorial candidates? No. What did they do? They did what they were asked and told. Ellen Cotter gave them Judy Codding, good friend of Mary Ellen Cotter, the mother, with whom Ellen Cotter lives, and Michael Wrotniak, husband of Patricia Wrotniak, one of Margaret Cotter's few good friends. And they obviously did virtually nothing, because promptly after the company announced Ms. Codding had been added to board a shareholder brought to their attention there were lots of Google articles that raised questions about Ms. Codding's relationship with her prior employer and the prior employer's conduct.

So on the nominating issue, Your Honor, on the board stacking our view is that all evidences loyalty to the controlling shareholders. And that, Your Honor, would be somewhere in the range of lack of independence or disinterestedness.

THE COURT: So, Mr. Krum, if we're going to get through all the motions this morning I need you to wrap up. Because I think I have all the information I need on Motion for Summary Judgment Number 1.

MR. KRUM: Okay. Certainly, Your Honor.

So just to finish the bullet points which you brought to my attention, these directors, Kane, Adams, McEachern, they're all on record dating back to the fall of

2014 that, yes, we should find a position for Margaret Cotter at the company so she can have health insurance, but, no, she can't be running our real estate. Well -- that's in the emails we have in the evidence actually, Your Honor, the first time around. And there's some more from Mr. Gould or McEachern. We had some additional testimony that we added this time. And so what happens? Ellen Cotter is made CEO after the aborted CEO search, she says, I want Margaret to the have the senior executive position, for which she has no prior experience and no qualifications. And what do these people do as committee members and board members? They say, where do we sign.

So, Your Honor, it's an ongoing, recurring, pervasive lack of independence or disinterestedness. And the conclusion of that, Your Honor, of course, was by what they did in response to the offer -- and I've sort of wrapped up the whole thing without talking about the law I intended to discuss -- and that is they ascertained what the controlling shareholders wanted to do and they did it in an hour-and-twenty-five-minute telephonic board meeting.

I didn't discuss what I intended to discuss, but I tried to answer your questions.

THE COURT: I understand, Mr. Krum. But the briefing was very thorough, which is why I tried to hit the questions --

MR. KRUM: Understood.

THE COURT: -- because I had some questions after reading it.

So Motion for Partial Summary Judgment Number 1 is granted in part. It is granted with respect to Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak.

It is denied as to Margaret Cotter, Ellen Cotter, and Guy Adams because there are genuine issues of material fact related to the disinterestedness of each of those individuals. As a result, they cannot at this point rely upon the business judgment rule.

MR. TAYBACK: Your Honor, is there a ruling on the aspect of the motion that goes to inability to hold the individuals personally liable for this claim?

THE COURT: For the three that I didn't grant the business judgment?

MR. TAYBACK: Correct.

THE COURT: No, you do not get a ruling to that effect.

Did you want to go to your next motion for summary judgment?

MR. TAYBACK: Yes, Your Honor.

THE COURT: And I'm trying to be consistent with the decision I made in the Wynn based upon the facts that seem to

be slightly different on the conduct of directors. I've got this thing in my head that nobody understands but me, so I'm trying to draw that line by asking questions so I can figure out where that is. Mr. Ferrario knows nobody understands but me. And I can't say it in a way the Supreme Court will understand, because they don't understand it, except for Chris Pickering, and she won't be deciding your appeal.

MR. TAYBACK: Your Honor, we have a second motion. It's Motion Number 2. It's also woven through some of the other motions. For the sake of just clarity I'll address Motion Number 2 separately, and I'll only --

THE COURT: Briefly.

MR. TAYBACK: -- briefly. I'll only say this. Even if you go to the -- well, I've certainly said my piece already, and I think you can just incorporate what I've said previously on this point, that independence I do not believe is a legal prerequisite to the invocation of the business judgment rule. Even if you look at the Shoen case, which Your Honor has discussed, where it talks about interestedness and the word it uses "interestedness," the quote there is, "To show interestedness a shareholder must allege that --" it's talking about allegations in that case "-- allege that a majority of the board members would be, quote, 'materially affected' either to benefit or detriment by a decision of the board in a manner not shared by the corporation and the

stockholders." To the extent there is a question of independence, it's not the generalized allegations that I think pollute the claims here, the transaction-by-transaction claims that the plaintiff seems to be asserting. You can't just say independence is lacking because there's -- one of the directors favored one of the board members versus one of the others, favored the sisters versus the brother. You have to show that there's a material impact in the transaction itself that was being voted upon, and that's the contention that we're making with respect to independence and how plaintiff's claims, all of them against all of the individual defendants transaction by transaction should fail under a summary judgment standard.

With that I'll stop, and then I'll allow him to address it, and then I've got on Motion Number 3.

THE COURT: Okay. Mr. Krum, anything else on Motion Number 2?

MR. KRUM: Just briefly, Your Honor, because I think we have a fundamental -- I'm going to repeat myself in one respect -- misapprehension of law. This is not a check-the-box exercise.

THE COURT: No, it is not.

MR. KRUM: So in Shoen the court says, "Thus, as with the Aronson test, under the Brehm test, director independence can be implicated by particularly alleging that

1 the directors' execution of their duties is unduly influenced,
2 manifesting a direction of corporate conduct in such a way as
3 to comport with the wishes or interests of the person doing
4 the controlling."
5 Now, we know that's a demand case, but that doesn't
6 change the law, it just changes the application of the law.
7 And so the point isn't any more complicated than what it said
8 elsewhere in Shoen, and that is "Directors' discretion must be
9 free from the influence of other interested persons."
10 So Motion Number 2 is -- it's nonsensical, because
11 that has to be assessed based on facts and based on the
12 particular application. You just did it with respect to
13 Number 1. And so it doesn't work that way. And the -- in
14 Rails the court said, of which Shoen is cited with approval,
15 "Directorial interest exists whenever divided loyalties are
16 present." And we have this ongoing set of transactions that
17 entail furthering and protecting the interests of the Cotter
18 sisters. That, Your Honor, is a perfect example of
19 circumstances that show divided loyalties. Thank you.
20 THE COURT: Thank you.
21 Motion for Summary Judgment Number 2 is granted in
22 part. To the extent that you asked me to make a determination
23 as to whether there has been a showing of a lack of
24 disinterestedness there is a lack of disinterestedness for
25 Margaret Cotter, Ellen Cotter, and Guy Adams.

With respect to the other directors who were involved in the motion there does not appear to be sufficient evidence presented to the Court to proceed with a claim of lack of disinterestedness.

Okay. That takes you to Number 3.

MR. TAYBACK: Your Honor, with respect to the Motion for Summary Judgment Number 3, which relates to what's called the patent vision expression of interest --

THE COURT: Yeah.

MR. TAYBACK: -- there are --

THE COURT: The unaccepted offer which may not have been a real offer.

MR. TAYBACK: Not may not have been. Was admitted by plaintiff --

THE COURT: Eh, you know.

MR. TAYBACK: Was admitted by the plaintiff was nonbinding expression of interest that could have been withdrawn or rejected at any point in time. Moreover, when you look -- that in and of itself disposes of the claim, because there are no damages that flow from that. There cannot be. And that Cook case, which is a Delaware case, but the Cook case really makes that clear.

THE COURT: I thought I wasn't supposed to look at Delaware law according to you. You know the legislature can't tell the court what it's allowed to look at.

MR. TAYBACK: And I did know that.

THE COURT: Okay.

MR. TAYBACK: I'm encouraging you to look at it.

THE COURT: I'm looking at all sorts of things, but I'm trying to interweave it into the legislative intent related to business judgment and the protections that we should give to officers and directors in Nevada.

MR. TAYBACK: Yeah. And I think what it is is it's factually analogous. It's factually analogous.

THE COURT: Right. I just had to give you a hard time. Anything else you want to tell me?

MR. TAYBACK: The only other thing that I would tell you is that when you look at what it is that the board members can look at with respect to the consideration of potential change of control overtures, call it expression of interest or anything else, it's nonexclusive. It says they may consider any of the relevant facts. And here the undisputed evidence is that they did consider a lot of relevant facts, including the views of the plaintiff, the views of the two Cotter sisters, including the presentations of the board. And they're entitled to rely upon that. And the reasonableness of the decision is not something that can be second guessed at this juncture based upon the showing that plaintiff has made.

THE COURT: Mr. Krum. Let's skip past a couple of those arguments and focus on a different issue. Other than as

evidence of breaches of fiduciary duty, do you have any claim of specific damages to the failure to accept the unsolicited offer?

MR. KRUM: Well, first, Your Honor, the notion that it's nonbinding and therefore it cannot result in damages is belied --

THE COURT: No. I asked you a very direct question.

MR. KRUM: I'm sorry.

THE COURT: Do you have damages that you have provided me evidentiary basis for strictly related to the failure of the company or the directors to accept the unsolicited offer?

MR. KRUM: Mr. Duarte Solis speaks to that in his expert opinion which was the subject of a motion in limine you denied in October of last year.

THE COURT: I know. But I'm asking you a question. Do you have specific evidence of damages related to the decision by the board not to accept the unsolicited offer?

MR. KRUM: No. The answer I have is the one I just gave, Your Honor.

THE COURT: All right. So that's the only answer you have. Okay. Anything else you want to tell me?

MR. KRUM: I just wanted to say again on law, different point, though, intentional misconduct, one of the ways that occurs is where the fiduciary acts with a purpose

other than advancing the best interests of the corporation. I think the evidence on this subject, Your Honor, the offer raises a question of fact, a disputed question of material fact as to whether that's what the directors did.

Another category of intentional misconduct is where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties. That is a pervasive and recurring phenomenon here, and I submit, Your Honor, with respect to the so-called offer that's what happened. So the point is, as I said before on the offer in particular, Your Honor, it sort of bookends this whole sequence of events, starting with the seizure of control. And you've read the papers, so I'll leave it at that.

THE COURT: Anything else?

MR. KRUM: No.

THE COURT: Okay. Because of the failure of damages related to an unenforceable, unsolicited, nonbinding offer, I am granting the motion.

However, that does not preclude the plaintiff from utilizing that factual basis for claims of a breach of fiduciary duty. Okay?

MR. TAYBACK: Or for other alleged -- to prove other alleged breaches you're saying it might be admissible as evidence.

THE COURT: Well, it may be additional evidence of breach of fiduciary duty. But they don't get to claim any damages from it, since they haven't established damages related to that because of the legal issues related to the nature of the offer.

So what is your next motion for summary judgment, if any? I think there were six.

MR. SEARCY: Your Honor, I'm addressing Motion for Summary Judgment Number 5. That relates to the CEO search. And --

THE COURT: Ready for me to say denied?

MR. SEARCY: If you'll let me --

THE COURT: You can talk, Mr. Searcy, but we're leaving here in 25 minutes whether you guys are done or not.

MR. SEARCY: All right. Well, if you're going to -- before you say denied then let me just address a few of the points in it. If you're going to say granted, then I'll certainly sit down.

THE COURT: I'm not going to say granted.

MR. SEARCY: The point, Your Honor, is that there's no dispute on the material facts here. There was a process that was undertaken by the board here to appoint a CEO. The board appointed a special committee, the special committee hired a search firm, that search firm went out and got information, they interviewed candidates, those candidates

1 were selected by the search firm Korn Ferry, and they were
2 considered along with internal candidates. The board -- or
3 the committee, rather, interviewed Ellen Cotter and decided
4 that she was the best candidate, and the board agreed with
5 that decision. And in the context of the law here you have a
6 majority of disinterested directors who agreed with that
7 decision. There's a presumption that all of this was
8 conducted in good faith. There hasn't been a rebuttal of the
9 presumption here, Your Honor, and, as a result, the motion
10 should be granted.
11 Are there particular issues, though, that I can
12 address for Your Honor?
13 THE COURT: Not that will cause you to be able to
14 get me to change my mind on denied.
15 MR. SEARCY: Okay. Are there any that I can at
16 least make an effort on, Your Honor?
17 THE COURT: Nope.
18 MR. SEARCY: Thank you, Your Honor.
19 THE COURT: All right. So that motion is denied.
20 Can we go to Number 6.
21 MR. SEARCY: Number 6 is mine, as well.
22 THE COURT: This has to do with the special bonus to
23 Mr. Adams.
24 MR. SEARCY: That's correct, Your Honor. There are
25 three main issues here. One has to do with the exercise of

1 options, and in that case there was an executive committee
2 that considered those options. There's no doubt, no dispute
3 that that was an existing plan, that the committee received
4 advice from counsel, and approved of the -- approved of the
5 exercise of the options.
6 THE COURT: Okay. Anything else?
7 MR. SEARCY: In addition to that -- and that's --
8 again, that is an exercise that is presumed to be done in good
9 faith and especially here, where the statute provides that you
10 can obtain information. And that's what the committee did.
11 In addition to that, Your Honor, there's the issue
12 of the payment to Mr. Adams that you just raised. That again
13 was approved by the board, approved by unanimous board who
14 were disinterested in the subject and are entitled to business
15 judgment on that subject.
16 And finally, with respect to Margaret Cotter's
17 appointment it's certainly within the board's discretion to
18 decide that someone who's worked for the company and been
19 affiliated with the company for approximately 20 years or so
20 has the qualifications to take on that job. And as Mr.
21 Tayback said, hiring someone to fill a role is certainly --
22 that's an operational decision that's within the discretion of
23 a board of directors, and certainly they're entitled to be
24 able to exercise the business judgment when it comes to that,
25 especially here. And with all of these decisions, Your Honor,

you're talking about a decision made by a majority of disinterested directors, directors that you've found to be disinterested.

THE COURT: Some directors I found to be disinterested.

MR. SEARCY: Well, for those directors, though, Your Honor, that you found to be disinterested, they constitute a majority of the decision makers here. And --

THE COURT: Well, they're protected. Those people are protected.

MR. SEARCY: And exercising their business judgment they approved these decisions.

THE COURT: Okay. Anything else?

MR. SEARCY: Thank you, Your Honor. That's it.

THE COURT: Denied.

So you had Number 4 I think we didn't get to. Was Number 4 reserved for this time, or had I ruled on it previously?

MR. TAYBACK: Your Honor, you --

MR. KRUM: You ruled on it previously.

THE COURT: Okay. So that takes me to your motions in limine. There were two that I think are important. One is Mr. Gould's motion in limine to exclude irrelevant and speculative evidence.

MR. RHOW: Your Honor, can I speak on this one?

THE COURT: It's your motion.

MR. RHOW: Thank you, Your Honor.

MR. FERRARIO: Hey, come on. This is his first time.

MR. RHOW: I feel honored to actually --

THE COURT: Here's my first question.

MR. RHOW: By the way, is it tentative to grant? I'd like to know that first.

THE COURT: My first question for you is one that I'm going to ask all the people in motions in limine. Did you have an opportunity to meet and confer with opposing counsel before you filed the motion to see if there were areas of agreement?

MR. RHOW: The answer is I don't think we did.

THE COURT: You know, we have a rule.

MR. SEARCY: I'm going to have to disagree with Mr. Rhow. We actually did meet and confer with Mr. Krum on the phone.

MR. RHOW: Oh. I'm sorry.

MR. SEARCY: Mr. Rhow wasn't part of the meet and confer, but his associate, Shoshana Bannett, was.

THE COURT: Oh. Okay. All right.

MR. RHOW: Okay. I had looked at -- I should have looked at Mr. Searcy.

THE COURT: Because usually -- usually I get a

declaration that tells me, we met and conferred on this date --

MR. RHOW: Correct.

THE COURT: -- so that I can then gauge whether somebody's being unreasonable or not. So it's your motion.

MR. RHOW: Thank you, Your Honor.

I think the motion was short and sweet on purpose. During the deposition of Mr. Cotter, Jr., and it lasted days and days and days, and throughout the questioning it was quite clear that he was testifying based on not what he saw, what he heard, what he observed; he was literally saying, here's what I think -- thought at the time, here's what I was thinking Mr. Gould was thinking and others were thinking and so therefore I believe the claim is sufficient because of my subjective belief as to what other directors were thinking. If that's going to be part of this trial, first, this trial's not going to be four weeks, it's going to be eight weeks; but, second, there's nothing in the law, there's nothing based on common sense that tells you that what the subjective beliefs of the plaintiff are none of that is relevant, none of that is relevant under the law, none that is relevant under common sense. So to streamline this case, if he's going to talk about what he saw, what he heard, certainly that's admissible. But if he's going to talk about what he believes, that's subjective and should not be part of this trial.

THE COURT: Thank you.

Ms. Levin, is this your motion?

MS. LEVIN: Yes, Your Honor.

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

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

MS. LEVIN: Correct, Your Honor.

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

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

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

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

MR. RHOW: I'm sorry?

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

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

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

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

THE COURT: What?

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

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

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

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

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

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

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

1 didn't have an opportunity to prepare a Gould brief, but we
2 didn't want to be accused of doing nothing. And some of the
3 evidence in those motions in our view did relate to Gould, and
4 we therefore put him on there.
5 That said, he filed two pieces of paper, they asked
6 me if we could have the hearing today. I told them no, I
7 wanted to respond. So -- but let me try to answer your
8 question with respect to Mr. Gould. So we start, Your Honor,
9 as we do, with the threat to terminate and the termination.
10 And I respectfully submit --
11 THE COURT: I will tell you that on your Mr. Gould
12 you've got the same list that we've already talked about.
13 What I'm trying to find out is -- and I understand the threat
14 is part of what you've alleged related to Mr. Gould along with
15 the other six or seven bullet points that are on pages 5 and 6
16 of the opposition. Is there something else related to Mr.
17 Gould, something like you have with Mr. Adams that would
18 establish a lack of disinterestedness?
19 MR. KRUM: Let me answer, and then you'll decide.
20 THE COURT: Yeah. That's what I'm trying to pull
21 out of you.
22 MR. KRUM: So, for example, with respect to the
23 termination Mr. Cotter raised the question of Mr. Adams's
24 independence before a vote was taken, and Mr. Gould asked Mr.
25 Adams, well, can you tell us about that. And Mr. Adams got

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

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

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

MR. KRUM: Okay.

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

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

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

work.

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

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

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

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

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

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

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

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

1 law relevant to their decision to terminate the plaintiff.
2 That would amount to a retroactive assessment of his ability,
3 which are not at issue. And I think that that's the -- you
4 know, the --
5 THE COURT: The problem I have with that is part of
6 what your client's position has been in this case is he is
7 suitable to be acting as the CEO, and if there is information
8 that is relevant to that suitability, that's where I have the
9 problem on this. I certainly understand from a decision-
10 making process that that information was not in the possession
11 of anyone who was making the decisions at the time. But given
12 the affirmative proposition by your client that he is suitable
13 to CEO, I have concerns about granting the motion at this
14 stage.
15 MS. LEVIN: Well -- okay. So -- but with respect to
16 the decision which you can agree that they could not use that
17 evidence to show that after the fact they made the right
18 decision because of the after --
19 THE COURT: No. That's a problem if your client is
20 saying he's suitable and therefore he should be able to be
21 CEO. Because part of what he originally asked for was to make
22 them make him be CEO.
23 MS. LEVIN: All right. And here at issue I believe
24 it's the -- we're seeking to void the termination.
25 THE COURT: I know.

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

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

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

THE COURT: Coach.

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

THE COURT: You want to be better.

MS. LEVIN: Exactly. So that was --

THE COURT: I understand.

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

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

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

THE COURT: Thank you.

MS. LEVIN: Thank you.

THE COURT: Mr. Searcy --

MR. SEARCY: I'll address that.

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

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

THE COURT: Okay.

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

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

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

MR. SEARCY: Thank you, Your Honor.

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

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

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

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

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

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

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

THE COURT: Nope. Motion's denied.

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

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

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

THE COURT: I am.

MS. LEVIN: Okay. Well --

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

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

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

1 to essentially process issues, how the attorney was hired,
2 what the scope of the retention was, and those kind of issues,
3 as opposed to the actual advice.
4 MS. LEVIN: That's true, Your Honor. And so our
5 arguments are really twofold. Number one is that Adams and
6 Kane, who were two of the three directors on the compensation
7 committee, they testified, as the Court found in its October
8 27, 2016, hearing, that they relied solely on the substance of
9 advice of counsel to determine whether the authorization
10 decision to authorize the estate to invoke the option was
11 proper. So, unlike in Wynn or in Comverge, on which the
12 defendants rely, they did not rely on anything else. So if
13 they are asked at trial to explain why they authorized the
14 option, they must rely on that legal advice.
15 So the second point is that the defendants waived
16 the attorney-client privilege by partially disclosing
17 attorney-client privileged information. Now, they're saying
18 -- or RDI says in the opposition that individual directors
19 cannot waive the privilege.
20 THE COURT: That's the Jacobs versus Sands case.
21 MS. LEVIN: Exact, Your Honor. And I agree with
22 that. But, of course, RDI can only act through its officers
23 and directors.
24 THE COURT: That's the Jacobs versus Sands case.
25 MS. LEVIN: And the current officer -- and I think

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

THE COURT: I understand.

MS. LEVIN: So, in other words --

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: Yeah. We had a hearing.

MS. HENDRICKS: And we had the supplemental briefing.

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

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

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

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

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

MS. LEVIN: Okay. Thank you.

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

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

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

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

(Pause in the proceedings)

THE COURT: The week before is fine?

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

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

MR. TAYBACK: That's the 3rd.

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

MR. TAYBACK: 4th?

THE CLERK: [Inaudible].

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

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

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

MR. KRUM: Perfect.

MR. FERRARIO: Thank you, Judge.

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

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

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

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

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

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

All right. Anything else that I missed?

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

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

MR. TAYBACK: Yeah, that's fine.

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

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

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

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

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

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

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

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

MR. RHOW: Understood, Your Honor.

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

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

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

MR. TAYBACK: Thank you, Your Honor.

MR. KRUM: Thank you.

MR. EDWARDS: Your Honor --

THE COURT: Yes, Jim.

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

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

MR. EDWARDS: Okay.

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

Anything else?

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

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

MR. FERRARIO: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 12:00 NOON

* * * * *

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

12/12/17

DATE

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12/19/2017 10:02 AM
Steven D. Grierson
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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **MOTION FOR RECONSIDERATION OR CLARIFICATION OF RULING ON MOTIONS FOR SUMMARY JUDGMENT NOS 1, 2, AND 3 AND GOULD'S SUMMARY JUDGMENT MOTION** **AND** **APPLICATION FOR ORDER SHORTENING TIME**

Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court under EDCR 2.24(b) to reconsider and/or clarify the Court's ruling on the individual defendants' motions for partial summary judgments Nos. 1 and 2 ("Partial MSJ Nos. 1 and 2") and William Gould's motion for summary judgment ("Gould MSJ"). Plaintiff further moves the Court under EDCR 2.26 for an Order shortening time to notice and hear this Motion.

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By: _____

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

I, Akke Levin, declare:

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

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

3. During the December 11 hearing, the Court set January 8, 2018 as the trial start date.

4. Good cause exists under EDCR 2.26 to shorten the time for notice and hearing of this Motion for Reconsideration and Clarification because trial is less than fourteen business days away, and the issues raised by this Motion have substantial impact on trial preparation and the scope of issues and claims remaining for trial. Plaintiff's counsel is available any day of the week of December 18, 2017.

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

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

Akke Levin, Bar No. 9102

ORDER SHORTENING TIME

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

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration and Clarification shall be, and it hereby is, shortened and shall be heard on shortened time on the 12 day of December, 2017, at the hour of 9:00 a.m.. Ctrm 10A.

Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11 CR

DATED:_____

I. INTRODUCTION

The defendants, except Gould, moved for partial summary judgment only on specific *issues*. The Court, however, without giving plaintiff proper notice and adequate time to respond, elected to treat the motions as directed to the *claims* made against the defendants and granted three of the five pending motions as to defendants Kane, McEachern, Codding, and Wrotniak on all claims and dismissed them from the case. The Court also dismissed defendant Gould although his separately-filed motion for summary judgment had not been fully briefed and was scheduled for hearing next month, on January 8, 2018. Granting summary

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judgment on all claims against these defendants under these circumstances was error and should be reconsidered by the Court.[1]

The Court also erred in granting summary judgment for these defendants under the business judgment rule because the Court did not adequately consider that intentional misconduct by directors rebuts the presumption that they acted in good faith and are entitled to immunity for their misconduct by the rule. Moreover, in assessing the dismissed directors' conduct for summary judgment purposes, the Court apparently overlooked the law that says the acts and omissions of individual directors must be viewed *collectively*, not separately, to determine, for example, whether their conduct and motives show independence of actions in the *interest* of their corporation, as distinct from their own interests or that of control shareholders.

As these observations suggest and the following law and evidence support, the Court erred in dismissing the five subject directors without allowing the jury to hear the evidence on disputed material facts and render a verdict on whether the dismissed directors were acting in RDI's interest or to protect and further the interests of the controlling shareholders, as alleged in detail in the Second Amended Complaint ("SAC") and set out again in the Joint Pretrial Memo.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Plaintiff's Complaint and Claims/Causes of Action

The SAC pleads four claims: (1) breach(es) of the duty of care; (2) breach(es) of the duty of loyalty; (3) breach(es) of the duty of candor; and (4) aiding and abetting breaches of fiduciary duty. SAC at 47–54. The Claims

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[1] The Court denied summary judgment for defendants Ellen Cotter ("EC" hereafter), Margaret Cotter ("MC" hereafter), and Guy Adams ("Adams" hereafter).

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1–3 are against each of the individual director defendants; the fourth claim is against EC and MC. *See id.*

Plaintiff's duty of care claim(s) are based on acts and omissions set out in the SAC, some of which were *not* the subject of a motion for partial summary judgment. Examples of such acts and omissions include: (i) the one time "special nominating committee" of McEachern, Kane and Adams forcing director Storey to "retire" and adding unqualified persons loyal to EC and/or MC to the RDI Board; and (ii) knowingly disseminating erroneous and materially misleading statements in RDI public disclosures (SEC filings and press releases). The acts and omissions on which fiduciary duty claims of care and loyalty are based also include one as to which MSJ No. 4 was denied in relevant part—misuse of the executive committee. *See* December 21, 2016 Order Regarding Defendants' Motions For Partial Summary Judgment Nos. 1-6..." (the "MSJ Order"), Ex. 1 at 3:15–19 (granting MSJ No. 4 "[a]s to formation and revitalization (activation) of the Executive Committee," but denying it "as to utilization of the committee").

Plaintiff's duty of loyalty claims also were based in part on matters which were *not* the subject of the motions for partial summary judgment, including breaches of the duty of loyalty arising from the misuse by EC and MC of their position as controlling shareholders *and* breaches of the duty of loyalty by the other director defendants in acquiescing to the wishes of EC and MC and actively assisting them in protecting and pursuing their personal interests rather than acting solely in the interests of the Company. These breaches are evidenced by other matters pleaded in the SAC and summarized in section II. B. below, some of which were *not* the subject of a partial summary judgment motion, such as the threat to terminate Plaintiff if he did not settle trust disputes unrelated to his sisters on terms satisfactory to them *and* the threat to terminate Plaintiff's family's

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health insurance if he did not resign as a director, among others. The breach of the duty of loyalty claims also are based on the misuse of the executive committee, as to which a prior motion for summary judgment (Partial MSJ No. 4) was denied in relevant part.

B. The Partial Summary Judgment Motions

On September 23, 2016, the individual director defendants other than Gould filed six separate motions for *partial* summary judgment numbered 1 through 6 ("Partial MSJ Nos. 1–6"), each of which was directed only at specific matter raised in the respective motions. None sought summary judgment on any of the four claims pleaded in the SAC.

The Court on October 27, 2016 denied Partial MSJ No. 1, finding that "there are genuine issues of material fact and issues related to interested directors participating in the process." *See* Oct. 27, 2016 Hearing Tr., Ex. 2 at 117:9–12. The Court granted in part and denied in part Partial MSJ No. 4 regarding the executive committee of the RDI Board. The Court ruled:

> The motion related to the executive committee is granted in part. As the formation and revitalization of the committee the Motion is granted. *As to the utilization of the committee it's denied.*

Id. at 93:10–13 (emphasis added).

Other Partial MSJs regarding particular matters—director independence (No. 2), the offer (No. 3), the CEO search (No. 5) and other matters including the exercise of the 100,000 share option and the employment and compensation of MC (No. 6), were denied on rule 56 (f) grounds. *See* December 21, 2016 Order, Ex. 1.

All of those motions were reset for hearing and heard on December 11, 2017. As Plaintiff understands the Court's oral rulings, the Court granted Partial MSJ No. 1 regarding termination as to defendants Kane, McEachern, Gould, Wrotniak, and Codding on the grounds that Plaintiff had failed to raise a disputed issue of material fact regarding their

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disinterestedness or independence. December 11, 2017 Hearing Tr., Ex. 3, at 41:4-20. The Court granted Partial MSJ No. 2 regarding director independence on the same grounds as to the same five defendants. *Id.* at 44:20-45:4. The Court granted Partial MSJ No. 3 regarding the unsolicited offer on separate grounds. *Id.* at 48:17-22. The Court denied Partial MSJ No. 5 regarding the CEO search and denied Partial MSJ No. 6 regarding the option exercise, compensation package and related conduct. *Id.* at 49:11-52:15.

Although the director defendants who filed Partial MSJ Nos. 1-6 did not seek summary judgment with respect to any of the *claims* for breach of fiduciary duty against them in the SAC, the Court indicated that only EC, MC and Adams remain defendants in the case. *Id.* at 73:9-14. As to director defendant Gould, his separate summary judgment motion had been noticed for hearing on January 8, 2018. *See* Request for Hearing on Gould MSJ, on file at 3. Nevertheless, on December 11, 2017 the Court ruled that Gould was entitled to summary judgment on the same grounds as the director defendants other than EC, MC and Adams. December 11, 2017 Hearing Tr. at 41:4-20; 44:20-45:4; 73:9-14.

III. ARGUMENT

A. Reconsideration and clarification of the Court's rulings are warranted.

The Court has authority under EDCR 2.24(b) to reconsider prior rulings, and inherent authority to "reconsider, rescind, or modify an interlocutory order for [sufficient] cause . . . . " *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). Courts may grant reconsideration based on new evidence or if the decision is clearly erroneous. *Masonry & Tile Contractors Ass 'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). As discussed below, the Court should reconsider and clarify its rulings on Partial MSJ Nos. 1, 2, and

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3 and the Gould MSJ, because in ruling in favor of defendants Codding, Kane, Gould, Wrotniak, and McEachern on all four claims for breaches of fiduciary duty, the Court overlooked that: (1) Partial MSJ Nos. 1, 2, and 3 did not seek complete relief on all four claims for breaches of fiduciary duty and briefing on Gould's MSJ was incomplete; and (2) Plaintiff's fiduciary duty claims are supported by other conduct not addressed by these Partial MSJs that is sufficient to rebut application of the business judgment rule.

B. The Court erred in granting summary judgment on all claims against five defendants.

When reviewing a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Although a district court has the inherent power under Nev. R. Civ. P. 56 to *sua sponte* grant summary judgment on claims that are not a part of a motion for summary judgment, before doing so the Court must give the non-moving party 10 days notice and the opportunity to defend himself. *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*, 130 Nev. ___, ___, 335 P.3d 199, 202 (2014) ("*Renown*"); *Soebbing v. Carpet Barn*, 109 Nev. 78, 83-84, 847 P.2d 731, 735 (1993)(holding that the defending party must be given the full 10 days notice under Nev. R. Civ. P. 56(c) and an opportunity to defend itself before a court may grant summary judgment *sua sponte*).

Renown is instructive, because its procedural history is similar to this case. There, the defendant hospital moved for summary judgment on three specific issues: policy coverage, third-party beneficiary status of the plaintiff, and Renown's compliance with certain statutes. *Renown*, 335 P.2d at 201. "The full merits of Wiley's claims for breach of the provider agreement and intentional interference with his Cigna policy were not at issue in the summary judgment proceedings." *Id.* The district court initially

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denied the motion, holding there were issues of fact. *Id.* Thereafter, Renown renewed its motion for summary judgment on the same three issues and Wiley filed summary judgment motion but only on the statute violation issue. *Id.* After a hearing on the summary judgment motions, the district court denied Renown's motion and granted Wiley's motion. But in granting that motion, the court decided not only the three issues raised by Renown; it also found "in favor of Wiley on his breach of contract and intentional interference with contract claims, ***even though the full merits of these claims were not specifically argued in the cross-motions for summary judgment or at the hearing***." *Id.* (emphasis added). "The district court stayed the remainder of the case so that Renown could seek writ relief in this court," which it did. *Id.* The Nevada Supreme Court granted the writ petition with respect to that portion of the order because the "claims for breach of contract and intentional interference with contract . . . were nowhere mentioned in the six summary judgment briefs." *Id.* at 202.

1. Partial MSJ Nos. 1, 2, and 3 did not argue the full merits of Plaintiff's fiduciary duty claims.

Here, the individual defendants (other than Gould) moved for partial summary judgment on distinct **issues** only—*i.e.*, Plaintiff's termination and reinstatement (Partial MSJ No. 1); director independence (No. 2); the unsolicited Patton Vision offer (No. 3); the executive committee (No. 4); the appointment of EC as CEO (No.5); and option exercise and other issues (No. 6). *See, e.g.*, Partial MSJ No. 1 at 2 (Defendants seek summary judgment "as to the First, Second, Third, and Fourth Causes of Action in Plaintiffs Second Amended Complaint, *to the extent that they assert claims based on Plaintiffs [sic] June 12, 2015 termination . . . .*") (emphasis added).

Unlike defendant Gould, the individual defendants did not move for summary judgment on all four **claims** for breach of fiduciary duty, which involve additional issues not addressed in the MSJs—*e.g.*, materially

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misleading and erroneous board materials published in public disclosures *and* process failures. *See* Pretrial Memo at 5–9. Moreover, the Court *denied* Partial MSJ Nos. 5 and 6, which involve conduct by dismissed defendants. For example, Partial MSJ No. 5 relates to the appointment of Ellen Cotter as CEO, which is a decision in which defendants Gould and McEachern participated.

2. The Court's ruling deprived Plaintiff of Notice and an Opportunity to be heard.

A party's right to notice and an opportunity to be heard on matter not addressed in a motion for summary judgment "has nothing to do with the merits of the case." *Soebbing*, 109 Nev. at 83, 847 P.2d at 735 (citing *U.S. Dev't Corp. v. Peoples Fed. Savings and Loan Ass'n*, 873 F.2d 731, 734 (4th Cir.1989)). " '[R]egardless of a claim's merit, a district court may not *sua sponte* enter summary judgment against it until the claim's proponent has been given notice and a reasonable opportunity to be heard.' " *Soebbing*, 109 Nev. at 83, 847 P.2d at 735 (quoting *U.S. Dev't Corp.*, 873 F.2d at 734).

Here, because the individual defendants other than Gould did not seek summary judgment across the board on all claims against all five defendants, and the Court's ruling went beyond the issues raised in Partial MSJ Nos. 1, 2, and 3 and dismissed all claims against five defendants, Plaintiff should have received ten days' notice and been given an opportunity to be heard. Nev. R. Civ. P. 56(c); *Renown*, 335 P.3d at 202. Plaintiff was entitled to the same notice on the Gould MSJ, because briefing was still open on that MSJ on December 11. *See* Request for Hearing on Gould MSJ at 3 (setting hearing on the MSJ for January 8).

C. The Court overlooked the conduct, acts and omissions stated in the SAC and Pretrial Memorandum.

During the October 27, 2016 hearing, the Court asked counsel to apprise the Court of the topics that would be the subject of special

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interrogatories, which Plaintiff's counsel understood to mean matters Plaintiff would claim also gave rise to or constitute breaches of fiduciary duty *alone*, not just a breach of duty when considered together with other complained of conduct. Oct. 27, 2016 Hearing Tr., Ex. 2 at 60:23–61:8. That is what Plaintiff did on pages 5 to 6 of his supplemental opposition that was discussed with the Court at the December 11, 2017 hearing.

But those matters were not the entirety of the bases for the claims of breaches of fiduciary duty, as the SAC reflects on its face, (which the Court observed during the October 27, 2016 hearing (*id.* at 58:19–25)), as Plaintiff explained in the Joint Pretrial Memorandum, and as the list below, included for the convenience of the Court, reflects. Likewise, the evidence proffered with Plaintiff's oppositions to Partial MSJ Nos. 1–6 (and Gould's MSJ) was of course focused on, *but not confined to*, the matters listed on pages 5 to 6 of the supplemental opposition that was discussed with Court at the December 11, 2017 hearing.

The matters which evidence fiduciary breaches by the individual director defendants include the following:

1. The threat by Adams, Kane and McEachern to terminate Plaintiff as President and CEO of RDI if he did not resolve trust disputes with his sisters on terms acceptable to them (which included giving them control of RDI);

2. The vote by Adams, Kane and McEachern to terminate Plaintiff because he failed to acquiesce to the threat;

3. EC's threat to terminate health insurance for JJC and his family if JJC did not resign as a director, which Gould acknowledged was an erroneous position, but to which he acquiesced, resulting in erroneous SEC filings by RDI, among other things;

4. Use of the executive committee of Kane, Adams, EC and MC to limit the participation of Plaintiff and Storey as directors, to which Gould acquiesced;

5. Manipulating board materials, including creating inaccurate minutes, to which Gould acquiesced;

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6. Kane and Adams as compensation committee members authorizing exercise of the 100,000 share option to assist EC and MC in their efforts to retain control of RDI, over the stated reservations of Storey;

7. The involuntary "retirement" of director Storey by the one-time "special nominating committee" of McEachern, Adams and Kane, at the direction of EC and MC, because Storey failed to exhibit the required subservience to EC and MC as controlling shareholders;

8. Board stacking/adding Codding and Wrotniak by the one-time "special nominating committee" of McEachern, Adams and Kane, to which Gould acquiesced while acknowledging that he had insufficient time to fulfill his fiduciary responsibilities;

9. The CEO search committee of MC, McEachern and Gould aborting the CEO search and selecting EC even though she did not possess the required experience and qualifications for the position, which the Board acknowledged;

10. Hiring MC as EVP RED NY and paying a $200,000 pre-employment bonus "recommended" by EC, even though all directors had acknowledged that she had no real estate development experience and was not qualified for the position;

11. Paying $50,000 to Adams because EC "recommended" it;

12. Erroneous and/or materially misleading statements in board materials, such as agendas and minutes; and

13. Materially misleading and inaccurate statements and omissions in public disclosures, including SEC filings and press releases

SAC ¶¶ 9, 13, 72, 101(a)–(i), 109–119, 135(a)–(k), 136(a)–(i), 147 (all).

D. Plaintiff Proffered Evidence of Fiduciary Breaches and Intentional Misconduct More Than Sufficient to Raise Disputed Issues of Material Fact.

The business judgment rule presumes that directors in making business decisions acted in good faith, on an informed basis and with a view to the interests of the corporation. NRS 78.138(3). Courts therefore give deference to directors' decisions reached by proper *process*, and do not evaluate the reasonableness of the subject decision itself, as distinct from the process by which it was made. *Brazen v. Bell Atl. Corp.*, 695 A.2d 43, 49 (Del.

1997). Thus, the business judgment rule presumption "is a rule of evidence that places the initial burden of proof on the plaintiff challenging the board's decision." *Cinerama v. Technicolor, Inc.*, 663 A.2d 1156, 1162 (Del. 1995). To rebut this presumption, the plaintiff bears "the burden of providing evidence that the Board of Directors, in reaching its challenged decision, breached any one of its... fiduciary duties [of] good faith, loyalty or due care." *Id.* at 1164.

In particular, NRS 78.138(7) requires the plaintiff to: (a) rebut the presumption under NRS 78.138(3) that directors are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation; (b) show that the director's act or failure to act constituted a breach of fiduciary duty; and (c) show that such breach involved intentional misconduct, fraud or a knowing violation of law.

"Intentional misconduct" is one of three ways in which a fiduciary can fail to act in good faith. *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006). The first occurs "where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation." *Id.* The second occurs "where the fiduciary acts with the intent to violate applicable positive law." *Id.* The third occurs "where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *Id.*

Additionally, as a matter of law and, in cases such as this, logic as well, the acts and omissions of the individual director defendants must be viewed collectively, not in isolation. *See, e.g., In re Ebix, Inc. Stockholder Litig.*, 2016 Del. Ch. LEXIS 5 at *66-67 n.137, 2016 WL 208402 (Del. Ch. Jan. 15, 2016) (rejecting director defendants' contention that bylaw amendments should be viewed individually rather than collectively); *Carmody v. Toll Brothers., Inc.*, 723 A.2d 1180, 1189 (Del. Ch. 1998) (finding that particularized

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allegations that directors acted for entrenchment purposes sufficient to excuse demand); *Chrysogelos v. London*, 1992 WL 58516, at *8 (Del. Ch. 1992) ("None of these circumstances, if considered individually and in isolation from the rest, would be sufficient to create a reasonable doubt as to the propriety of the director's motives. However, when viewed as a whole, they do create such a reasonable doubt . . ."); *Cal. Pub. Employees' Ret. Sys. v. Coulter*, 2002 Del. Ch. LEXIS 144 at *29-30, 2002 WL 31888343 (Del. Ch. Dec. 18, 2002) (concluding that allegations which individually would be insufficient to show a lack of disinterestedness or independence when taken together, were sufficient to do so).[2]

Plaintiff respectfully submits that the evidence proffered with his various oppositions to the various motions, including the evidence highlighted below, is more than sufficient to raise disputed issues of material fact and rebut the presumptions that the RDI directors in taking the actions raised in this case and described above acted in good faith, on an informed basis and with a view to the interest of the corporation.

1. Examples of Evidence Sufficient to Rebut the Business Judgment Rule Presumptions.

a) The (a) Attempted Extortion (by threatening termination) and (b) the Termination Because Plaintiff Refused to Be Extorted.

As Plaintiff demonstrated in his own summary judgment motion and in his oppositions to Partial MSJ No. 1, and as summarized again below, Kane, McEachern, and Adams attempted to extort plaintiff by telling him that they would vote to terminate him as President and CEO of RDI if he did not resolve personal disputes with his sisters concerning trust and estate

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[2] Plaintiff understood the Court to recognize and agree that, even if individual matters or activities did not in and of themselves constitute breaches of fiduciary duty, that "taken with other activities [they may] evidence... a breach of fiduciary duty." *See* Oct. 27, 2016 Hearing Tr., Ex. 2 at 57:9-11.

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matters (including control of RDI), unrelated to his performance as an officer and director of the corporation. Once Kane, McEachern and Adams had threatened JJC with termination, Kane used his position as a RDI director to pressure Plaintiff to acquiesce to that extortion.

When Kane, McEachern (who personally solicited plaintiff to resign rather than be terminated, Oct. 13, 2016 Decl. of JJC, ¶ 14) and Adams failed to extort him, they acted on their threat and terminated plaintiff. They did so because, as Adams memorialized contemporaneously, they had picked the sisters' side in their *family dispute* with plaintiff, as opposed to acting in the interest of RDI. Remarkably, Kane admitted to plaintiff just before he terminated Plaintiff, "**there is no one more qualified to be the CEO of this company than you.**" Appendix ("App.") Ex. 2 (JCOTTER009286) (emphasis added). In making this statement, Kane not only admitted that he, Adams, and McEachern were not acting in the interests of RDI, but also admitted that they were acting *in derogation of* RDI's interests. (The details of these events are summarized below from Plaintiff's motion for summary judgment and opposition to Partial MSJ No. 1, and the citations are to the Appendices of evidence Plaintiff submitted previously therewith).

On May 19, 2015, EC distributed an agenda for a RDI board of directors meeting two days later, May 21, 2015. App. Ex. 6 (EC Dep. Ex. 339). The first agenda item was "Status of President and CEO." *Id.* This subject had not been previously addressed at an RDI Board of Directors meeting. Indeed, a draft agenda a few days earlier made no mention of the subject. App. Ex. 7 (EC Dep. Ex. 338). Storey wrote in a May 20, 2015 email to Director Gould that "I am only assuming the matter before us is a resolution to immediately remove the CEO—that isn't clear from the agenda, or any direct comment made to me by any party." App. Ex. 8

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