

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

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

Respondents.

Electronically Filed
Aug 28 2019 08:23 p.m.
Case No. 75053
Supreme Court Clerk of Supreme Court
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 (77733)

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

RESPONDENT'S APPENDIX TO ANSWERING BRIEF
FOR CASE NO. 77733

Volume III
RA469 – RA685

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James J. Cotter, Jr.

RESPONDENT'S APPENDIX TO ANSWERING BRIEF

CHRONOLOGICAL INDEX

Date	Description	Vol.#	Page Nos.
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2015-08-31	Motion to Compel Arbitration	I	RA62-RA83
2015-09-03	Motion to Dismiss Complaint	I	RA84-RA172
2015-10-06	Transcript of Proceedings of Hearing on Defendants' Motion to Dismiss and Plaintiff's Motion for Preliminary Injunction	I	RA173-RA191
2015-10-12	Order Denying Nominal Defendant Reading International, Inc.'s Motion to Compel Arbitration	I	RA192-RA194
2015-10-19	Order Regarding Motion to Dismiss Complaint	I	RA195-RA197
2016-02-18	Transcript of Proceedings of Hearing on Cotter's Motion to Compel and Motion to File Document Under Seal	I	RA198-RA216
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2016-10-21	Reading International, Inc.'s Reply In Support of Defendant W. Gould's Motion for Summary Judgment	II	RA273-RA278
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2017-10-18	William Gould's Joinder to Motion for Evidentiary Hearing Re Cotter's Adequacy as a Derivative Plaintiff	II	RA325-RA327
2017-11-20	Transcript of Proceedings of Hearing on Motion for Evidentiary Hearing	II	RA328-RA347
2017-11-28	Defendants M. Cotter, E. Cotter, Guy Adams, E. Kane, D. McEachern, W. Gould, J. Coddling, M. Wrotniak's Answer to 2 nd Amended Complaint	II	RA348-RA377
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2018-06-19	Transcript of Proceedings of Hearing on Motion to Dismiss, Motion to Compel, Motions to Seal, Motion for Relief Re Noncompliance & Motion for Summary Judgment	IV	RA800-RA851
2018-07-12	Order Granting in Part Motion to Compel and Motion for Relief	IV	RA852-RA854
2018-07-12	Order Granting in Part Plaintiff's Motion for Omnibus Relief & Motion to Compel Production Documents & Privilege Log	IV	RA855-RA857
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CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 29th day of August, 2019, a true and correct copy of the foregoing **RESPONDENT'S APPENDIX TO ANSWERING BRIEF FOR CASE NO. 77733**, was served by the following method(s):

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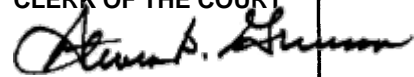
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By: /s/ Gabriela Mercado



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18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

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

23 **Plaintiff,**

24 **v.**

25 **MARGARET COTTER, et al,**

26 **Defendants.**

27 **In the Matter of the Estate of**

28 **JAMES J. COTTER,**

Deceased.

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

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

Coordinated with:

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

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

MOTION TO DISMISS
FOR FAILURE TO SHOW
DEMAND FUTILITY

Hearing Date: 1/8/18
Hearing Time: 8:30a.m.

1 Nominal Defendant Reading International, Inc. ("RDI"), a Nevada corporation, by and
2 through its undersigned counsel of record, hereby moves this Court to dismiss this action due to
3 the inability of Plaintiff James J. Cotter, Jr. ("Cotter, Jr.") to prove his allegations of demand
4 futility. This motion is based upon the files and records in this matter, the attached memorandum
5 of authorities, and any argument allowed at the time of hearing.

6 DATED this 3rd day of January, 2018.

7 GREENBERG TRAURIG, LLP

8 

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10 Kara B. Hendricks, Esq. (NBN 7743)
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14 *Counsel for Reading International, Inc.*

DECLARATION OF TAMI D. COWDEN, ESQ.

I, Tami D. Cowden, state and declare as follows:

1. I am licensed to practice law in the State of Nevada. I am an attorney with the law firm of Greenberg Traurig, LLP, counsel for Reading International, Inc. in this proceeding. I make this declaration based upon personal, firsthand knowledge. If called upon to testify as to the contents of this declaration, I am legally competent to testify to its contents.

2. On December 28, 2017, this Court executed an order that determined, as a matter of law, that RDI Directors Judy Coddington, William Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak were independent.

3. In so ruling, this Court found that Cotter, Jr. could not prove the allegations he had made as to the purported interestedness of these directors. As a result, this Court has also determined that Cotter, Jr. cannot prove the allegations of demand futility that he had included in the various iterations of his complaint.

4. This Court had previously determined that Cotter, Jr.'s allegations of interestedness and demand futility had been sufficient to survive a motion to dismiss.

5. Pursuant to Nevada law, the Court's determination as to the adequacy of the pleading required the Court to subsequently determine, as a matter of law, whether the allegations of interestedness were proven.

6. This Court's December 28, 2017 Order establishes that the allegations of interestedness could not be proven.

7. Accordingly, as Cotter, Jr.'s allegations of demand futility cannot be proven, he does not have standing to maintain a derivative action, and it should therefore be dismissed as a matter of law.

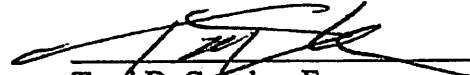
8. Good cause exists to hear this motion on shortened time. Presenting this motion in the ordinary course would prevent the Court from ruling on the motion to dismiss prior to the scheduled trial date. Accordingly, grant of an order shortening time is appropriate.

///

///

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

3 Executed on this 3rd day of January, 2018, at Las Vegas, Nevada.

4
5 
6 Tami D. Gowden, Esq.

1 **ORDER SHORTENING TIME**

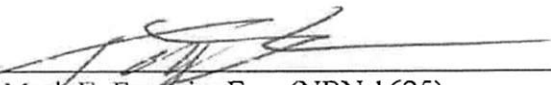
2 GOOD CAUSE APPEARING, it is hereby ordered that the foregoing *Reading*
3 *International, Inc.'s Motion to Dismiss for Failure to Show Demand Futility* shall be heard on
4 shortened time on the 8th day of January, 2018, at the hour of 8:30 A.m.in
5 Department XI.

6 DATED this 3rd day of January, 2018.

7  CR
8 DISTRICT COURT JUDGE CR
9

10 Respectfully submitted by:

11 GREENBERG TRAURIG, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

This Court's recent determination that, as a matter of law, Directors Judy Coddington, William Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak establishes that the making of a demand to file an action against the remaining defendants would not have been futile. Accordingly, this action must be dismissed for lack of standing by Cotter, Jr. to maintain a derivative action on behalf of RDI.

FACTS RELEVANT TO THIS MOTION TO DISMISS

Cotter, Jr. first filed his complaint in this action on June 12, 2015. The original complaint combined both individual claims and claims brought derivatively on behalf of RDI. The Defendants for the derivative claims included RDI Directors Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, and Timothy Storey, with RDI as a Nominal Defendant. As relevant here, the individual directors moved to dismiss the derivative claims for a failure to make demand; RDI joined that motion. At a hearing on September 10, 2015, this Court determined that Cotter, Jr. had "adequately alleged demand futility and interestedness," but partially granted the motion to dismiss due to a failure to adequately plead damages. *See* Transcript, Sept. 10, 2015, 15:24-16:3.

Cotter, Jr. thereafter filed his First Amended Complaint, to which Defendants Judy Coddington and Michael Wrotniak were added. On November 12, 2015, the Individual Director Defendants again filed motions to dismiss, including a failure to allege demand futility among the grounds.¹ RDI moved to dismiss on additional grounds. This Court denied those motions in an order filed March 1, 2016, noting that the denial was without prejudice for the Defendants' rights to file motions for summary judgment. On May 6, 2016, Cotter, Jr. voluntarily dismissed Defendant Timothy Storey from the action. Cotter, Jr. subsequently sought leave, over the objection of Defendants, to file a Second Amended Complaint, again naming as defendants all of the members of RDI's Board of Directors, other than himself.

///

¹ Defendants William Gould and Timothy Storey filed such motion separately from the other defendants.

1 On September 23, 2016, the Individual Directors (except for Director Gould) filed a
2 motion for partial summary judgment on the issue of the independence of each of them (save
3 Gould). RDI joined that motion. Defendant Gould filed a motion for summary judgment, in
4 which the issue of his independence was one of the claimed grounds. This Court denied those
5 motions finding there were material issues of fact regarding the independence of the Directors.
6 Those motions were subsequently renewed, however, and, as noted above, this Court granted
7 them on December 28, 2017.

8 LEGAL ARGUMENT

9 **THE DETERMINATION THAT A MAJORITY OF RDI'S DIRECTORS WERE** 10 **INDEPENDENT ESTABLISHES THAT COTTER, JR. CANNOT PROVE HIS** 11 **DEMAND FUTILITY ALLEGATIONS, REQUIRING DISMISSAL**

12 This Court's determination that Directors Coddington, Gould, Kane, McEachern, and
13 Wrotniak are disinterested with respect to the decisions cited in the Second Amended Complaint
14 establishes that such complaint must be dismissed for failure of demand.

15 Pursuant to NRCP 23.1, a plaintiff must allege efforts made to have the corporation file
16 the action, or to show that the making of a demand to sue is futile. When a court determines that
17 the allegations of purported interest of a majority of members of the board of directors are
18 sufficient to withstand a motion to dismiss for failure to make demand, the court must "later
19 conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement
20 nevertheless deprives the shareholder of his or her standing to sue." *In re Amerco Derivative*
21 *Litig.*, 127 Nev. 196, 222, 252 P.3d 681, 700 (2011), quoting *Shoen v. SAC Holding Corp.*, 122
22 Nev. 621, 636, 137 P.3d 1171, 1181 (2006). In fact, in *In Re Amerco*, the remand to the district
23 court instructed the court to determine "whether demand was, in fact, futile." 127 Nev. at 222,
24 252 P.3d at 700.

25 Here, this Court's ruling on summary judgment has taken the place of such evidentiary
26 hearing; Cotter, Jr. was unable to show that demand was futile. Accordingly, the matter should
27 be dismissed. This is true regardless of which of the three iterations of the complaint the Court
28 considers. the Court considers the time the initial complaint was filed, wherein the majority of

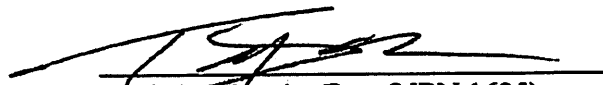
1 the RDI Directors included William Gould, Edward Kane, Douglas McEachern, and Timothy
2 Storey, or if the Court considers the time of the filings of the First or Second Amended
3 Complaints, wherein the majority of RDI's Board was comprised of Judy Coddington, William
4 Gould, Edward Kane, Douglas McEachern and Michael Wrotniak. Accordingly, a majority of
5 RDI's Directors were independent as of the filing of each version of Cotter, Jr.'s complaint, and
6 demand would not have been futile.

7 **CONCLUSION**

8 This Court has determined that a majority of RDI's Directors were independent with
9 respect to the decisions challenged by Cotter, Jr. Therefore, none of these Directors faced
10 liability based on Cotter, Jr.'s claims. Cotter, Jr. cannot prove his allegations that demand on the
11 Board to file his claims was futile. Accordingly, Cotter, Jr. has no standing to serve as a plaintiff
12 in this derivative action.

13 DATED this 3rd day of January, 2018.

14 GREENBERG TRAURIG, LLP

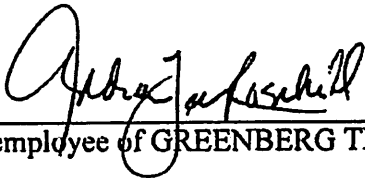
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I
3 caused a true and correct copy of the forgoing *Motion to Dismiss for Failure to Show Demand*
4 *Futility* to be filed and served via the Court's Odyssey eFileNV Electronic Service system on all
5 registered and active parties. The date and time of the electronic proof of service is in place of
6 the date and place of deposit in the mail.

7 DATED this 3rd day of January, 2018.

8 
9
10 An employee of GREENBERG TRAURIG, LLP

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

22 JAMES J. COTTER, JR.,
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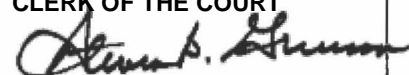
27 MARGARET COTTER, ELLEN
28 COTTER, GUY ADAMS,
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GOULD, JUDY CODDING,
MICHAEL WROTONIAK,

Defendants.

And

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

Electronically Filed
1/4/2018 5:26 PM
Steven D. Grierson
CLERK OF THE COURT



) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered


) **NOTICE OF ENTRY OF ORDER**

RA478

1 PLEASE TAKE NOTICE that an Order Granting Plaintiff's
2 Motion for Rule 54(b) Certification and Stay was entered in this action on the
3 4th day of January, 2018.

4 A copy of the Order is attached as Exhibit 1.

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CERTIFICATE OF SERVICE

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

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Reading International, Inc.

DATED this 4th day of January, 2018.

By: 

EXHIBIT 1

EXHIBIT 1

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

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

) Coordinated with:

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

) Jointly Administered

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

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

RA482

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

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

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

2 ☐ stayed;

3 ☒ not stayed pending Plaintiff's appeal.

4
5 DATED this ____ day of January, 2018.

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

11 Submitted by:

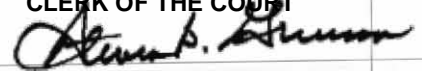
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, *et al.*,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

Case No.: A-15-719860-B

Dept. No.: XI

Case No.: P-14-082942-E

Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

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

**APPLICATION FOR ORDER
SHORTENING TIME**

Judge: Hon. Elizabeth Gonzalez

Date of Hearing:

Time of Hearing:

01-03-18P05:00 RC

RA485


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

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

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

10
11 Dated: January 3, 2018

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

13
14 By: /s/ H. Stan Johnson 

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

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor, IT IS
HEREBY ORDERED that Defendants Margaret Cotter, Ellen Cotter, and Guy Adams'
(collectively, "Remaining Director Defendants") Motion for Judgment as a Matter of Law shall
be heard before the above-entitled Court in Department XI, on the 8th day of
January, 2018 at 8³⁰ a.m./p.m., or as soon thereafter as counsel can be heard.

Dated this _____ day of January, 2018


DISTRICT COURT JUDGE

CR

PREPARED AND SUBMITTED BY:

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DECLARATION OF COUNSEL NOAH HELPERN

I, Noah Helpern, state and declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 /s/ Noah Helpert
28 Noah Helpert

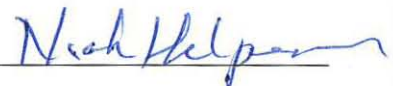


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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

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

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

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

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

11 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 A motion was made and seconded, as follows:

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

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

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

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

13 ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

10 **CONCLUSION**

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

13
14 Dated: January 3, 2018

15 **COHENJOHNSONPARKEREDWARDS**

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

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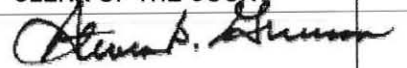
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EXHIBIT A

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18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

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

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

25 Plaintiff,

26 v.

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

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

RA505

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

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CERTIFICATE OF SERVICE

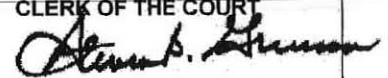
Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER** . The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

DATED this 20th day of December, 2017.

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

EXHIBIT A

RA508



ORDER

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Judy Coddig, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

Case No.: A-15-719860-B

Dept. No.: XI

Case No.: P-14-082942-E

Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 IT IS FURTHERED ORDERED THAT Defendant Gould's
27 Motion *in Limine* to Exclude Irrelevant Speculative Evidence is DENIED as
28

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

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

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

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

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

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

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

21 
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

1
2 PREPARED AND SUBMITTED BY:

3 COHEN|JOHNSON|PARKER|EDWARDS

4
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24 *Attorneys for Defendants Margaret Cotter,*
25 *Ellen Cotter, Douglas McEachern, Guy Adams,*
26 *Edward Kane, Judy Coddling, and Michael*
27 *Wrotniak*

EXHIBIT B

FILED UNDER SEAL

MORRIS LAW GROUP

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Attorneys for Plaintiff

James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:


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

) Dept. No. XI

) Jointly Administered

) NOTICE OF ENTRY OF ORDER

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Steven D. Grierson
CLERK OF THE COURT



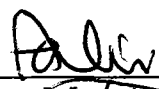
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PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration was entered in this action on the 4th day of January, 2018.

A copy of the Order is attached as Exhibit 1.

MORRIS LAW GROUP

By: 
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CERTIFICATE OF SERVICE

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

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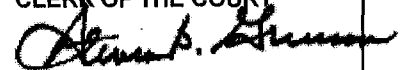
DATED this 4th day of January, 2018.

By: 

EXHIBIT 1

EXHIBIT 1

RA521



1 **ORDR**

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19 James J. Cotter, Jr.

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

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

25 Plaintiff,

26 v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

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

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

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


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

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

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

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

DATED this 4 day of Jan, 2018.


THE HONORABLE ELIZABETH
GONZALEZ,
DISTRICT COURT JUDGE

MORRIS LAW GROUP

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Submitted by:

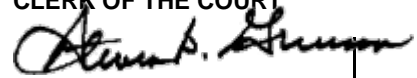
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By: /s/ Akke Levin

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James J. Cotter, Jr.



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

JURY TRIAL - DAY 1

MONDAY, JANUARY 8, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

RA525

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

KEVIN JOHNSON, ESQ.
MARSHALL M. SEARCY, ESQ.
CHRISTOPHER TAYBACK, ESQ.
MARK E. FERRARIO, ESQ.
KARA B. HENDRICKS, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 8, 2018, 1:58 P.M.
2 (Proceedings 1:00 p.m. to 1:58 filed under separate cover)

3 (Prospective jurors are present)

4 THE COURT: You can sit down when you get to your
5 chairs.

6 You can be seated.

7 Good afternoon, ladies and gentlemen. Thank you for
8 waiting. I want to apologize for the time we had you waiting
9 out in the hallway. My name is Elizabeth Gonzalez. I'm the
10 presiding judge in Department 11. Welcome.

11 We had been addressing while you were waiting in the
12 hallway a medical issue that had occurred with one of the
13 witnesses in the case and whether that was going to cause us
14 to delay the trial. I've just decided it is.

15 So, rather than have you wait around any more, I'm
16 now going to excuse you and return you to Jury Services. I do
17 not know if they will let you go home. I am hopeful they will,
18 but thank you very much for your patience today. I've had to
19 continue this trial based upon the medical issue of a witness.
20 So thank you very much.

21 Dan, if you could help them get over to the third
22 floor to Mariah.

23 (Jury discharged at 2:01 p.m.)

24 THE COURT: Okay. Now that we've finished that part
25 of our day, let me go to the other parts of my day.

1 So, Mr. Ferrario and Mr. Tayback, you had both as
2 part of your inquiry asked if there was a cost issue if your
3 clients could seek any recompense for that. The answer is you
4 can file whatever motions you think are appropriate.

5 And, Mr. Searcy, if you believe there's a written
6 motion related to the qualifications of a class
7 representative, you can, of course, file that.

8 With respect to the motions that I denied this
9 morning because they were too late, let's talk about that
10 issue. I indicated earlier today that if we were going to
11 entertain those motions I was going to reopen discovery and
12 allow discovery on the issues related to the matters that were
13 addressed in those motions. Does anybody want to talk to me
14 about that?

15 MR. FERRARIO: We absolutely want to bring those
16 motions back. To the extent -- I personally don't think
17 there's discovery needed on the demand futility motion, but to
18 the extent you're willing to accommodate them I think they can
19 certainly inquire into the ratification. I think there should
20 be a limited discovery period opened and with appropriate
21 limitations, limited to that ratification process. And then
22 we can bring that to you on a more fulsome record.

23 THE COURT: Mr. Krum, Mr. Morris?

24 MR. FERRARIO: And we will renew the motion, as
25 well, on the demand futility. As Ms. Cowden pointed out to me

1 when we were walking back to the war room, Shoen says "must,"
2 not "may." So I will -- I'll renew that and perhaps address
3 the Court's comments more targeted. Thank you.

4 THE COURT: Mr. Krum.

5 MR. KRUM: Well, Your Honor, obviously creating
6 evidence for use in a case is an unusual circumstance, but
7 obviously we're entitled to discovery if there's any
8 possibility they're going to be allowed to use it.

9 In this particular case we have evidence that is
10 predicated on a ruling that is subject of appeal, so we have
11 multiple moving targets. And I think that, among other
12 considerations that you'll probably describe to us or you may
13 describe to us shortly, such as your schedule --

14 THE COURT: What schedule?

15 MR. KRUM: Yes. Exactly.

16 -- as well as the fact that we don't know -- I think
17 to the extent we assume that seven weeks hence Mr. Cotter is
18 good to go, so to speak, we'll have to see. So we have a lot
19 of uncertainties. And I certainly disagree with any
20 suggestion that we ought to have any expedited limited
21 discovery period, because we're clearly going to have months
22 and months and months before we're on track; right? You're
23 not going to put us on trial in the middle of Wynn-Okada.

24 THE COURT: I was going to see if I could fit you
25 into my March spot, because the Swarovski people claim they're

1 going to settle on Friday.

2 MR. KRUM: Okay. Well, that would be a familiar
3 circumstance for us, Your Honor, that is rushing to complete
4 discovery. So, look, if the point is that they don't object
5 to discovery, we'll promptly propound the document requests,
6 we'll collect documents such as they exist. I think it would
7 be probably prudent to have a couple written requests, as
8 well, to identify witnesses so that we don't waste the time of
9 a deponent doing what we could do by way of an interrogatory
10 identifying who knows about this, that and the other. And
11 then we'll undertake to schedule the depositions.

12 THE COURT: So you're talking about a 75- to 90-day
13 period basically, from what I heard.

14 MR. KRUM: I think it's at least 90 days, Your
15 Honor, yes.

16 MR. FERRARIO: We -- there's no -- it should not be
17 90 days. We can get this done quickly. We're prepared to
18 engage them. And if you want a 16.1 supplement, we'll
19 supplement 16.1.

20 THE COURT: Well, if you intended to use it, one
21 would have thought you would have already done a 16.1
22 supplement, Mr. Ferrario.

23 MR. FERRARIO: Your Honor, with all due respect,
24 this happened very quickly over the holidays. And, you know,
25 we're now here dealing with --

1 THE COURT: You told me about it before it was going
2 to happen, so I would have thought that you would have filed a
3 supplement before you did it.

4 MR. FERRARIO: We needed the written order. But
5 we're here now. So I can tell you we'll supplement the 16.1,
6 and they should have limited discovery on the ratification.
7 There's no way it takes 75 or however many days. And if Your
8 Honor's going to squeeze us in March --

9 THE COURT: I don't know that I can.

10 MR. FERRARIO: I already know what you have in
11 March, okay, and I don't think it's looking real pretty, and
12 it isn't looking pretty for me. So if we're going to squeeze
13 in in March, let's get it done.

14 THE COURT: The trial starts in April, so I have
15 other things I'm going to do in March besides get ready for
16 trial in April.

17 MR. KRUM: March doesn't matter. Recall, Your Honor
18 -- and counsel know this -- I'm out of the country for in
19 excess of two weeks in March.

20 MR. FERRARIO: I get it. Okay. Well, then I don't
21 know about that.

22 THE COURT: Okay.

23 MR. FERRARIO: So I'm saying let's -- tell us to get
24 discovery done way sooner than 75 days so we can get this back
25 in front of you. So I would say --

1 THE COURT: Mr. Ferrario, where on earth would you
2 put me -- put this case? Where -- if you were going to put it
3 on my schedule, when would it be ready?

4 MR. FERRARIO: Your Honor, I wouldn't even hazard a
5 guess. And that's what I told everybody last night when they
6 asked me that. Because I suspect what you're going to tell us
7 is you're going to tell us it's going to go after Wynn. And
8 then what I'm going to ask you is could you please -- if Wynn
9 happens to miraculously go away, could you plug us in during
10 that time you had previously set. So that's what I was going
11 to tell my client.

12 THE COURT: So, Mr. Krum, when in March are you out
13 of the country?

14 MR. KRUM: I had this wrong previously, so let me
15 look at the calendar. I believe, Your Honor, it's from the
16 8th of March through the 19th.

17 THE COURT: So that shoots my idea about March.

18 MR. FERRARIO: Yeah. That ruins March. So there's
19 some other things.

20 THE COURT: I'm listening. I've got a week to
21 listen now.

22 MR. FERRARIO: You 54(b)-ed some stuff. They're
23 going to appeal it. The quicker we get decisions on this we
24 may be able to make some decisions regarding writs and get
25 these legal issues up in front of the Supreme Court. They're

1 going to consider what they want to appeal on the 54(b) stuff.
2 So I'm committing to the Court, to opposing counsel -- and if
3 Mr. Tayback or Mr. Searcy disagree, they're free to say so --
4 we're willing to get on an expedited schedule with Mr. Krum.
5 There's no reason to delay this. We will identify -- and it's
6 no secret who was involved in the ratification, it's the board
7 members and the like. To the extent there are any documents,
8 okay, other than what was referenced in the meetings and
9 referenced in the minutes, which I think are -- we submitted
10 drafts, we'll get the final, we'll produce all that stuff,
11 okay. If Mr. Krum wants more information, he's free to ask,
12 and then we'll deal with that.

13 But our -- we need to get these issues decided.
14 This case has gone on. It has been a huge drain on
15 everything.

16 THE COURT: Mr. Ferrario, the medical issue is one
17 that Mr. Cotter had that is not inside your control. The
18 ratification issue is clearly inside your client's control.
19 So the issue about the timing is not one I'm going to be very
20 sympathetic to at this point.

21 So I am vacating the trial. I am going to set a
22 status check for resetting the trial on my March 2nd chambers
23 calendar. At that time I would like a status report,
24 hopefully joint, but, if not, separate, from all parties
25 advising me as to the status of the discovery.

1 I am opening discovery for a period not to exceed 75
2 days. If the discovery on these limited issues for which I
3 have reopened it -- that's the ratification issue and the
4 demand futility issues that were raised in the motions I
5 denied for procedural reasons this morning. If you are unable
6 to be done with everything by the date of that status report,
7 you will have to file a motion to extend.

8 MR. KRUM: Your Honor, I have a question. The 75
9 days --

10 THE COURT: Hold on.

11 MR. KRUM: Is actually 60 days for me.

12 THE COURT: You're right. It's not quite 75.

13 MR. KRUM: So, I mean, what I have --

14 THE COURT: If you're not going to be able to finish
15 in the 75 days, I need you to tell me in the March 2 status
16 report.

17 MR. KRUM: No. I'm just pointing out that I'm
18 actually -- okay.

19 MR. FERRARIO: You're anticipating we will get done
20 but for good cause within that period of time.

21 THE COURT: That is correct. That's why I'm saying
22 75 days, not to exceed 75 days.

23 MR. FERRARIO: All right.

24 THE COURT: It's a month and a half.

25 MR. FERRARIO: And, again, I'm not going to belabor

1 this, but everything that we did was occasioned because of
2 Your Honor's ruling and it fell on right after the order was
3 signed and --

4 THE COURT: Blaming me for your situation --

5 MR. FERRARIO: I'm not blaming you.

6 THE COURT: -- really doesn't help.

7 MR. FERRARIO: I'm not blaming you.

8 THE COURT: Anything else?

9 MR. KRUM: No, Your Honor.

10 MR. FERRARIO: You set the -- I didn't blame you,
11 it's just that's what happened.

12 THE COURT: That's what happens when judges decide.
13 Things are resolved. That's why the motions are usually near
14 the end, because you have the factual information. But one
15 anticipates the parties will act in good faith during the term
16 of litigation and not wait until the judge decides.

17 Anything else?

18 MR. FERRARIO: Any implication we didn't ask in good
19 faith I would disagree with Your Honor. We did act in good
20 faith.

21 THE COURT: Okay. Anything else?

22 MR. FERRARIO: We filed the motions, you know. And
23 then, you know -- look, we're here in an awkward situation.
24 We were ready to get this case done.

25 THE COURT: We were all ready to get this thing

1 done.

2 MR. FERRARIO: Okay. You were, obviously, and --

3 THE COURT: And I was not convinced until I read the
4 doctor's affidavit that indicated about the testing and things
5 he referred him to, because the delay between November 29th
6 and when it was scheduled were of concern to me until I read
7 the doctor's declaration this afternoon. So --

8 MR. FERRARIO: No. And it is -- that's an unusual
9 situation --

10 THE COURT: It is.

11 MR. FERRARIO: -- that we're unfortunately on the
12 outside looking --

13 THE COURT: It's outside of all of our control.
14 Anything else?

15 Dulce wants you to take away --

16 Can I stipulate to return the exhibit devices even
17 though some of them were already admitted? Or do you want me
18 to keep them?

19 MR. FERRARIO: Yes.

20 MR. MORRIS: Yes.

21 THE COURT: So Dulce's going to return your three
22 devices to each of you, your respective three devices. She'll
23 have a receipt ready for you tomorrow.

24 MR. TAYBACK: And so that means we'll start over,
25 nothing will have been admitted the next time we come back.

1 THE COURT: Correct. But hopefully it will be
2 easier when we get to the exhibit lists the next time, because
3 you will have done it before.

4 MR. TAYBACK: Hope so.

5 THE COURT: So we're also going to return the depositions.
6 You will also have a receipt provided for each of you for your
7 depositions to be picked up.

8 Anything else? All right. I am -- given the tone
9 of the doctor's declaration -- I had thought you could do a
10 video deposition of Mr. Cotter if you needed to as part of
11 your process, but it does not appear to me that you probably
12 can.

13 MR. FERRARIO: Your Honor, we will not -- I would
14 not impede Mr. Cotter's recovery with a deposition.

15 THE COURT: Okay.

16 MR. FERRARIO: We will wait until he is --

17 THE COURT: Better.

18 MR. FERRARIO: -- legit and we'll take it then if we
19 need to.

20 THE COURT: Okay. Anything else? We'll be in
21 recess.

22 MR. KRUM: Thank you.

23 MR. MORRIS: Thank you, Your Honor.

24 THE PROCEEDINGS CONCLUDED AT 2:13 P.M.

25 * * * * *

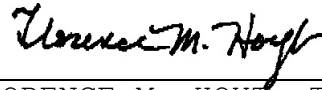
CERTIFICATION

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

AFFIRMATION

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

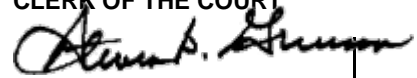
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

1/9/18

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR CONTINUANCE

MONDAY, JANUARY 8, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

RA539

APPEARANCES:

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FOR THE DEFENDANTS:

KEVIN JOHNSON, ESQ.
MARSHALL M. SEARCY, ESQ.
CHRISTOPHER TAYBACK, ESQ.
MARK E. FERRARIO, ESQ.
TAMI COWDEN, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 8, 2018, 10:07 A.M.
2 (Proceedings 8:28 a.m. to 8:42 a.m. and 10:00 a.m. to 10:07
3 filed under seal. Hearing continued in open court as follows)
4 THE COURT: I have 10 minutes for your arguments.
5 MR. KRUM: So I'll talk with counsel about this
6 matter after we do what we need to in the arguments so that we
7 can take care of that and get out of the courtroom. Thank
8 you.
9 THE COURT: Okay. I have a motion to dismiss for
10 failure to show demand futility, and I have a motion for
11 judgment as a matter of law --
12 Let everybody in now.
13 -- both which appear to be summary judgment motions,
14 because they are asking me to look outside of the pleadings.
15 Can someone explain why these motions were not filed in the
16 time required for summary judgment motions under my scheduling
17 order?
18 MR. FERRARIO: Who do you want to go first?
19 THE COURT: It doesn't matter. They both have the
20 same procedural issue.
21 MR. FERRARIO: Well, Your Honor, I addressed this
22 briefly the other day. And I don't think there's any dispute
23 as to this. Your ruling on the motions for summary judgment
24 relating to the five now disinterested directors had what I
25 would call a ripple effect. And so I don't think that we

1 would have been in a position to file the motion we filed, nor
2 do I think that director defendants would have been in the
3 position to file the motions they filed without the benefit of
4 your order. So your order -- and I can see you're smiling,
5 but we filed the motions, we filed motions before, and you
6 said the record wasn't complete, go out and complete the -- we
7 did all that. Then by the time they got decided, okay, we're
8 now in December. So Your Honor appropriately considered the
9 motions that were in front of you, and I'm not going to go
10 through the numbers of them now, because, quite frankly, I
11 don't remember them all, and concluded that five directors
12 were now disinterested.

13 THE COURT: I determined there were no genuine
14 issues of material fact --

15 MR. FERRARIO: Exactly.

16 THE COURT: -- without the interestedness of those
17 directors. Different.

18 MR. FERRARIO: Right. And you gave -- and I want to
19 make on the -- you gave Mr. Krum every opportunity at that
20 hearing to convince you otherwise, and he had a full and fair
21 opportunity to present to you in the record any facts that
22 would controvert Your Honor's ruling. He didn't do that.
23 Which that, from our perspective, is the equivalent -- it's
24 equivalent to an evidentiary hearing. So having now the
25 benefit of Your Honor's ruling, we went back and we looked at

1 certain things. One of the things we looked at under the
2 statute in Nevada is the concept of ratification. And that's
3 addressed more extensively in the directors' motion. We
4 brought that to your attention last week.

5 The other thing that we looked at, and it's what the
6 company filed based on, is the demand futility concept. Your
7 Honor at the outset of the case determined that from the
8 allegations of the complaint that sufficient information had
9 been pled to excuse demand on the board. That was based on
10 what was in the complaint.

11 We then go through discovery, and it was robust
12 discovery, I must say. There were numerous depositions taken,
13 thousands of pages of documents produced, and based upon a
14 full and complete record Your Honor makes the determination
15 that the five board members are not interested. That then
16 raises the issue of whether or not demand should have been
17 excused in the first place. Obviously, given your ruling,
18 demand should not have been excused, okay. And if you look at
19 whether you want to call them, as Ms. Cowden says, the Shane
20 case, because she likes to pronounce it like Germans do, I
21 call it Shoen, or you call it Amerco --

22 THE COURT: Because we know the family, Lynn's
23 family.

24 MR. FERRARIO: Exactly. Whatever -- if you look at
25 those cases, one thing they made clear is the review of demand

1 or demand futility doesn't stop at the beginning, it's a
2 continual look. And that's quoted in both -- in Shoen and in
3 Amerco. And so what we've had in effect is the evidentiary
4 hearing on whether the directors were interested or could act
5 independently. And that hearing didn't go in favor of the
6 plaintiff. So at this stage demand should not have been
7 excused. And plaintiff consequently lacks standing as a
8 derivative plaintiff to bring this case. He would have
9 presented this and still should present the demand to the
10 board, which is comprised primarily now of independent,
11 disinterested directors. That's what the law provides, that's
12 what the Shoen and Amerco cases provide, and that's why we
13 brought this motion, because we're relying on Your Honor's
14 ruling, which we didn't have until a couple weeks ago. That's
15 it.

16 THE COURT: So you believe waiting for the Court to
17 decide some motions that had a required filing deadline is
18 sufficient showing of good cause for the late filing of these
19 two motions?

20 MR. FERRARIO: Well, I wouldn't phrase it that way.
21 I would phrase it that as we are standing here in front of you
22 today dealing with an odd set of circumstances things evolve,
23 okay. The case evolved. We didn't have the benefit of your
24 ruling. We now have your ruling. And this is a follow-on
25 motion related to that ruling. And you can say it's a motion

1 for summary judgment. I don't think that's an appropriate
2 characterization. It's a motion to dismiss for demand
3 futility. And so I think that the predicate for that motion
4 was your order, and I don't think we're running afoul of the
5 summary judgment deadline that you had, because it arose
6 because of your order. And under Amerco and Shoen it says a
7 motion can be filed any time. And so that's how I would
8 characterize it. So we're not intentionally trying to go
9 around your deadline for filing summary judgment motions in
10 any way, shape --

11 THE COURT: Thank you.

12 Did someone want to respond on the procedural issue
13 related to your motion for judgment as a matter of law?

14 MR. SEARCY: Yes, Your Honor. With respect to the
15 procedural issue on several of the claims we actually did file
16 a motion for summary judgment. So with respect to the
17 appointment of Ellen Cotter as CEO, the appointment of
18 Margaret Cotter to the position of executive vice president of
19 real estate, we did file motions on those. And the byproduct
20 of Your Honor's ruling on those is -- should necessarily be
21 that because there were five disinterested directors who
22 approved of those transactions, those transactions should be
23 valid as a matter of law, Your Honor. So we did file in a
24 timely fashion on those.

25 With respect to two other transactions, specifically

1 those are the termination of Jim Cotter, Jr., and with respect
2 to the exercise of 100,000 shares, in those instances, Your
3 Honor, based upon the ripple effect that Mr. Ferrario just
4 described the board of directors got together, as they were
5 allowed to do under Nevada Revised Statute 78.140(2)(a), which
6 applies to interested director transactions, and they ratified
7 those two transactions, using a majority of disinterested
8 directors, specifically Mr. Kane, Mr. Gould, Mr. McEachern,
9 Judy Coddington, and Michael Wrotniak. Those five directors
10 approved of the two transactions that the Court has singled
11 out as being a potential issue for this case and ratified them
12 as they're allowed to under the law.

13 With respect to the timing issue, Your Honor, the
14 Court has held -- and this is with respect to a Rule 50
15 motion, which would apply to a bench trial, as opposed to a
16 jury trial --

17 THE COURT: This isn't a bench trial, Counsel.
18 We're picking a jury starting at 1:00 o'clock unless I grant
19 these motions.

20 MR. SEARCY: Understood, Your Honor. But my point
21 -- to distinguish that case, but to also explain the
22 importance of it here, in the Charles Brown case the court
23 held, if the plaintiff's not going to be able to prove their
24 case, if there's going to be a failure, as there is here,
25 because of the ratification under the applicable statute, then

1 that should be the end of the analysis. Here they're not
2 going to be able to prove their case, because the transactions
3 have been ratified by the disinterested directors, the five
4 who this Court has held as a matter of law are disinterested.
5 You found that there's no issue of fact on that, Your Honor,
6 and they've ratified those two transactions.

7 And I would ask that to the extent that Mr. Cotter
8 is allowed to receive some sort of continuance, then I'd ask
9 for leave of the Court, if the Court really does think that
10 this is an issue of a motion for summary judgment, then I'd
11 ask for leave of the Court to be able to bring that motion,
12 because this is now ripe for adjudication, there are no issues
13 of fact here, this is a ratification that was done by a board
14 of directors regarding transactions that you've examined and
15 you've examined the relationship of those directors to those
16 transactions. So there shouldn't be an issue of fact here.

17 So to the extent that the Court does not -- is not
18 ready to consider this a motion for judgment as a matter of
19 law, then I'd ask for leave to file a motion for summary
20 judgment. Thank you.

21 THE COURT: Thank you, Mr. Searcy.

22 Mr. Krum, Mr. Morris, do you want to address the
23 procedural issue?

24 MR. KRUM: Thank you, Your Honor. You're absolutely
25 correct. These are not only untimely summary judgment

1 motions, but one of them is predicated upon evidence created
2 on December 29th with respect to which not only is there an
3 issue of fact, there should be discovery. So agree with Your
4 Honor's assessment that they are untimely.

5 And the demand motion, Your Honor, they've made it,
6 and they've made it in the only -- it's -- nothing has changed
7 as they suggest it has, I don't think, Your Honor.

8 And you said just the procedural, so I won't go to
9 the law.

10 THE COURT: Thank you. Now, Mr. Krum, in a minute
11 I'm going to ask you a question. So can you pull up the
12 opposition you emailed, because Cassandra didn't pull it in
13 the pile. I read it, but I don't remember the footnote number
14 I may refer to.

15 MR. KRUM: Which one, Your Honor?

16 THE COURT: The opposition you sent over the weekend
17 to probably the motion for judgment as a matter of law. Mr.
18 Morris did one, and you did one, I think.

19 MR. KRUM: I have it, Your Honor.

20 THE COURT: All right. Don't answer any questions
21 yet.

22 So the motions both are denied without prejudice to
23 renew if you should obtain leave of Court if there is not a
24 proceeding today, because waiting for the Court to decide
25 other motions is insufficient showing of good cause for late

1 filing of these two motions. If you thought you had a valid
2 basis for the filing of the motions as they are currently
3 presented, that should have been done prior to the date of the
4 summary judgment motion.

5 With respect to Footnote -- is it 2 or 3 that talks
6 about the admissibility of evidence?

7 MR. KRUM: Footnote 3, Your Honor.

8 THE COURT: So with respect to the issue raised in
9 Footnote 3 of Mr. Krum's opposition I am not ruling on that at
10 this time. I do have serious concerns about the appropriate
11 disclosure of the factual evidence on which these motions are
12 based.

13 MR. FERRARIO: Well, Your Honor, as to the company's
14 motion it's --

15 THE COURT: That's the demand futility motion.

16 MR. FERRARIO: -- based entirely on your order.

17 THE COURT: I'm aware of that, Mr. Ferrario.

18 MR. FERRARIO: And the only thing is would -- just
19 so the record's clear and it is under Shoen and Amerco --

20 THE COURT: It isn't Shane, it's Shoen.

21 MR. FERRARIO: Shoen. Okay.

22 THE COURT: And it's not Amerco, it's Shoen II.

23 I know the Supreme Court wants to give it a new name, but
24 it's --

25 MR. FERRARIO: Okay. So what do you want to call

1 it, Shoen and Shoen II?

2 THE COURT: It's Shoen.

3 MR. FERRARIO: All right. Well, then there. You
4 got that Tami? It's Shoen from now on.

5 THE COURT: They're Shoen. They're Shoen. Both
6 Shoen. Ask Mr. Peek. They were his case.

7 MR. FERRARIO: She keeps correcting me, and then --

8 THE COURT: Yeah, she's wrong.

9 MR. FERRARIO: All right.

10 THE COURT: Lynn Shoen. His name was Lynn Shoen.

11 MR. FERRARIO: Right.

12 THE COURT: And her family is the family that was
13 fighting.

14 MR. FERRARIO: That's right. Where is she now?

15 THE COURT: I believe there's some bar proceedings.

16 MR. FERRARIO: Okay. What we're filing is what the
17 statute provides. It's a motion to dismiss for failure to
18 meet the requirements of Rule 23.

19 THE COURT: Mr. Ferrario, I absolutely understand
20 what you're filing.

21 MR. FERRARIO: And I think the Shoen cases provide
22 for that, Your Honor. And I don't know that it's fair --

23 THE COURT: You think the Shoen case provides for
24 you after the hearing of the summary judgment motions to go to
25 the board, get a change of belief as to whether a futility

1 then exists or other action should occur, and then after all
2 of the pretrial disclosure deadlines are due then to make a
3 decision right before trial?

4 MR. FERRARIO: Let me --

5 THE COURT: You think that's what Shoen says?

6 MR. FERRARIO: I don't think that --

7 THE COURT: No. I'm just trying to figure out. Do
8 you think --

9 MR. FERRARIO: No, I don't think -- I don't think --

10 THE COURT: -- that's what Shoen 1 or Shoen 2 says?

11 MR. FERRARIO: I don't think Shoen says that.

12 THE COURT: Okay.

13 MR. FERRARIO: I think what Shoen says is -- and
14 this is what we're doing. Shoen requires first of all demand
15 futility. You look at it like you did at the beginning as
16 pled. We made a motion to dismiss on that. You made
17 conclusions based on what was pled.

18 THE COURT: At the time.

19 MR. FERRARIO: At the time. Those conclusions then
20 changed with your order, okay. So with those changed
21 conclusions we now know as a matter of law that demand should
22 not have been excused. If --

23 THE COURT: That is not true, Mr. Ferrario. What
24 you know now is based on the facts elicited in discovery --

25 MR. FERRARIO: Right.

1 THE COURT: -- and a briefing in this case I have
2 made certain decisions as to whether there was a genuine issue
3 of material fact related to interestedness. That's what you
4 know. You don't know other stuff. That's what you know.

5 MR. FERRARIO: I understand. But the predicate for
6 your ruling to excuse demand was that they were interested and
7 not independent.

8 THE COURT: But there was an allegation that they
9 were interested --

10 MR. FERRARIO: Exactly.

11 THE COURT: -- that was well founded.

12 MR. FERRARIO: And what Shoen does articulate, Your
13 Honor, is that you can raise that issue during the course of
14 the proceedings. And as we've articulated, in effect your
15 ruling on summary judgment is -- supplanted the evidentiary
16 hearing that was mentioned in Shoen.

17 THE COURT: That can be had in Shoen.

18 MR. FERRARIO: Exactly. And that's what we're --

19 THE COURT: You didn't request that in this case.

20 MR. FERRARIO: We didn't have to once you did --
21 once you made your ruling.

22 THE COURT: You never requested it for the four
23 years or so we've been in litigation. Wait. We've only been
24 in litigation three years. You didn't request it after the
25 motion to dismiss was denied because it appeared the

1 allegations at that time were well founded. You never again
2 requested or renewed that motion with a request for an
3 evidentiary hearing.

4 MR. FERRARIO: You are correct, Your Honor. But
5 what we did do, and as Your Honor recalls, at the beginning of
6 this case there was a flurry of activity. The plaintiffs
7 wanted injunctions, we were on an expedited schedule.

8 THE COURT: Absolutely.

9 MR. FERRARIO: The parties called time out and we
10 pulled that injunction off, and then we set out to do
11 discovery, which would have dealt with all of this, okay. I
12 guess we could have had a separate track. But we dealt with
13 this through the course of discovery. And I don't think that
14 the fact that the issue materializes and the facts are
15 crystallized and you have a decision right before trial that
16 supports our argument regarding demand -- that that's somehow
17 been waived. This is a predicate for a plaintiff to make,
18 okay. You have to make demand or it has to be excused. Here
19 it should not have been excused. That's what your ruling
20 says, and that's why it runs afoul of Rule 23. It's a
21 standing issue.

22 THE COURT: I understand.

23 MR. FERRARIO: And he lacks standing. And I just
24 wanted to make that clear.

25 THE COURT: Sure. I appreciate you --

1 MR. FERRARIO: And my understanding of your comments
2 were that if for some reason the case gets continued, if they
3 get an affidavit that's sufficient, we can revisit these
4 issues, correct, with a more complete record? Did I
5 understand that correctly?

6 THE COURT: Then I would anticipate that you or Mr.
7 Searcy would file a motion for leave to file a new motion for
8 summary judgment and attach the draft motion. I would then
9 make a decision as to whether I wanted to hear it.

10 MR. FERRARIO: Thank you.

11 THE COURT: And it depends on a lot of timing
12 issues, because I'd probably have to reopen discovery if I
13 entertain these motions.

14 MR. FERRARIO: Understand. Thank you.

15 THE COURT: Anything else? All right. So I'll see
16 you guys at 1:00 o'clock. We are in Courtroom 3D at 1:00
17 o'clock.

18 Mr. Krum, your opposition didn't hit Odyssey, which
19 is why nobody could find it but me, which is why I had to ask
20 you for the footnote number. So you may want to check to see
21 if it got sent. Mr. Morris's did hit Odyssey.

22 MR. KRUM: Thank you, Your Honor. We will.

23 THE COURT: 1:00 o'clock, 3D.

24 THE PROCEEDINGS CONCLUDED AT 10:24 A.M.

25 * * * * *

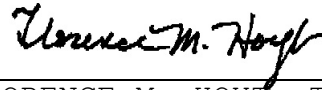
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

1/9/18

DATE

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

22 JAMES J. COTTER, JR.,) Case No. A-15-719860-B
23 derivatively on behalf of Reading	) Dept. No. XI
24 International, Inc.,)
25 Plaintiff,	) Coordinated with:
26 v.)
27 MARGARET COTTER, ELLEN	) Case No. P-14-0824-42-E
28 COTTER, GUY ADAMS,	) Dept. No. XI
EDWARD KANE, DOUGLAS)
McEACHERN, WILLIAM	) Jointly Administered
GOULD, JUDY CODDING,)
MICHAEL WROTHIAK,	) PLAINTIFF JAMES J. COTTER
Defendants.	) JR.'S MOTION FOR OMNIBUS
And	) RELIEF
READING INTERNATIONAL,	) AND
INC., a Nevada corporation,	) APPLICATION FOR ORDER
Nominal Defendant.	) SHORTENING TIME AND
	) ORDER SHORTENING TIME

04-23-10P12:10 RCVD

Pursuant to N.R.C.P. 16, 26, 34, 37, 45, and EDCR 2.34, plaintiff James J. Cotter ("Plaintiff") hereby moves the Court for relief against Greenberg Traurig ("GT"), the remaining individual defendants, former defendants William Gould, Judy Coddling, and Doug McEachern, and nominal defendant Reading International, Inc. ("RDI") based on the apparent intentional failure of RDI, Coddling, McEachern, and Gould to either produce or list on a privilege log an obviously and indisputably discoverable document concerning the very purported ratifications upon which they previously based a motion for summary judgment: The minutes of a December 21, 2017 meeting of a so-called Special Independent Committee of the RDI Board of Directors, about which each of the committee members (McEachern, Coddling, and Gould) testified and admitted that the subject of ratification was addressed at that meeting. Although those minutes were directly responsive to Plaintiff's January 12, 2018 discovery requests and subpoenas, those minutes were not produced by RDI's counsel of record until April 12, 2018, and then only in redacted form that discloses literally nothing other than that a meeting of the referenced committee occurred and redacts, among other things, the subject matter(s) of the meeting and any decisions that were made at the meeting.

In particular and without limitation, Plaintiff respectfully requests that the Court:

(1) Schedule an evidentiary hearing to determine whether the failure to produce and/or list the December 21, 2017 Special Independent Committee meeting minutes on a privilege log any time prior to the belated production of the document (redacted of all substance and subject matter) on April 12, 2018 was intentional. If that proves to be the case, Plaintiff asks that the Court preclude defendants, RDI, the former director defendants and any person or entity acting at the behest or direction of any of them from

1 introducing or using any evidence of any purported ratification, and from
2 seeking dismissal of this action based on any purported ratification,
3 including in particular the purported ratifications of December 29, 2017,
4 whether by motion (including a renewed summary judgment motion)
5 and/or at trial.

6 (2) In the alternative, Order Coddington, McEachern, Gould, and
7 RDI to produce all documents, including emails, agenda, meeting minutes
8 and handwritten notes, which mention, concern or in any way relate to any
9 meeting of the so-called Special Independent Committee of the RDI Board of
10 Directors, the members of which are Gould, Coddington and McEachern, at
11 which anything concerning or relating to ratification was referenced,
12 discussed and/or formally acted upon, including an unredacted version of
13 minutes from a December 21, 2017 telephonic meeting of the referenced
14 Committee;

15 (3) Conduct an *in camera* inspection of an unredacted version of
16 the December 21, 2017 Special Independent Committee meeting minutes to
17 determine whether it should be (i) produced in unredacted form, (ii)
18 produced in a partially redacted form different than the wholly redacted
19 form in which it was produced or, (iii) if neither, properly logged on the
20 privilege log(s) of those who possess it; and

21 (4) Order Gould, Coddington and McEachern to appear for further
22 deposition, should Plaintiff choose to depose them further after these
23 matters are resolved, and order that the travel and lodging costs incurred by
24 counsel for Plaintiff to further depose any one or all of Gould, Coddington and
25 McEachern with respect to these matters be awarded against the
26 respondents to this motion.

27 Plaintiff further moves the court, under EDCR 2.26, for an order
28 shortening the time for hearing this motion.

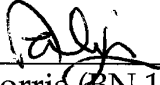
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1 This Motion is based upon the pleadings and papers on file, the
2 declaration of Mark G. Krum, the exhibits attached hereto, the following
3 memorandum of points and authorities, and any oral argument.

4 DATED this 23rd day of April, 2018

5 Morris Law Group

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ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor, IT IS HEREBY ORDERED, that the hearing on James J. Cotter, Jr.'s Motion to For Omnibus Relief shall be heard before the above-entitled Court in Department XI, before Judge Elizabeth Gonzalez on the 30 day of April, 2018, at 8:30 a.m./p.m., or as soon thereafter as counsel may be heard, at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101.

DATED this 23rd day of April, 2018


DISTRICT COURT JUDGE

Respectfully submitted:

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By: 

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**DECLARATION OF MARK G. KRUM IN SUPPORT OF ORDER
SHORTENING TIME ON JAMES J. COTTER, JR.'S MOTION FOR
OMNIBUS RELIEF**

I, Mark G. Krum, Esq., being duly sworn, deposes and says that:

1. I am an attorney with the firm Yurko, Salvesen & Remz, P.C., attorneys for James J. Cotter, Jr., plaintiff in the above-captioned action ("Plaintiff").

2. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this Declaration, I am legally competent to testify to the contents of this Declaration in a court of law.

Reason for Order Shortening Time

3. This motion is brought because William Gould, Judy Coddington and Doug McEachern, members of the Reading International, Inc. ("RDI") board of directors (the "Board") and the so-called "Special Independent Committee" of that Board, failed to timely produce at least one critical document responsive to the January 12, 2018 subpoenas and document requests served on them through counsel, namely, minutes from a December 21, 2017 meeting of the referenced committee. Those minutes were produced for the first time on April 12, 2018 by counsel of record for RDI. This Motion also is directed at RDI because its counsel of record, Greenberg Traurig ("GT"), also purports to act as counsel to the so-called Special Independent Committee and, as such, failed to timely produce and/or log the December 21, 2017 meeting minutes.

4. The Motion also is brought because, as produced on April 12, 2018 after the depositions of each of Coddington, McEachern and Gould, the December 21, 2017 meeting minutes are redacted of all substance and all reference even to the subject(s) of the meeting, presumably on the basis of

1 unidentified claims of privilege. Counsel for Plaintiff respectfully submits
2 that it is unlikely that minutes of a meeting of a board committee do not
3 even identify the subject(s) discussed and/or whether any decision was
4 reached or formal action authorized by the committee with respect to the
5 unidentified subject(s). That is particularly so in view of the fact that, on
6 April 5, 2018, Gould testified at his deposition that the committee formally
7 took action regarding ratification at the December 21, 2017 meeting.

8 5. Additionally, each of Gould, Coddington, McEachern and RDI
9 failed to list the December 21, 2017 meeting minutes as withheld based on
10 claims of privilege on any privilege log. After those minutes were belatedly
11 produced on April 12, 2017, Plaintiff's counsel asked that the obviously
12 improperly redacted document be properly identified on the privilege log,
13 but that has not occurred.

14 6. Finally, counsel of record for RDI and counsel for the referenced
15 directors have failed to explain their failure to timely produce or log the
16 December 21, 2017 minutes, to explain why they were not produced or
17 logged after they were specifically requested, or to explain why the
18 substance and subject matter of the belatedly produced redacted version of
19 those minutes is redacted completely. GT lawyers (Bonner and Ferrario)
20 attended the December 21, 2017 committee meeting and it is highly unlikely
21 that the lawyers representing the remaining defendants and Coddington and
22 McEachern did not know of the meeting, independent of Coddington's
23 testimony that two of those lawyers (Messrs. Tayback and Searcy) also
24 advised the Litigation Committee. (See Ex. 8, Coddington 2/28/18 dep. tr. at
25 207:6-208:24.)

26 7. Additionally, there was deposition testimony that the Litigation
27 Committee considered ratification prior to December 2017, but no
28 documents pre-dating December 2017 were produced or listed on a

1 privilege log. McEachern testified that the subject of ratification was first
2 raised "sometime" in the late Fall of 2017, but that the subject was tabled.
3 (See Ex. 7, McEachern 2/28/18 dep.tr. at 548:21-549:13.) Gould testified that
4 the first communication he recalled regarding ratification was telephonically
5 in mid or late November 2017 with GT attorneys Bonner and Ferrario;
6 Gould clarified that that communication was in his capacity as the
7 chairperson of the Litigation Committee. (See Ex. 6, Gould 4/5/18 dep. tr. at
8 14:19-15:13.)

9 8. The forgoing testimony suggests that additional documents
10 relating to ratification and predating December 2017 should exist. However,
11 none have been produced and none have been listed on a privilege log.
12 Counsel for RDI has represented that there are no other Litigation
13 Committee meeting minutes referencing or concerning ratification. Counsel
14 for the remaining individual defendants and the dismissed directors other
15 than Gould has stated that no documents concerning ratification and
16 predating December 2017 have been located. (See Exs, 10, 11, email chains)

17 9. We find it incredible that there is not even one document to
18 produce or log, in view of the deposition testimony of McEachern and
19 Gould that the Litigation Committee members discussed ratification with
20 GT lawyers prior to December 2017. Even if ratification had not been an
21 agenda item and was merely discussed and tabled, it should have been
22 identified as a matter discussed in the minutes of the Litigation Committee
23 meeting(s) at which it was discussed. Additionally, even if the minutes
24 failed to do so, Litigation Committee members and/or their counsel (GT)
25 should be able to identify the meeting(s) in question and produce the emails
26 scheduling the meeting(s) (which is what we understand Mr. Gould did in
27 producing the single email he produced, in which Mr. McEachern asks only
28 if there is a call scheduled for the date of the email).

1 10. Plaintiff respectfully submits that this Motion should be heard
2 on an order shortening time because unless and until Plaintiff obtains the
3 documents and information responding parties are obligated to provide but
4 have not provided, Plaintiff will not be able to complete the discovery he
5 needs and to which he is entitled with respect to the purported "ratification"
6 by Gould, Coddling McEachern and two other former director defendants of
7 certain prior actionable conduct. For such reasons, Plaintiff respectfully
8 submits that the Motion should be heard on an order shortening time rather
9 than in the ordinary course.

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

12 **Discovery Disputes and EDCR 2.34 Conference**

13 12. On January 12, 2018 Plaintiff served requests for the production
14 of documents on RDI, and a subpoena *duces tecum* commanding the
15 production of documents, service of which was accepted by counsel, on
16 Judy Coddling, William Gould, and Douglas McEachern. (Exs. 1, 2, 3, and 4.)

17 13. On February 15, 2018, RDI served written objections and
18 responses and produced documents in response to Plaintiff's document
19 requests, along with a privilege log. After I conferred with RDI's counsel
20 regarding the inadequacy of the privilege log, counsel for RDI produced a
21 superseding privilege log on February 22, 2018. The document production
22 did not include the December 21, 2017 meeting minutes and the privilege
23 log contain any reference to those meeting minutes.

24 14. On January 29, 2018, written objections and responses to the
25 document requests contained in the subpoena *duces tecum* were served on
26 behalf of Ms. Coddling and Mr. McEachern. I conferred with counsel for Ms.
27 Coddling and Mr. McEachern by telephone on February 8, 2018 regarding
28 the disputed document requests and objections to the document requests,

1 and we ultimately came to an agreement on February 14, 2018 as to what
2 documents the Dismissed Directors were to produce. Ms. Coddington and Mr.
3 McEachern produced documents on February 19, 2019. Their production did
4 not include the December 21, 2017 meeting minutes, nor were those minutes
5 logged in any privilege log.

6 15. On January 25, 2018 written objections and responses to the
7 document requests contained in the subpoena *duces tecum* were served on
8 behalf of Mr. Gould. Mr. Gould did not produce documents until March 30,
9 2018, at which time he produced a single email, and a privilege log
10 containing only six entries. His production did not include the December 21,
11 2017 meeting minutes, nor was the document referenced in his privilege log.

12 16. In the course of deposing Ms. Coddington, I learned for the first
13 time that a meeting of a so-called Special Independent Committee (*i.e.*, the
14 "Litigation Committee"), comprised of Ms. Coddington, Mr. McEachern, and
15 Mr. Gould, had taken place in December 2017 ("a couple days" prior to the
16 December 29 Board meeting, according to Ms. Coddington's deposition
17 testimony). Mr. McEachern's February 28, 2018 deposition testimony was so
18 equivocal that it was not clear whether there had been a (telephonic)
19 meeting of the referenced committee or of the full RDI board. (*See* Ex. 7,
20 McEachern 2/28/18 dep.tr. at 510:6-511:17.) Ms. Coddington's testimony later
21 the same day was clear enough that a committee meeting had occurred that
22 I then requested of Messrs. Ferrario and Tayback that the meeting minutes
23 be produced. (Ex. 8, Coddington 2/28 dep. tr. at 210:12-15). I reiterated the
24 specific request for those meeting minutes at the end of the deposition of
25 Michael Wrotniak on March 6, 2018. Mr. Searcy was present in person and
26 Ms. Hendricks telephonically; Mr. Searcy responded that he believed Mr.
27 Ferrario was handling the request and that he (Searcy) would follow up
28 with Mr. Ferrario on it. (*See* Ex. 9, Wrotniak dep. tr. at 93:16-94:2.) In view of

1 the fact that Mr. Gould was chair of that committee, I anticipated that his
2 production would include those meeting minutes, which expectation proved
3 erroneous when Gould effectively produced nothing on March 30, 2018.

4 17. It was not until April 12, 2018 that Greenberg Traurig ("GT"),
5 counsel for RDI, produced heavily redacted minutes from the December 21,
6 2017 meeting, even though those minutes were responsive to multiple of the
7 January 12, 2018 document requests propounded on RDI, Ms. Coddington, and
8 Mr. McEachern. (Ex. 5). Even then, the production occurred only because I
9 reiterated (on April 5 at Gould's deposition and again by email dated April
10 9) our specific request for the meeting minutes, having learned for the first
11 time at the April 5, 2017 Gould deposition that the Litigation Committee had
12 taken formal action at that meeting regarding ratification. (Ex. 10, Hendricks
13 email chain).

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15 Executed this 23rd day of April, 2018

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Mark G. Krum, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Notwithstanding the fact that on January 12, 2018, Plaintiff propounded document requests regarding ratification to RDI, each of the remaining director defendants, and each of the now dismissed directors, and notwithstanding the fact that all except former defendant and RDI director William Gould purported to have produced or logged as privileged all responsive documents by February 22, 2018, it was not until April 12, 2018 that an obviously and indisputably important, responsive document relating to the purported ratifications was produced. That document is minutes of a December 21, 2017 meeting of the so-called Special Independent Committee (*i.e.*, the "Litigation Committee") of RDI's board. The members of that Committee are former defendants and current RDI directors Gould, McEachern and Coddington, who were three of the five "ratifying" directors. According to Gould's April 5, 2018 deposition testimony, quoted and cited below, the Litigation Committee took formal action in furtherance of the purported ratifications at that December 21, 2017 meeting. These minutes are directly relevant to the purported ratification that took place on December 29, including to whether the decision to "ratify" the prior decisions was made in good faith or a mere litigation tactic, as Gould acknowledged in his deposition testimony.

Moreover, when the December 21, 2017 Litigation Committee meeting minutes were belatedly produced on April 12, 2018, they were produced in a wholly redacted form—literally everything of substance was redacted. Plaintiff respectfully submits that that is unusual, if not unbelievable, particularly in view of Gould's April 5, 2018 testimony that the committee took formal action at this meeting. After receipt of that wholly redacted minutes, counsel for Plaintiff asked that the redactions be corrected

1 and/or that the minutes be properly identified on a privilege log. Neither
2 has happened.

3 No explanation has been proffered for the failure to timely
4 produce or log the December 21, 2017 Litigation Committee meeting
5 minutes. Committee members have identified GT as counsel who advised
6 the Committee (although Ms. Coddington also identified Quinn attorneys
7 Tayback and Searcy), and the redacted minutes of the December 21, 2017
8 Litigation Committee meeting show that it was attended by GT attorneys
9 Michael Bonner and Mark Ferrario. Counsel for Plaintiff understands that
10 GT lawyers prepared the December 21, 2017 Litigation Committee meeting
11 minutes. Additionally, the record is clear from the testimony of the
12 committee members and the privilege log produced by GT (whether for RDI
13 or the Litigation Committee), that GT lawyers conceived the "ratification"
14 scheme and participated in every step in furtherance of it. It likewise
15 appears that counsel for Ms. Coddington and Mr. McEachern was aware of the
16 meeting and of the minutes. Mr. Gould, as chair of the Litigation Committee
17 according to his April 5, 2018 deposition testimony, played a unique role in
18 interfacing with GT attorneys and, as an attorney himself, surely understood
19 the importance of producing and/or logging the minutes of the December
20 21, 2017 Litigation Committee meeting. These facts and others suggest that it
21 is highly unlikely that the failure to timely produce and/or log the
22 December 21, 2017 Litigation Committee meeting minutes was
23 unintentional. The absence of any explanation of why those minutes were
24 not timely logged and/or produced likewise weighs against the possibility
25 that it was an oversight.

26 Additionally, there was deposition testimony that the Litigation
27 Committee considered ratification prior to December 2017, but no
28 documents pre-dating December 2017 were produced or listed on a

1 privilege log. McEachern testified that the subject of ratification was first
2 raised "sometime" in the late Fall of 2017, but that the subject was tabled.
3 Gould testified that the first communication he recalled regarding
4 ratification was telephonically in mid or late November 2017 with GT
5 attorneys Bonner and Ferrario. The forgoing testimony suggests that
6 additional documents relating to ratification and predating December 2017
7 should exist. However, none have been produced and none have been listed
8 on a privilege log.

9 In view of the foregoing, and for the reasons described herein,
10 Plaintiff respectfully requests an order: (1) setting an evidentiary hearing
11 and such evidentiary sanctions that are warranted; (2) compelling further
12 production of documents; (3) for an *in camera* inspection of the December 21
13 minutes; and, as necessary, (4) compelling further deposition testimony
14 from Gould, Coddington, and McEachern.

15 II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

16 As the Court will recall, defendants filed untimely motions for
17 summary judgment the first week of January, long after discovery had
18 concluded and days before trial was scheduled to commence.

19 One of those motions reasserted demand futility and the other
20 motion was based upon purported "ratifications" at a December 29, 2017
21 board meeting of certain prior actionable conduct that indisputably had not
22 been approved by a majority of disinterested and independent directors.
23 The Court denied both untimely motions without prejudice. After the trial
24 was continued, the Court ruled that Plaintiff was entitled to discovery with
25 respect to the matters raised by the motions. The Court further ruled that
26 defendants, if they wished to renew those motions after Plaintiff had
27 completed the discovery to which he was entitled, should file motions for
28

1 permission to do so, attaching to those motions drafts of the proposed,
2 renewed motions.

3 On January 12, 2018 Plaintiff served requests for the production
4 of documents on RDI, and a subpoena *duces tecum* commanding the
5 production of documents, service of which was accepted by counsel, on
6 Judy Coddington, William Gould, and Douglas McEachern. (Exs. 1, 2, 3, and 4.)

7 On February 15, 2018, RDI served written objections and
8 responses and produced documents in response to Plaintiff's document
9 requests, along with a privilege log. After Plaintiff's counsel conferred with
10 RDI's counsel regarding the inadequacy of the privilege log, counsel for RDI
11 produced a superseding privilege log on February 22, 2018. The document
12 production did not include nor did the privilege log contain any reference to
13 the December 21, 2017 meeting minutes. (Krum Declaration, ¶13)

14 On January 29, 2018 written objections and responses to the
15 document requests contained in the subpoena *duces tecum* were served on
16 behalf of Ms. Coddington and Mr. McEachern. Counsel for Plaintiff and counsel
17 for the Dismissed Directors conferred by telephone on February 8, 2018
18 regarding the disputed document requests and objections to the document
19 requests, and ultimately came to an agreement on February 14, 2018 as to
20 what documents the Dismissed Directors were to produce. Ms. Coddington and
21 Mr. McEachern produced documents on February 19, 2019. Their
22 production did not include the December 21, 2017 meeting minutes, nor
23 were those minutes logged in any privilege log. (Krum Declaration, ¶14)

24 On January 25, 2018 written objections and responses to the
25 document requests contained in the subpoena *duces tecum* were served on
26 behalf of Mr. Gould. Mr. Gould did not produce documents until March 30,
27 2018, at which time he produced a single email, and a privilege log
28 containing only six entries. His production did not include the December 21,

1 2017 meeting minutes, nor was the document referenced in his privilege log.
2 (Krum Declaration, ¶15).

3 In the course of deposing Ms. Coddington, Plaintiff's counsel
4 learned for the first time that a meeting of a so-called Special Independent
5 Committee (i.e., the "Litigation Committee"), comprised of Ms. Coddington, Mr.
6 McEachern and Mr. Gould, had taken place (on or about December 27, 2017,
7 according to Coddington), and requested then and thereafter that the minutes
8 from that meeting be produced. (Krum Declaration, ¶16)

9 It was not until April 12, 2018 that Greenberg Traurig ("GT"),
10 counsel for RDI, produced heavily redacted minutes from the December 21,
11 2017 meeting, even though those minutes were responsive to multiple of the
12 January 12, 2018 document requests propounded on RDI, Ms. Coddington, and
13 Mr. McEachern. (Ex. 5)

14 Defendants never raised a question about whether the December
15 21, 2017 Litigation Committee meeting minutes should have been produced
16 or listed on a privilege log. Nor, after having been admonished by the Court
17 to provide a Rule 16.1 supplement with such documents, did defendants do
18 so. In this regard, at the January 8, 2017 hearing at which the Court denied
19 the summary judgment motion based on the purported December 29, 2017
20 ratifications, the Court stated as follows:

21 THE COURT: Well, if you intended to use it, one would have
22 thought you would have already done a 16.1 supplement, Mr.
23 Ferrario.

24 MR. FERRARIO: Your Honor, with all due respect, this
25 happened very quickly over the holidays. And, you know, we're
26 now here dealing with --

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THE COURT: you told me about it before it was going to happen, so I would have thought that you will file the supplement before you did it.

(See Ex. 12, 1/8/18 hearing tr. at 31:5-13.)

III. ARGUMENT

A. Responding Parties Withheld and Failed to Log An Extremely Important Document, Warranting an Evidentiary Hearing and Sanctions.

Rule 45(e) allows a party to seek an order to show cause why a third-party should not be held in contempt for failure to abide by a subpoena. Courts may sanction third parties served with a subpoena for a "willful disregard" of the procedures of Rule 45. *Humana Inc. v. Eighth Judicial Dist. Court*, 110 Nev. 121, 123, 867 P.2d 1147, 1149 (1994)(involving monetary sanction of \$500.00). As the facts described above and the argument below demonstrate, it is clear that former director defendants Coddington, McEachern and Gould, as well as RDI, willfully disregarded their obligations to produce and/or log December 21, 2017 Litigation Committee meeting minutes.

Consistent with what the Court ordered in view of the previously filed summary judgment motion based upon the purported ratifications by Gould, McEachern, Coddington and two other directors on December 29, 2017, Plaintiff sought discovery regarding what each of those five directors did with respect to the purported ratifications, including when they decided, how they decided and so forth, including whether what they did and/or learned was part of a "litigation strategy" (Gould's words) to produce a preordained result. (See Ex. 6, Gould 4/5/18 dep. tr at 46:15-18 ("ratification might be a litigation strategy")). Knowing the exact chronology of events therefore was important if not critical to the ability to examine

1 those five directors at deposition. That was particularly so because the
2 documents produced in response to Plaintiff's January 12, 2018 document
3 requests effectively were only (i) a December 27, 2017 email from Gould on
4 behalf of the five requesting that the ratification matters be placed on the
5 agenda at a December 29, 2017 board meeting or that a special meeting be
6 scheduled, (ii) the board package for the December 29, 2017 meeting
7 delivered electronically at approximately 5:30 p.m. on December 27 and (iii)
8 draft minutes of the December 29, 2017 board meeting. Counsel for Plaintiff
9 therefore was required to scrutinize the only privilege log produced, by
10 counsel of record for RDI, to identify what appeared to be very little prior
11 activity. That privilege log did not include any entries for minutes of a
12 December 21, 2017 Litigation Committee meeting.

13 After each of the three members of the Litigation Committee had
14 been deposed by Plaintiff, including Gould on April 5, 2018, counsel of
15 record for nominal defendant RDI on April 12, 2018 belatedly produced
16 minutes of a December 21, 2017 meeting of the so-called Special
17 Independent Committee (*i.e.*, the "Litigation Committee"). That document
18 was responsive to multiple document requests Plaintiff had propounded to
19 RDI and to each of the Litigation Committee members Gould, McEachern,
20 and Coddling on January 12, 2018. For example, Plaintiff asked RDI and
21 Coddling and McEachern for "[a]ll documents relating to the decision to call
22 the [December 29] Meeting to ratify the prior decisions." (Ex. 1, RFP No. 6 to
23 RDI; Ex. 2 Coddling Subpoena, No. 10; Ex. 4, McEachern Subpoena, No. 10).
24 Plaintiff also asked Coddling for "[a]ll documents relating to any advice
25 requested or given by counsel *prior* to the [December 29] Meeting." (Ex. 2,
26 No. 9) (emphasis added). Indeed, the December 21, 2017 minutes are
27 responsive to most of the particularized document requests, including for
28 example request numbers 1-4, 7, 9-12, and 14-19 to each of Coddling,

1 McEachern and Gould. (Ex. 3, Nos. 5,6, 8-12, 14-19.) The same is true for
2 particularized requests for documents propounded to RDI, including in
3 particular request numbers 1-10, 13, 16 and 17. (*See* Ex. 1.) Notwithstanding
4 the foregoing, and notwithstanding their obligations under Rule 16.1, none
5 of Coddling, McEachern, Gould or RDI produced the December 21, 2017
6 Litigation Committee meeting minutes or logged it as privileged prior to
7 April 12, 2018. Counsel for Plaintiff therefore had no knowledge of the
8 December 21, 2017 meeting prior to the depositions of the committee
9 members.

10 The deposition testimony of two of the three committee
11 members regarding the December 21, 2017 meeting and to the minutes of it
12 was less than clear, whether by design or oversight. McEachern at his
13 deposition the claimed uncertainty as to whether the telephonic meeting
14 with Mr. Bonner and/or Mr. Ferrario "was an entire board meeting or ... a
15 meeting of the special committee of myself, Bill Gould and Judy Coddling. I
16 suspect it was the three of us." (*See* Ex. 7, McEachern 2/28/18 dep.tr. at
17 510:6-511:17.) McEachern also claimed to be uncertain about the status of
18 minutes from that meeting, testifying that he believed there were drafts, but
19 was "not sure if the committee's approved them or not. I know they have
20 not been presented to the board." (*Id.*, McEachern 2/28/18 dep.tr. at 545:1-
21 11.) Coddling testified that the Litigation Committee meeting occurred "[j]ust
22 a couple of days" before the December 29, 2017 board meeting and that there
23 are meeting minutes "that have not been approved... with our attorney,"
24 whom she identified as Messrs. Bonner and Ferrario of GT and Messrs.
25 Tayback and Searcy of the Quinn firm. (*See* Ex. 8, Coddling 2/28/18 dep. tr.
26 at 207:6-208:24.)

27 Litigation Committee chair Gould was decidedly more definitive
28 about what the Litigation Committee did and concluded on December 21,

1 2018, as well as about the status of its minutes. Gould testified that the
2 Litigation Committee "formally [took] action," which was to "request[] that
3 the Company include the subject [of ratification] on the agenda for its next
4 meeting, and call for a special meeting if there was not a regular meeting
5 being scheduled." (*See* Ex. 6, Gould 4/5/18 dep. tr. at 33:17-25.) As to
6 minutes of the December 21, 2017 Litigation Committee meeting, Gould
7 testified that the minutes had been prepared and that he believed that they
8 had been approved by the committee. (*Id.*, Gould 4/5/18 dep. tr. at 33:5-12.)

9 Because the December 21, 2017 Litigation Committee meetings
10 minutes were neither logged nor produced, Plaintiff prior to taking
11 depositions did not even know that the meeting had occurred, much less
12 when it had occurred and that it concerned ratification. In fact, counsel for
13 Plaintiff did not know until the April 5, 2018 deposition of Gould that the
14 Litigation Committee had formally considered, much less formally acted in
15 furtherance of, ratification. Until April 12, 2018, the date on which the
16 (wholly redacted) minutes were produced, Plaintiff had understood that this
17 Litigation Committee meeting occurred on or about December 27, 2017,
18 because Coddington's deposition testimony placed it on or about December 27
19 and that comported with entries about other communications on the
20 privilege log produced by counsel for RDI. As described above, the three
21 members of the Litigation Committee were unable to remember exactly
22 when the meeting occurred and provided differing testimony about what
23 transpired at it, insofar as they were not instructed not to answer questions
24 about the meeting. Without the benefit of possessing the meeting minutes,
25 and without an entry on a privilege log identifying the meeting, counsel for
26 Plaintiff at those depositions was unable to conduct the examination he
27 otherwise would have conducted, including with respect to matters that will
28 be at issue in a renewed ratification summary judgment motion.

1 Simply put, the ability of Plaintiff to obtain the discovery to
2 which he is entitled, and which he needs, to respond to a renewed summary
3 judgment based on the purported ratifications, or to respond to such a
4 defense raised at trial, has been materially impaired by the failure of RDI
5 and the Litigation Committee meeting members, acting through the same
6 lawyers who represent the remaining defendants, to produce or log the
7 December 21, 2017 minutes in a timely manner. For that reason, Plaintiff
8 requests an evidentiary hearing and such other relief, including evidentiary
9 sanctions, as the Court deems just and proper under the circumstances.

10 **B. The December 21, 2017 Minutes Belatedly Produced on April**
11 **12, 2018 Were Improperly Redacted.**

12 When the December 21, 2017 Litigation Committee meeting
13 minutes were produced belatedly on April 12, 2018, the minutes were
14 produced in an entirely redacted state; nothing other than the meeting being
15 called and adjourned is reflected in the version produced. *See* Ex. 5. Such
16 redactions imply that the minutes reflect no discussions, deliberations or
17 decisions by the members of the Litigation Committee, but instead consist
18 solely of attorney advice, presumably regarding ratification. However, the
19 April 5, 2018 deposition testimony of Gould, discussed below, was that the
20 litigation committee "formally [took] action" on December 21, 2018. If so,
21 that information has been improperly redacted. *See Wardleigh v. Second*
22 *Judicial Dist. Ct.*, 111 Nev. 345, 352, 891 P.2d 1180, 1184 (1995) (holding that
23 facts are not privileged "even if such facts were related to the corporate
24 attorney as part of the employee's communication with counsel").

25 For such reasons, Plaintiff asks that RDI produce to the Court an
26 unredacted version of the December 21, 2017 litigation committee meeting
27 minutes for an *in camera* inspection and determination whether it should be
28 produced in its entirety, produced with redactions different from those

1 made or, if neither, order that it be properly logged and sufficiently
2 described on a privilege log, as Nev. R. Civ. P. 26(b)(5) requires.

3 **C. Plaintiff Is Entitled To SPECIFIC Formal Assurances That No**
4 **Other Responsive Documents That Should Have Been**
5 **Produced And/Or Logged Have Been Withheld.**

6 Additionally, there was deposition testimony that the Litigation
7 Committee considered ratification prior to December 2017, but no
8 documents pre-dating December 2017 were produced or listed on a
9 privilege log. McEachern testified that the subject of ratification was first
10 raised "sometime" in the late Fall of 2017, but that the subject was tabled.
11 (See Ex. 7, McEachern 2/28/18 dep.tr. at 548:21-549:13.) Gould testified that
12 the first communication he recalled regarding ratification was telephonically
13 in mid or late November 2017 with GT attorneys Bonner and Ferrario;
14 Gould clarified that that communication was in his capacity as the
15 chairperson of the Litigation Committee. (See Ex. 6, Gould 4/5/18 dep. tr. at
16 14:19-15:13.)

17 The forgoing testimony suggests that additional documents
18 relating to ratification and predating December 2017 should exist. However,
19 none have been produced, whether by RDI, Gould, Coddington and/or
20 McEachern, and neither Gould's (otherwise incomplete) privilege log nor
21 RDI's privilege log lists a single document pre-dating December 2017.
22 (Coddington and McEachern provided no privilege logs.)

23 Counsel for RDI has represented that there are no other
24 Litigation Committee meeting minutes referencing or concerning
25 ratification. Counsel for the remaining individual defendants and the
26 dismissed directors other than Gould has stated that no documents
27 concerning ratification and predating December 2017 have been located.

28 Plaintiff finds it incredible that there is not even one document to
produce or log, in view of the deposition testimony of McEachern and

1 Gould that the Litigation Committee members discussed ratification with
2 GT lawyers prior to December 2017. Even if ratification had not been an
3 agenda item and was merely discussed and tabled, it should have been
4 identified as a matter discussed in the minutes of the Litigation Committee
5 meeting(s) at which it was discussed. Additionally, even if the minutes
6 failed to do so, Litigation Committee members and/or their counsel (GT)
7 should be able to identify the meeting(s) in question and produce the emails
8 scheduling the meeting(s) (which is what Gould did in producing the single
9 email he produced).

10 In view of the foregoing, Plaintiff requests that the Court order
11 RDI, Coddling, Gould, and McEachern to confirm, under oath, that no other
12 documents exist, or, in the alternative, that the Court include as part of the
13 evidentiary hearing sought by this motion the issue of whether documents
14 concerning ratification predating December 2017 exist, including in
15 particular emails, minutes, notes or other documents relating to Litigation
16 Committee meetings in the Fall of 2017, in view of the fact that when
17 ratification first was discussed as an issue that could be outcome-
18 determinative with respect to a motion by the remaining defendants for
19 leave to refile their ratification summary judgment motion.

20 **D. An Order Compelling Production of All Responsive**
21 **Documents is Warranted.**

22 Pursuant to Nev. R. Civ. P. 37(a) and 45(c)(2)(B), the responding
23 parties should be ordered to produce any and all documents, including
24 emails, agenda, meeting minutes and handwritten notes which mention,
25 concern or in any way relate to any meeting of the so-called Special
26 Independent Committee of the RDI Board of Directors, the members of
27 which are Gould, Coddling and McEachern, at which anything concerning or
28 relating to ratification was referenced, discussed and/or formally acted
upon. As explained above, such documents are responsive to several of

Plaintiff's document requests, which defendants do not dispute. Only with the benefit of such an order can Plaintiff be assured that other responsive documents that should have been produced and/or logged were not simply withheld.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court:

(1) Schedule an evidentiary hearing to determine whether the failure to produce and/or list the December 21, 2017 Special Independent Committee meeting minutes on a privilege log any time prior to the belated production of the document (redacted of all substance and subject matter) on April 12, 2018 was intentional. If that proves to be the case, Plaintiff asks that the Court preclude defendants, RDI, the former director defendants and any person or entity acting at the behest or direction of any of them from introducing or using any evidence of any purported ratification, and from seeking dismissal of this action based on any purported ratification, including in particular the purported ratifications of December 29, 2017, whether by motion (including a renewed summary judgment motion) and/or at trial.

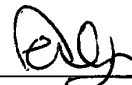
(2) In the alternative, Order Coddington, McEachern, Gould, and RDI to produce all documents, including emails, agenda, meeting minutes and handwritten notes, which mention, concern or in any way relate to any meeting of the so-called Special Independent Committee of the RDI Board of Directors, the members of which are Gould, Coddington and McEachern, at which anything concerning or relating to ratification was referenced, discussed and/or formally acted upon, including an unredacted version of minutes from a December 21, 2017 telephonic meeting of the referenced Committee;

1 (3) Conduct an *in camera* inspection of an unredacted version of
2 the December 21, 2017 Special Independent Committee meeting minutes to
3 determine whether it should be (i) produced in unredacted form, (ii)
4 produced in a partially redacted form different than the wholly redacted
5 form in which it was produced or, (iii) if neither, properly logged on the
6 privilege log(s) of those who possess it;

7 (4) Order Gould, Coddington and McEachern to appear for further
8 deposition, should Plaintiff choose to depose them further after these
9 matters are resolved, and order that the travel and lodging costs incurred by
10 counsel for Plaintiff to further depose any one or all of Gould, Coddington and
11 McEachern with respect to these matters be awarded against the
12 respondents to this motion: and

13 (5) Provide Plaintiff such additional relief as the Court
14 determines warranted under the circumstances.
15
16
17

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28

CERTIFICATE OF SERVICE

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

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255 East Warm Springs Road, Ste. 110
Las Vegas, Nevada 89119

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Douglas McEachern, Judy Coddington, and
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Gould

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Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 23rd day of April, 2018.

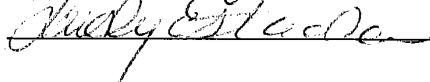
By: 

EXHIBIT 1

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

REQT

MORRIS LAW GROUP
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Email: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

) Case No. A-15-719860-B
) Dept. No. XI
)
) Coordinated with:
)
) Case No. P-14-0824-42-E
) Dept. No. XI
)
) Jointly Administered
)
) **PLAINTIFF JAMES COTTER,
JR.'S REQUEST FOR
PRODUCTION OF
DOCUMENTS TO NOMINAL
DEFENDANT READING
INTERNATIONAL, INC.**

1 Plaintiff James J. Cotter, Jr. ("JJC" or "Plaintiff") , by and through
2 his attorneys pursuant to Nevada Rule of Civil Procedure 34, hereby
3 requests that nominal defendant Reading International, Inc. ("RDI") produce
4 and make available for inspection and copying the documents and things
5 described herein, in accordance with the Definitions and Instructions set
6 forth below, at the offices of Morris Law Group, 411 E. Bonneville Ave., Ste.
7 360, Las Vegas, NV 89101 within 30 days of the date of service of this
8 request.

9 **INSTRUCTIONS**

10 1. *If any document responsive to this Request for Production has*
11 *already been produced in this action, you are not required to produce it again.*

12 2. This Request for Production is a continuing request. You
13 shall promptly produce any and all additional documents that are received,
14 discovered or created after the time of the initial production.

15 3. This Request for Production applies to all documents in
16 your possession, custody or control, and includes documents within the
17 possession, custody or control of your partners, employees, agents,
18 attorneys and representatives, wherever located, including but not limited
19 to all documents obtained by Defendants.

20 4. If you object to any request in part, you shall produce all
21 responsive documents to which the objection does not apply.

22 5. If any documents are withheld from production on the
23 alleged grounds of privilege or immunity (whether under common law,
24 statute, or otherwise), each such document is to be identified by stating: (a)
25 the identity of each person who prepared and/or signed the document; (b)
26 the identity of each person designated as an addressee; (c) the identity of
27 each person who received any copy of the document; (d) the date of the
28 document; (e) the subject matter of the document; (f) the type of document;
and (g) the basis for withholding the document.

1 6. If a document contains both privileged and non-privileged
2 material, the non-privileged material must be disclosed to the fullest extent
3 possible without thereby disclosing the privileged material. If a privilege is
4 asserted with regard to part of the material contained in a document, the
5 party claiming the privilege must clearly indicate the portions as to which
6 the privilege is claimed. When a document has been redacted or altered in
7 any fashion, identify as to each document the reason for the redaction or
8 alteration, the date of the redaction or alteration, and the person performing
9 the redaction or alteration. Any redaction must be clearly visible on the
10 redacted documents.

11 7. In the event that any document called for by this Request
12 for Production has been destroyed or discarded, that document is to be
13 identified by stating; (a) any address or any addressee; (b) any indicated or
14 blind copies; (c) the document's date, subject matter, number of pages, and
15 attachments or appendices; (d) all persons to whom the document was
16 distributed, shown or explained; (e) its date of destruction or discard,
17 manner of destruction or discard, and reason for destruction or discard; (f)
18 the persons who authorized and carried out such destruction or discard;
19 and (g) whether any copies of the document presently exist and, if so, the
20 name of the custodian of each copy.

21 8. Any copy of a document that varies in any way
22 whatsoever from the original or from any other copy of the document,
23 whether by reason of handwritten or other notation or any omission, shall
24 constitute a separate document and must be produced, whether or not the
25 original of such a document is within your possession, custody or control. A
26 request for any document shall be deemed to include a request for all drafts
27 thereof, and all revisions and modifications thereto, including any red-lined
28 versions or document comparisons, in addition to the document itself. Each

1 document is to be produced in its entirety, without abbreviation or
2 expurgation.

3 9. In producing documents, all documents that are physically
4 attached to each other when located for production shall be left so attached.
5 Documents that are segregated or separated from other documents, whether
6 by inclusion of binders, files, subfiles or by use of dividers, tabs, or any other
7 method, shall be left so segregated or separated. Documents shall be
8 retained in the order in which they were maintained and in the file where
9 found. If no documents exist that are responsive to a particular request, you
10 shall so state in writing.

11 10. Electronic records and computerized information as well
12 as documents stored electronically, including, but not limited to, electronic
13 mail and draft documents, must be produced in electronic form in an
14 intelligible format as well as in hard copy form, together with a description
15 of the system from which it was derived sufficient to permit rendering the
16 materials intelligible.

17 DEFINITIONS

18 The following Definitions shall apply herein and to each
19 Request:

20 1. "All," as used herein means "any and all" and "Any" means
21 "any and all."

22 2. "And/Or," as used herein, means either disjunctively or
23 conjunctively as necessary to bring within the scope of the Request, all
24 responses that might otherwise be construed to be outside of its scope.

25 3. "Communication," as used herein, or its plural or any
26 synonym thereof, means any exchange, transmission or receipt (whether as
27 listener, addressee, person called or otherwise) of information, whether such
28 exchange, transmission or receipt be oral, written, electronic or otherwise
and includes, without limitation, any meeting, conversation, telephone call,

1 letter, email, telegram and the exchange, transmission, or receipt of any
2 Document of any kind whatsoever.

3 4. "Concerning" "Concerns" or "Concern," as used herein, all
4 mean concerning, related to, referring to, relying on, describing,
5 memorializing, evidencing, reflecting, touching upon, or constituting in any
6 way. When used to refer to a Document and/or Writing it includes, but is
7 not limited to, all Documents and/or Writings now or previously attached
8 or appended to any Documents and/or Writings called for by a Request.

9 5. As used herein, the term "documents" means all writings
10 of any kind, including the originals and all nonidentical copies, whether
11 different from the original by reasons of any abstracts, agreements,
12 appointment records, audio recordings (whether transcribed or not), balance
13 sheets, bills, bills of lading, blueprints, books, books of account, bulletins,
14 bylaws, cablegrams, cassettes, catalogues, certificates, charts, charters,
15 checks, circulars, computer printouts, computer programs, computer tapes,
16 contracts, correspondence, data compilations from which information can be
17 obtained or translated through proper devices, data processing cards, data
18 sheets, delivery records, desk calendars, diagrams, diaries, discs, drafts,
19 electronic mail, electric or electronic records or representations, entries,
20 estimates, expense reports, field notes, files, financial analyses, financial
21 statements, forms, graphs, handbooks, income statements, indices,
22 instructions, instruments, insurance policies, insurance riders, interoffice
23 communications, intraoffice communications, invoices, itemizations,
24 journals, letters, maps, mechanical records, meeting reports, memoranda,
25 memoranda of all conversations (including telephone calls), microfiche,
26 microfilm, minutes, motion pictures, notes, notices, order forms, orders,
27 pamphlets, photographs, printed matter, prospectuses, receipts, recordings,
28 records, records of account, reports, requisitions, resolutions, retrievable
information in computer storage, returns, sketches, specifications,

1 statements, statistical records, studies, summaries, system analyses, tapes,
2 telefaxes, telegrams, teletypes, telexes, tests, text, time records, transcripts,
3 valuations, video recordings, writings, and work papers, and notations of
4 any sort of communications or conversations, and all drafts, changes and
5 amendments of any of the foregoing.

6 6. As used herein, the term "communications" means or
7 refers to inquiries, discussions, conversations, emails, negotiations,
8 agreements, understandings, meetings, telephone conversations, letters,
9 notes, memoranda, telegrams, advertisements, or other form of verbal
10 intercourse, whether oral or written, or any summaries, paraphrases or other
11 records of any of the foregoing.

12 7. As used herein, the term "all documents" means every
13 document as above defined known to you and every such document, which
14 can be located or discovered by reasonably diligent efforts.

15 8. As used herein, the terms "JJC" or "Plaintiff" shall mean
16 and refer to James J. Cotter, Jr.

17 9. As used herein, the term "JJC, Sr." refers to James J. Cotter,
18 Sr.

19 10. As used herein, the term "EC" refers to defendant Ellen
20 Cotter.

21 11. As used herein, the term "MC" refers to defendant
22 Margaret Cotter.

23 12. As used herein, the term "Kane" refers to dismissed
24 defendant Edward Kane.

25 13. As used herein, the term "Adams" refers to defendant Guy
26 Adams.

27 14. As used herein, the term "McEachern" refers to dismissed
28 defendant Doug McEachern.

1 15. As used herein, the term "Storey" refers to dismissed
2 defendant Timothy Storey.

3 16. As used herein, the term "Gould" refer to dismissed
4 defendant William Gould.

5 17. As used herein, the term "Coddling" refer to dismissed
6 defendant Judy Coddling.

7 18. As used herein, the term "RDI" refers to nominal defendant
8 Reading International, Inc.

9 19. As used herein, the term "Relate to," including but not
10 limited to its various forms such as "relating to," shall mean, consist of, refer
11 to, reflect, or be in any way logically or factually connected with the matter
12 discussed.

13 20. "Ratification" shall refer to the vote of the RDI Board of
14 Directors at special telephonic meeting held on December 29, 2017, to ratify
15 (i) actions taken by board members relating to the termination of JJC Jr. as
16 President and CEO of RDI as such actions are outlined in the minutes of the
17 Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015; and
18 (ii) the decision of the Compensation Committee of RDI, as outlined in the
19 minutes of September 21, 2015 meeting of the Compensation Committee to
20 permit the Estate of JJC Sr. to use Class A non-voting stock as a means to
21 pay for the exercise of an option to purchase 100,000 shares of Class B voting
22 stock of RDI.

23 21. Whenever appropriate, the singular form of a word should
24 be interpreted in the plural and vice versa. All words and phrases shall be
25 construed as masculine, feminine, or neuter gender, according to the
26 context. "And" as well as "or" shall be construed either disjunctively or
27 conjunctively as necessary to bring within the scope of this request any
28 information which might otherwise be construed to be outside the scope.

1 22. "Person" means or refers to any individual, corporation,
2 partnership, association, organization and any other entity of any type and
3 nature.

4 23. "Identify," when used in reference to a Person, means to:

- 5 a) state his or her full name;
6 b) state his or her present or last-known address;
7 c) state his or her present or last-known position and
8 business affiliation; and
9 d) describe his or her relationship, if any, to You.

10 24. "Identify," when used in reference to a corporation,
11 partnership, or entity, means:
12

- 13 a) state its full name;
14 b) state its present or last-known address;
15 c) state the names and addresses of its directors,
16 members, officers, directors, executives and/or
17 shareholders, as appropriate;
18 d) set forth the state of its incorporation or formation, as
19 appropriate;
20 e) describe its relationship, if any, to You; and
21 f) provide specific references to any and all contracts
22 You had or have with the entity.

23 25. "Identify," when used in reference to a Document and/or
24 Writing, means to:

- 25 a) state the date of preparation, author, title (if any),
26 subject matter, number of pages, and type of
27 Document and/or Writing (e.g., contract, letter,
28 reports, etc.) or some other means of distinguishing
the Document and/or Writing;

- b) Identify each and every Person who prepared or participated in the preparation of the Document and/or Writing;
- c) Identify each and every Person who received an original or copy of the Document and/or Writing;
- d) state the present location of the Document and/or Writing;
- e) Identify each and every Person having custody or control of the Document and/or Writing;
- f) state whether any copy of the Document and/or Writing is not identical to the original by reason of shorthand, translation or other written notes, initials, or any other modifications;
- g) state, if the Document and/or Writing has been destroyed, the circumstances surrounding the reason for the destruction; and
- h) Identify, if the Document and/or Writing has been destroyed, each and every Person who destroyed, or participated in, or ordered or suggested the destruction of it.

26. Unless otherwise indicated, each request calls for any and all documents created or dated on or after January 1, 2014, including all communications by, between, among, to or from any or all of Ellen Cotter ("EC"), Margaret Cotter ("MC"), Edward Kane ("Kane"), Guy Adams ("Adams"), Doug McEachern ("McEachern"), Tim Storey ("Storey"), William Gould ("Gould") and/or nominal defendant Reading International, Inc. ("RDI").

REQUEST FOR DOCUMENTS

1. All documents relating to the termination of JJC as President and CEO of RDI.
2. All documents relating to the exercise of the option to purchase 100,000 shares of Class B voting shares of RDI, which was

1 exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of
2 JJC, Sr. on or about September 17, 2015.

3 3. All documents relating to payment to exercise the option
4 to purchase 100,000 shares of Class B voting shares of RDI, which was
5 exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of
6 JJC, Sr. by their actions taken on or about September 17, 2015.

7 4. All documents relating to any advice requested or given by
8 counsel at the December 29, 2017 meeting of the Board of Directors of RDI
9 (hereafter, the "Meeting") concerning the prior decisions that were ratified at
10 the Meeting.

11 5. All documents relating to any advice requested or given by
12 counsel prior to the Meeting concerning the prior decisions that were
13 ratified at the Meeting.

14 6. All documents relating to the decision to call the Meeting
15 to ratify the prior decisions.

16 7. All documents relating to any advice requested or given by
17 counsel concerning the decision to call the Meeting to ratify the prior
18 decisions.

19 8. All documents relating to any advice requested or given by
20 counsel concerning the notice of Meeting to the extent it concerned
21 Ratification.

22 9. All documents relating to the Meeting to the extent
23 concerning Ratification.

24 10. All documents relating to any advice requested of or given
25 by counsel concerning the Meeting to the extent it concerned Ratification.

26 11. All draft notices of the Meeting.

27 12. All draft minutes of the Meeting.

28 13. All documents prepared in connection with the Meeting.

14. All documents distributed prior to or at the Meeting.

15. All documents referring to, discussing, analyzing or relating to the disinterestedness or independence of Adams as a Director of RDI.

16. All documents relating to the "letter dated December 27, 2017" referenced on page 3 of Exhibit 1 to RDI's Errata to its "Joinder to the Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay," including any drafts of the letter and responses thereto, as well as emails transmitting such documents.

17. All documents relating to the agenda for the Meeting, including any communications relating to the agenda to the extent concerning Ratification.

18. All communications with any RDI director relating to the Meeting, including any emails from EC and or MC to any RDI director transmitting, referencing, and/or discussing any written board materials in advance of the Meeting.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

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Attorneys for Plaintiff
James J. Cotter, Jr.

MORRIS LAW GROUP

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702/474-9400 • FAX 702/474-9422

CERTIFICATE OF SERVICE

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

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

Donald A. Lattin
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Attorneys for /Defendants Edward Kane,
Douglas McEachern, Judy Coddling, and
Michael Wrotniak

Attorneys for Defendant William
Gould

Mark Ferrario
Kara Hendricks
Tami Cowden
Greenberg Traurig, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, NV 89169

Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 12th day of January, 2018.

By: /s/ PATRICIA FERRUGIA

EXHIBIT 2

MORRIS LAW GROUP

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

CC03

MORRIS LAW GROUP

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Las Vegas, Nevada 89101

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Email: mkrum@bizlit.com

Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **SUBPOENA DUCES TECUM**

THE STATE OF NEVADA TO: JUDY CODDING

c/o Christopher Tayback, Esq. and Marshall M. Searcy, Esq.
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017

YOU ARE ORDERED, pursuant to NRCP 45, to produce and permit inspection and copying of the books, documents, or tangible things set forth in **Exhibit B** hereto that are in your possession, custody, or control. The requested documents shall be produced on or before January 31, 2018 to MORRIS LAW GROUP, 411 E. Bonneville Ave., Ste. 360, Las Vegas, Nevada 89101. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

CONTEMPT: Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100. Additionally, a witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS 50.195, 50.205, and 22.100(3).

Please see **Exhibit A** for information regarding your rights and responsibilities relating to this Subpoena.

(This Subpoena must be signed by the Clerk of the Court or an attorney.)

Steven D. Grierson, CLERK OF THE COURT

By: _____ (Signature)
Deputy Clerk Date:

MORRIS LAW GROUP

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

Or

By: 

(Signature)

Attorney Name: Akke Levin Date: 1/12/2018

Attorney Bar Number: 9102

Submitted by:

MORRIS LAW GROUP

By: 

Steve Morris, Bar No. 1543

Akke Levin, Bar No. 9102

411 E. Bonneville Ave., Ste. 360

Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913

YURKO, SALVESEN & REMZ, P.C.

1 Washington Mall, 11th Floor

Boston, MA 02108

Attorneys for Plaintiff

James J. Cotter, Jr.

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B
Request for Production

INSTRUCTIONS

1. *If any document responsive to this Request for Production has already been produced in this action, you are not required to produce it again.*
2. This Request for Production applies to all documents in your possession, custody or control, and includes documents within the possession, custody or control of your partners, employees, agents, attorneys and representatives, wherever located, including but not limited to all documents obtained by Defendants.
3. If you object to any request in part, you shall produce all responsive documents to which the objection does not apply.
4. If any documents are withheld from production on the alleged grounds of privilege or immunity (whether under common law, statute, or otherwise), each such document is to be identified by stating: (a) the identity of each person who prepared and/or signed the document; (b) the identity of each person designated as an addressee; (c) the identity of each person who received any copy of the document; (d) the date of the document; (e) the subject matter of the document; (f) the type of document; and (g) the basis for withholding the document.
5. If a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted documents.

6. In the event that any document called for by this Request for Production has been destroyed or discarded, that document is to be identified by stating; (a) any address or any addressee; (b) any indicated or blind copies; (c) the document's date, subject matter, number of pages, and attachments or appendices; (d) all persons to whom the document was distributed, shown or explained; (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (f) the persons who authorized and carried out such destruction or discard; and (g) whether any copies of the document presently exist and, if so, the name of the custodian of each copy.

7. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such a document is within your possession, custody or control. A request for any document shall be deemed to include a request for all drafts thereof, and all revisions and modifications thereto, including any red-lined versions or document comparisons, in addition to the document itself. Each document is to be produced in its entirety, without abbreviation or expurgation.

8. In producing documents, all documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, subfiles or by use of dividers, tabs, or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained and in the file where found. If no documents exist that are responsive to a particular request, you shall so state in writing.

9. Electronic records and computerized information as well as documents stored electronically, including, but not limited to, electronic mail and draft documents, must be produced in electronic form in an intelligible format as well as in hard copy form, together with a description of the system from which it was derived sufficient to permit rendering the materials intelligible.

DEFINITIONS

The following Definitions shall apply herein and to each Request:

1. "All," as used herein means "any and all" and "Any" means "any and all."
2. "And/Or," as used herein, means either disjunctively or conjunctively as necessary to bring within the scope of the Request, all responses that might otherwise be construed to be outside of its scope.
3. "Communication," as used herein, or its plural or any synonym thereof, means any exchange, transmission or receipt (whether as listener, addressee, person called or otherwise) of information, whether such exchange, transmission or receipt be oral, written, electronic or otherwise and includes, without limitation, any meeting, conversation, telephone call, letter, email, telegram and the exchange, transmission, or receipt of any Document of any kind whatsoever.
4. "Concerning" "Concerns" or "Concern," as used herein, all mean concerning, related to, referring to, relying on, describing, memorializing, evidencing, reflecting, touching upon, or constituting in any way. When used to refer to a Document and/or Writing it includes, but is not limited to, all Documents and/or Writings now or previously attached or appended to any Documents and/or Writings called for by a Request.
5. As used herein, the term "documents" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reasons of any abstracts, agreements, appointment records, audio recordings (whether transcribed or not), balance sheets, bills, bills of lading, blueprints, books, books of account, bulletins, bylaws, cablegrams, cassettes, catalogues, certificates, charts, charters, checks, circulars, computer printouts, computer programs, computer tapes, contracts, correspondence, data compilations from which information can be obtained or translated through proper devices, data processing cards, data sheets, delivery records, desk calendars, diagrams, diaries, discs, drafts, electronic mail, electric or electronic records or representations, entries, estimates, expense reports, field notes, files, financial analyses, financial statements, forms, graphs, handbooks, income

statements, indices, instructions, instruments, insurance policies, insurance riders, interoffice communications, intraoffice communications, invoices, itemizations, journals, letters, maps, mechanical records, meeting reports, memoranda, memoranda of all conversations (including telephone calls), microfiche, microfilm, minutes, motion pictures, notes, notices, order forms, orders, pamphlets, photographs, printed matter, prospectuses, receipts, recordings, records, records of account, reports, requisitions, resolutions, retrievable information in computer storage, returns, sketches, specifications, statements, statistical records, studies, summaries, system analyses, tapes, telefaxes, telegrams, teletypes, telexes, tests, text, time records, transcripts, valuations, video recordings, writings, and work papers, and notations of any sort of communications or conversations, and all drafts, changes and amendments of any of the foregoing.

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11. As used herein, the term "MC" refers to defendant Margaret Cotter.

12. As used herein, the term "Kane" refers to dismissed defendant Edward Kane.

13. As used herein, the term "Adams" refers to dismissed defendant Guy Adams.

14. As used herein, the term "McEachern" refers to dismissed defendant Doug McEachern.

15. As used herein, the term "Storey" refers to dismissed defendant Timothy Storey.

16. As used herein, the term "Gould" refer to dismissed defendant William Gould.

17. As used herein, the term "Coddling" refer to dismissed defendant Judy Coddling.

18. As used herein, the term "RDI" refers to nominal defendant Reading International, Inc.

19. As used herein, the term "Relate to," including but not limited to its various forms such as "relating to," shall mean, consist of, refer to, reflect, or be in any way logically or factually connected with the matter discussed.

20. "Ratification" shall refer to the vote of the RDI Board of Directors at special telephonic meeting held on December 29, 2017, to ratify (i) actions taken by board members relating to the termination of JJC Jr. as President and CEO of RDI as such actions are outlined in the minutes of the Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015; and (ii) the decision of the Compensation Committee of RDI, as outlined in the minutes of September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC Sr. to use Class A non-voting stock as a means to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock of RDI.

21. Whenever appropriate, the singular form of a word should be interpreted in the plural and vice versa. All words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside the scope.

22. "Person" means or refers to any individual, corporation, partnership, association, organization and any other entity of any type and nature.

23. "Identify," when used in reference to a Person, means to:
a) state his or her full name;

- b) state his or her present or last-known address;
- c) state his or her present or last-known position and business affiliation;
and
- d) describe his or her relationship, if any, to You.

24. "Identify," when used in reference to a corporation, partnership, or entity, means:

- a) state its full name;
- b) state its present or last-known address;
- c) state the names and addresses of its directors, members, officers, directors, executives and/or shareholders, as appropriate;
- d) set forth the state of its incorporation or formation, as appropriate;
- e) describe its relationship, if any, to You; and
- f) provide specific references to any and all contracts You had or have with the entity.

25. "Identify," when used in reference to a Document and/or Writing, means to:

- a) state the date of preparation, author, title (if any), subject matter, number of pages, and type of Document and/or Writing (e.g., contract, letter, reports, etc.) or some other means of distinguishing the Document and/or Writing;
- b) Identify each and every Person who prepared or participated in the preparation of the Document and/or Writing;
- c) Identify each and every Person who received an original or copy of the Document and/or Writing;
- d) state the present location of the Document and/or Writing;
- e) Identify each and every Person having custody or control of the Document and/or Writing;
- f) state whether any copy of the Document and/or Writing is not identical to the original by reason of shorthand, translation or other written notes, initials, or any other modifications;
- g) state, if the Document and/or Writing has been destroyed, the circumstances surrounding the reason for the destruction; and
- h) Identify, if the Document and/or Writing has been destroyed, each and every Person who destroyed, or participated in, or ordered or suggested the destruction of it.

26. Unless otherwise indicated, each request calls for any and all documents created or dated on or after January 1, 2014, including all communications by, between, among, to or

from any or all of Ellen Cotter ("EC"), Margaret Cotter ("MC"), Edward Kane ("Kane"), Guy Adams ("Adams"), Doug McEachern ("McEachern"), Tim Storey ("Storey"), William Gould ("Gould") and/or nominal defendant Reading International, Inc. ("RDI") or any agent of any or all of them.

REQUESTS FOR DOCUMENTS

1. All communications between Kane and either or both of EC and MC.
2. All documents relating to the termination of JJC as President and CEO of RDI.
3. All documents relating to the exercise of the option to purchase 100,000 shares of Class B voting shares of RDI, which was exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of JJC, Sr. on or about September 17, 2015.
4. All documents relating to payment to exercise the option to purchase 100,000 shares of Class B voting shares of RDI, which was exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of JJC, Sr. on or about September 17, 2015.
5. All documents you reviewed at or prior to the December 29, 2017 meeting of the Board of Directors of RDI (the "Meeting") relating to ratification at the Meeting of actions taken by board members to terminate JJC as President and CEO, as outlined in the minutes of the meetings of the Board of Directors of RDI held on May 21, May 29, and June 12, 2015.
6. All documents you reviewed at or prior to the Meeting relating to ratification at the Meeting of the actions of the compensation committee of RDI, as outlined in the minutes of the September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC, Sr. to use Class A non-voting stock to pay for the exercise of an option to purchase 100,000 share of Class B voting stock of RDI.
7. All documents relating to what you or any other director did to inform himself or herself of the merits of the decisions that were ratified at the Meeting.

8. All documents relating to any advice requested or given by counsel at the Meeting concerning the prior decisions that were ratified at the Meeting.
9. All documents relating to any advice requested or given by counsel prior to the Meeting concerning the prior decisions that were ratified at the Meeting.
10. All documents relating to the decision to call the Meeting to ratify the prior decisions.
11. All documents relating to any advice requested or given by counsel concerning the decision to call the Meeting to ratify the prior decisions.
12. All documents relating to any advice requested or given by counsel concerning the notice of Meeting to the extent it concerned Ratification.
13. All documents relating to the Meeting to the extent concerning Ratification.
14. All documents relating to any advice requested of or given by counsel concerning the Meeting to the extent it concerned Ratification.
15. All communications between you any other director of RDI concerning the Meeting or the matters that were the subject of the Meeting to the extent they concerned Ratification.
16. All communications between you and anyone concerning the Meeting or the matters that were the subject of the Meeting to the extent concerning Ratification.
17. All documents relating to the "request for a special meeting at the behest of the five named Directors (Coddington, Gould, Kane, McEachern and Wrotniak) pursuant to a letter dated December 27, 2017" (referenced on page 3 of "draft minutes of the Meeting" attached as Exhibit B to EC, Adams and MC's Motion for Judgment as a Matter of Law), including any

drafts of the letter and responses thereto, as well as emails transmitting such documents and communications relating to the letter.

18. All documents relating to the agenda for the Meeting, including any communications relating to the agenda to the extent concerning Ratification.

19. All communications with any RDI director relating to the Meeting, including any emails from EC and or MC to any RDI director transmitting, referencing, and/or discussing any written board materials in advance of the Meeting to the extent concerning Ratification.

20. All documents referring to, discussing, analyzing or relating to the disinterestedness or independence of Adams as a Director of RDI.

EXHIBIT 3

MORRIS LAW GROUP

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

CC03

MORRIS LAW GROUP

Steve Morris, Bar No. 1543

Akke Levin, Bar No. 9102

411 E. Bonneville Ave., Ste. 360

Las Vegas, Nevada 89101

Telephone: (702) 474-9400

Facsimile: (702) 474-9422

Email: sm@morrislawgroup.com

Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913

Yurko, Salvesen & Remz, P.C.

1 Washington Mall, 11th Floor

Boston, MA 02108

Telephone: (617) 723-6900

Facsimile: (617) 723-6905

Email: mkrum@bizlit.com

Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

) **SUBPOENA DUCES TECUM**

1 THE STATE OF NEVADA TO: WILLIAM GOULD

2 c/o Ekwan E. Rhow, Esq. and Shoshanna E. Barnett, Esq.
3 BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS,
4 LINCENBERG & RHOW, P.C.
5 1875 Century Park East, 23rd Floor
6 Los Angeles, California 90067-2561

7 **YOU ARE ORDERED**, pursuant to NRCP 45, to produce and permit
8 inspection and copying of the books, documents, or tangible things set forth
9 in **Exhibit B** hereto that are in your possession, custody, or control. The
10 requested documents shall be produced on or before January 31, 2018 to
11 MORRIS LAW GROUP, 411 E. Bonneville Ave., Ste. 360, Las Vegas, Nevada
12 89101. All documents shall be produced as they are kept in the usual course
13 of business or shall be organized and labeled to correspond with the
14 categories listed. NRCP 45(d)(1).

15 **CONTEMPT:** Failure by any person without adequate excuse to obey a
16 subpoena served upon that person may be deemed a contempt of the court,
17 NRCP 45(e), punishable by a fine not exceeding \$500 and imprisonment not
18 exceeding 25 days, NRS 22.100. Additionally, a witness disobeying a
19 subpoena shall forfeit to the aggrieved party \$100 and all damages sustained
20 as a result of the failure to attend, and a warrant may issue for the witness'
21 arrest. NRS 50.195, 50.205, and 22.100(3).

22 Please see **Exhibit A** for information regarding your rights and
23 responsibilities relating to this Subpoena.

24 (This Subpoena must be signed by the Clerk of the Court or an attorney.)

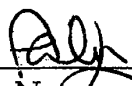
25 Steven D. Grierson, CLERK OF THE COURT

26 By: _____ (Signature)
27 Deputy Clerk Date:
28

MORRIS LAW GROUP

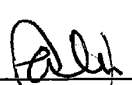
411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

Or

By:  (Signature)
Attorney Name: Akke Levin Date: 1/12/2018
Attorney Bar Number: 9102

Submitted by:

MORRIS LAW GROUP

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

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

Attorneys for Plaintiff

James J. Cotter, Jr.

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B
Request for Production

INSTRUCTIONS

1. *If any document responsive to this Request for Production has already been produced in this action, you are not required to produce it again.*
2. This Request for Production applies to all documents in your possession, custody or control, and includes documents within the possession, custody or control of your partners, employees, agents, attorneys and representatives, wherever located, including but not limited to all documents obtained by Defendants.
3. If you object to any request in part, you shall produce all responsive documents to which the objection does not apply.
4. If any documents are withheld from production on the alleged grounds of privilege or immunity (whether under common law, statute, or otherwise), each such document is to be identified by stating: (a) the identity of each person who prepared and/or signed the document; (b) the identity of each person designated as an addressee; (c) the identity of each person who received any copy of the document; (d) the date of the document; (e) the subject matter of the document; (f) the type of document; and (g) the basis for withholding the document.
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7. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such a document is within your possession, custody or control. A request for any document shall be deemed to include a request for all drafts thereof, and all revisions and modifications thereto, including any red-lined versions or document comparisons, in addition to the document itself. Each document is to be produced in its entirety, without abbreviation or expurgation.

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statements, indices, instructions, instruments, insurance policies, insurance riders, interoffice communications, intraoffice communications, invoices, itemizations, journals, letters, maps, mechanical records, meeting reports, memoranda, memoranda of all conversations (including telephone calls), microfiche, microfilm, minutes, motion pictures, notes, notices, order forms, orders, pamphlets, photographs, printed matter, prospectuses, receipts, recordings, records, records of account, reports, requisitions, resolutions, retrievable information in computer storage, returns, sketches, specifications, statements, statistical records, studies, summaries, system analyses, tapes, telefaxes, telegrams, teletypes, telexes, tests, text, time records, transcripts, valuations, video recordings, writings, and work papers, and notations of any sort of communications or conversations, and all drafts, changes and amendments of any of the foregoing.

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a) state his or her full name;

- b) state his or her present or last-known address;
- c) state his or her present or last-known position and business affiliation;
and
- d) describe his or her relationship, if any, to You.

24. "Identify," when used in reference to a corporation, partnership, or entity, means:

- a) state its full name;
- b) state its present or last-known address;
- c) state the names and addresses of its directors, members, officers, directors, executives and/or shareholders, as appropriate;
- d) set forth the state of its incorporation or formation, as appropriate;
- e) describe its relationship, if any, to You; and
- f) provide specific references to any and all contracts You had or have with the entity.

25. "Identify," when used in reference to a Document and/or Writing, means to:

- a) state the date of preparation, author, title (if any), subject matter, number of pages, and type of Document and/or Writing (e.g., contract, letter, reports, etc.) or some other means of distinguishing the Document and/or Writing;
- b) Identify each and every Person who prepared or participated in the preparation of the Document and/or Writing;
- c) Identify each and every Person who received an original or copy of the Document and/or Writing;
- d) state the present location of the Document and/or Writing;
- e) Identify each and every Person having custody or control of the Document and/or Writing;
- f) state whether any copy of the Document and/or Writing is not identical to the original by reason of shorthand, translation or other written notes, initials, or any other modifications;
- g) state, if the Document and/or Writing has been destroyed, the circumstances surrounding the reason for the destruction; and
- h) Identify, if the Document and/or Writing has been destroyed, each and every Person who destroyed, or participated in, or ordered or suggested the destruction of it.

26. Unless otherwise indicated, each request calls for any and all documents created or dated on or after January 1, 2014, including all communications by, between, among, to or

from any or all of Ellen Cotter ("EC"), Margaret Cotter ("MC"), Edward Kane ("Kane"), Guy Adams ("Adams"), Doug McEachern ("McEachern"), Tim Storey ("Storey"), William Gould ("Gould") and/or nominal defendant Reading International, Inc. ("RDI") or any agent of any or all of them.

REQUESTS FOR DOCUMENTS

1. All communications between Kane and either or both of EC and MC.
2. All documents relating to the termination of JJC as President and CEO of RDI.
3. All documents relating to the exercise of the option to purchase 100,000 shares of Class B voting shares of RDI, which was exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of JJC, Sr. on or about September 17, 2015.
4. All documents relating to payment to exercise the option to purchase 100,000 shares of Class B voting shares of RDI, which was exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of JJC, Sr. on or about September 17, 2015.
5. All documents you reviewed at or prior to the December 29, 2017 meeting of the Board of Directors of RDI (the "Meeting") relating to ratification at the Meeting of actions taken by board members to terminate JJC as President and CEO, as outlined in the minutes of the meetings of the Board of Directors of RDI held on May 21, May 29, and June 12, 2015.
6. All documents you reviewed at or prior to the Meeting relating to ratification at the Meeting of the actions of the compensation committee of RDI, as outlined in the minutes of the September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC, Sr. to use Class A non-voting stock to pay for the exercise of an option to purchase 100,000 share of Class B voting stock of RDI.
7. All documents relating to what you or any other director did to inform himself or herself of the merits of the decisions that were ratified at the Meeting.

8. All documents relating to any advice requested or given by counsel at the Meeting concerning the prior decisions that were ratified at the Meeting.
9. All documents relating to any advice requested or given by counsel prior to the Meeting concerning the prior decisions that were ratified at the Meeting.
10. All documents relating to the decision to call the Meeting to ratify the prior decisions.
11. All documents relating to any advice requested or given by counsel concerning the decision to call the Meeting to ratify the prior decisions.
12. All documents relating to any advice requested or given by counsel concerning the notice of Meeting to the extent it concerned Ratification.
13. All documents relating to the Meeting to the extent concerning Ratification.
14. All documents relating to any advice requested of or given by counsel concerning the Meeting to the extent it concerned Ratification.
15. All communications between you any other director of RDI concerning the Meeting or the matters that were the subject of the Meeting to the extent they concerned Ratification.
16. All communications between you and anyone concerning the Meeting or the matters that were the subject of the Meeting to the extent concerning Ratification.
17. All documents relating to the "request for a special meeting at the behest of the five named Directors (Coddington, Gould, Kane, McEachern and Wrotniak) pursuant to a letter dated December 27, 2017" (referenced on page 3 of "draft minutes of the Meeting" attached as Exhibit B to EC, Adams and MC's Motion for Judgment as a Matter of Law), including any

drafts of the letter and responses thereto, as well as emails transmitting such documents and communications relating to the letter.

18. All documents relating to the agenda for the Meeting, including any communications relating to the agenda to the extent concerning Ratification.

19. All communications with any RDI director relating to the Meeting, including any emails from EC and or MC to any RDI director transmitting, referencing, and/or discussing any written board materials in advance of the Meeting to the extent concerning Ratification.

20. All documents referring to, discussing, analyzing or relating to the disinterestedness or independence of Adams as a Director of RDI.

EXHIBIT 4

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

CC03

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913
Yurko, Salvesen & Remz, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108
Telephone: (617) 723-6900
Facsimile: (617) 723-6905
Email: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

16	JAMES J. COTTER, JR.,	) Case No. A-15-719860-B
17	derivatively on behalf of Reading	) Dept. No. XI
17	International, Inc.,)
18	Plaintiff,	) Coordinated with:
19	v.	) Case No. P-14-0824-42-E
20	MARGARET COTTER, ELLEN	) Dept. No. XI
21	COTTER, GUY ADAMS,	) Jointly Administered
22	EDWARD KANE, DOUGLAS)
23	McEACHERN, WILLIAM	) SUBPOENA DUCES TECUM
23	GOULD, JUDY CODDING,)
24	MICHAEL WROTONIAK,)
25	Defendants.)
26	And)
27	READING INTERNATIONAL,)
28	INC., a Nevada corporation,)
	Nominal Defendant.)

1 THE STATE OF NEVADA TO: DOUGLAS McEACHERN

2 c/o Christopher Tayback, Esq. and Marshall M. Searcy, Esq.
3 QUINN EMANUEL URQUHART & SULLIVAN, LLP
4 865 South Figueroa Street, 10th Floor
5 Los Angeles, CA 90017

6 YOU ARE ORDERED, pursuant to NRCP 45, to produce and permit
7 inspection and copying of the books, documents, or tangible things set forth
8 in Exhibit B hereto that are in your possession, custody, or control. The
9 requested documents shall be produced on or before January 31, 2018 to
10 MORRIS LAW GROUP, 411 E. Bonneville Ave., Ste. 360, Las Vegas, Nevada
11 89101. All documents shall be produced as they are kept in the usual course
12 of business or shall be organized and labeled to correspond with the
13 categories listed. NRCP 45(d)(1).

14 CONTEMPT: Failure by any person without adequate excuse to obey
15 a subpoena served upon that person may be deemed a contempt of the
16 court, NRCP 45(e), punishable by a fine not exceeding \$500 and
17 imprisonment not exceeding 25 days, NRS 22.100. Additionally, a witness
18 disobeying a subpoena shall forfeit to the aggrieved party \$100 and all
19 damages sustained as a result of the failure to attend, and a warrant may
20 issue for the witness' arrest. NRS 50.195, 50.205, and 22.100(3).

21 Please see Exhibit A for information regarding your rights and
22 responsibilities relating to this Subpoena.

23 (This Subpoena must be signed by the Clerk of the Court or an attorney.)

24 Steven D. Grierson, CLERK OF THE COURT

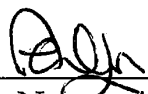
25 By: _____ (Signature)
26 Deputy Clerk Date:

27 Or

MORRIS LAW GROUP

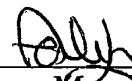
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101
702/474-9400 · FAX 702/474-9422

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By:  (Signature)
Attorney Name: Akke Levin Date: 1/12/2018
Attorney Bar Number: 9102

Submitted by:

MORRIS LAW GROUP

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

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

Attorneys for Plaintiff

James J. Cotter, Jr.

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,
- the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B
Request for Production

INSTRUCTIONS

1. *If any document responsive to this Request for Production has already been produced in this action, you are not required to produce it again.*
2. This Request for Production applies to all documents in your possession, custody or control, and includes documents within the possession, custody or control of your partners, employees, agents, attorneys and representatives, wherever located, including but not limited to all documents obtained by Defendants.
3. If you object to any request in part, you shall produce all responsive documents to which the objection does not apply.
4. If any documents are withheld from production on the alleged grounds of privilege or immunity (whether under common law, statute, or otherwise), each such document is to be identified by stating: (a) the identity of each person who prepared and/or signed the document; (b) the identity of each person designated as an addressee; (c) the identity of each person who received any copy of the document; (d) the date of the document; (e) the subject matter of the document; (f) the type of document; and (g) the basis for withholding the document.
5. If a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted documents.

6. In the event that any document called for by this Request for Production has been destroyed or discarded, that document is to be identified by stating; (a) any address or any addressee; (b) any indicated or blind copies; (c) the document's date, subject matter, number of pages, and attachments or appendices; (d) all persons to whom the document was distributed, shown or explained; (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (f) the persons who authorized and carried out such destruction or discard; and (g) whether any copies of the document presently exist and, if so, the name of the custodian of each copy.

7. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such a document is within your possession, custody or control. A request for any document shall be deemed to include a request for all drafts thereof, and all revisions and modifications thereto, including any red-lined versions or document comparisons, in addition to the document itself. Each document is to be produced in its entirety, without abbreviation or expurgation.

8. In producing documents, all documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, subfiles or by use of dividers, tabs, or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained and in the file where found. If no documents exist that are responsive to a particular request, you shall so state in writing.

9. Electronic records and computerized information as well as documents stored electronically, including, but not limited to, electronic mail and draft documents, must be produced in electronic form in an intelligible format as well as in hard copy form, together with a description of the system from which it was derived sufficient to permit rendering the materials intelligible.

DEFINITIONS

The following Definitions shall apply herein and to each Request:

1. "All," as used herein means "any and all" and "Any" means "any and all."
2. "And/Or," as used herein, means either disjunctively or conjunctively as necessary to bring within the scope of the Request, all responses that might otherwise be construed to be outside of its scope.
3. "Communication," as used herein, or its plural or any synonym thereof, means any exchange, transmission or receipt (whether as listener, addressee, person called or otherwise) of information, whether such exchange, transmission or receipt be oral, written, electronic or otherwise and includes, without limitation, any meeting, conversation, telephone call, letter, email, telegram and the exchange, transmission, or receipt of any Document of any kind whatsoever.
4. "Concerning" "Concerns" or "Concern," as used herein, all mean concerning, related to, referring to, relying on, describing, memorializing, evidencing, reflecting, touching upon, or constituting in any way. When used to refer to a Document and/or Writing it includes, but is not limited to, all Documents and/or Writings now or previously attached or appended to any Documents and/or Writings called for by a Request.
5. As used herein, the term "documents" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reasons of any abstracts, agreements, appointment records, audio recordings (whether transcribed or not), balance sheets, bills, bills of lading, blueprints, books, books of account, bulletins, bylaws, cablegrams, cassettes, catalogues, certificates, charts, charters, checks, circulars, computer printouts, computer programs, computer tapes, contracts, correspondence, data compilations from which information can be obtained or translated through proper devices, data processing cards, data sheets, delivery records, desk calendars, diagrams, diaries, discs, drafts, electronic mail, electric or electronic records or representations, entries, estimates, expense reports, field notes, files, financial analyses, financial statements, forms, graphs, handbooks, income

statements, indices, instructions, instruments, insurance policies, insurance riders, interoffice communications, intraoffice communications, invoices, itemizations, journals, letters, maps, mechanical records, meeting reports, memoranda, memoranda of all conversations (including telephone calls), microfiche, microfilm, minutes, motion pictures, notes, notices, order forms, orders, pamphlets, photographs, printed matter, prospectuses, receipts, recordings, records, records of account, reports, requisitions, resolutions, retrievable information in computer storage, returns, sketches, specifications, statements, statistical records, studies, summaries, system analyses, tapes, telefaxes, telegrams, teletypes, telexes, tests, text, time records, transcripts, valuations, video recordings, writings, and work papers, and notations of any sort of communications or conversations, and all drafts, changes and amendments of any of the foregoing.

6. As used herein, the term "communications" means or refers to inquiries, discussions, conversations, emails, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, memoranda, telegrams, advertisements, or other form of verbal intercourse, whether oral or written, or any summaries, paraphrases or other records of any of the foregoing.

7. As used herein, the term "all documents" means every document as above defined known to you and every such document, which can be located or discovered by reasonably diligent efforts.

8. As used herein, the terms "JJC" or "Plaintiff" shall mean and refer to James J. Cotter, Jr.

9. As used herein, the term "JJC, Sr." refers to James J. Cotter, Sr.

10. As used herein, the term "EC" refers to defendant Ellen Cotter.

11. As used herein, the term "MC" refers to defendant Margaret Cotter.

12. As used herein, the term "Kane" refers to dismissed defendant Edward Kane.

13. As used herein, the term "Adams" refers to dismissed defendant Guy Adams.

14. As used herein, the term "McEachern" refers to dismissed defendant Doug McEachern.

15. As used herein, the term "Storey" refers to dismissed defendant Timothy Storey.

16. As used herein, the term "Gould" refer to dismissed defendant William Gould.

17. As used herein, the term "Coddling" refer to dismissed defendant Judy Coddling.

18. As used herein, the term "RDI" refers to nominal defendant Reading International, Inc.

19. As used herein, the term "Relate to," including but not limited to its various forms such as "relating to," shall mean, consist of, refer to, reflect, or be in any way logically or factually connected with the matter discussed.

20. "Ratification" shall refer to the vote of the RDI Board of Directors at special telephonic meeting held on December 29, 2017, to ratify (i) actions taken by board members relating to the termination of JJC Jr. as President and CEO of RDI as such actions are outlined in the minutes of the Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015; and (ii) the decision of the Compensation Committee of RDI, as outlined in the minutes of September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC Sr. to use Class A non-voting stock as a means to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock of RDI.

21. Whenever appropriate, the singular form of a word should be interpreted in the plural and vice versa. All words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside the scope.

22. "Person" means or refers to any individual, corporation, partnership, association, organization and any other entity of any type and nature.

23. "Identify," when used in reference to a Person, means to:
a) state his or her full name;

- b) state his or her present or last-known address;
- c) state his or her present or last-known position and business affiliation;
and
- d) describe his or her relationship, if any, to You.

24. "Identify," when used in reference to a corporation, partnership, or entity, means:

- a) state its full name;
- b) state its present or last-known address;
- c) state the names and addresses of its directors, members, officers, directors, executives and/or shareholders, as appropriate;
- d) set forth the state of its incorporation or formation, as appropriate;
- e) describe its relationship, if any, to You; and
- f) provide specific references to any and all contracts You had or have with the entity.

25. "Identify," when used in reference to a Document and/or Writing, means to:

- a) state the date of preparation, author, title (if any), subject matter, number of pages, and type of Document and/or Writing (e.g., contract, letter, reports, etc.) or some other means of distinguishing the Document and/or Writing;
- b) Identify each and every Person who prepared or participated in the preparation of the Document and/or Writing;
- c) Identify each and every Person who received an original or copy of the Document and/or Writing;
- d) state the present location of the Document and/or Writing;
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- h) Identify, if the Document and/or Writing has been destroyed, each and every Person who destroyed, or participated in, or ordered or suggested the destruction of it.

26. Unless otherwise indicated, each request calls for any and all documents created or dated on or after January 1, 2014, including all communications by, between, among, to or

from any or all of Ellen Cotter ("EC"), Margaret Cotter ("MC"), Edward Kane ("Kane"), Guy Adams ("Adams"), Doug McEachern ("McEachern"), Tim Storey ("Storey"), William Gould ("Gould") and/or nominal defendant Reading International, Inc. ("RDI") or any agent of any or all of them.

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3. All documents relating to the exercise of the option to purchase 100,000 shares of Class B voting shares of RDI, which was exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of JJC, Sr. on or about September 17, 2015.
4. All documents relating to payment to exercise the option to purchase 100,000 shares of Class B voting shares of RDI, which was exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of JJC, Sr. on or about September 17, 2015.
5. All documents you reviewed at or prior to the December 29, 2017 meeting of the Board of Directors of RDI (the "Meeting") relating to ratification at the Meeting of actions taken by board members to terminate JJC as President and CEO, as outlined in the minutes of the meetings of the Board of Directors of RDI held on May 21, May 29, and June 12, 2015.
6. All documents you reviewed at or prior to the Meeting relating to ratification at the Meeting of the actions of the compensation committee of RDI, as outlined in the minutes of the September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC, Sr. to use Class A non-voting stock to pay for the exercise of an option to purchase 100,000 share of Class B voting stock of RDI.
7. All documents relating to what you or any other director did to inform himself or herself of the merits of the decisions that were ratified at the Meeting.

8. All documents relating to any advice requested or given by counsel at the Meeting concerning the prior decisions that were ratified at the Meeting.

9. All documents relating to any advice requested or given by counsel prior to the Meeting concerning the prior decisions that were ratified at the Meeting.

10. All documents relating to the decision to call the Meeting to ratify the prior decisions.

11. All documents relating to any advice requested or given by counsel concerning the decision to call the Meeting to ratify the prior decisions.

12. All documents relating to any advice requested or given by counsel concerning the notice of Meeting to the extent it concerned Ratification.

13. All documents relating to the Meeting to the extent concerning Ratification.

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15. All communications between you any other director of RDI concerning the Meeting or the matters that were the subject of the Meeting to the extent they concerned Ratification.

16. All communications between you and anyone concerning the Meeting or the matters that were the subject of the Meeting to the extent concerning Ratification.

17. All documents relating to the "request for a special meeting at the behest of the five named Directors (Coddington, Gould, Kane, McEachern and Wrotniak) pursuant to a letter dated December 27, 2017" (referenced on page 3 of "draft minutes of the Meeting" attached as Exhibit B to EC, Adams and MC's Motion for Judgment as a Matter of Law), including any

drafts of the letter and responses thereto, as well as emails transmitting such documents and communications relating to the letter.

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20. All documents referring to, discussing, analyzing or relating to the disinterestedness or independence of Adams as a Director of RDI.

EXHIBIT 5
(TO BE FILED UNDER SEAL)

EXHIBIT 6

In The Matter Of:
James Cotter -v- Margaret Cotter, et al.

Volume 3, William Gould
April 5, 2018
ROUGH DRAFT

Lori Byrd, Court Reporter
RPR, CRR, CLR, CA-CSR 13023, KS-CCR 1681, OK-CSR 1981
Realtime Systems Administrator
E-mail Lori@ByrdReporting.com
Cell 202-422-8810

Original File 040518-(LitService)-Gould-Vol.3-ROUGH-DRAFT.txt

Min-U-Script® with Word Index

Page 1	Page 3
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
<p>UNCERTIFIED ROUGH DRAFT ONLY</p> <p>-----</p> <p>THIS ROUGH DRAFT CANNOT BE QUOTED IN ANY PLEADINGS OR FOR ANY OTHER PURPOSE, AND MAY NOT BE FILED WITH ANY COURT.</p> <p>USE AT DEPOSITION WITH REALTIME HOOKUP, OR ORDER OF THIS ROUGH DRAFT, CONSTITUTES A FINISHED TRANSCRIPT SALE, AND FOR COURT PROCEEDINGS, CHARGED AS AGREED BY COURT REPORTER AND COUNSEL.</p> <p>This transcript draft is uncertified and may contain untranslated stenographic symbols, an occasional reporter's note, a misspelled proper name, and/or nonsensical word combinations. All such entries will be corrected on the final certified transcript.</p> <p>Due to the need to correct entries prior to certification, you agree to use this realtime draft only for the purpose of augmenting counsel's notes and not to use or cite it in any court proceeding.</p> <p>Please keep in mind that the final certified transcript's page and line numbers will not match the rough draft, due to the addition of title pages, indices, appearances of counsel, paragraphing and other changes.</p> <p>COURT REPORTER: Lori Byrd RPR, CRR, CLR, CA-CSR 13023, KS-CCR 1681, OK-CSR 1981, RSA</p> <p>E-MAIL Lori@ByrdReporting.com CELL 202-422-8810</p> <p>WORKING FOR: Litigation Services</p> <p>800-330-1112 calendar@litigation-services.com</p>	<p>DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MARGARET COTTER, et al.,</p> <p>Defendants,</p> <p>and</p> <p>READING INTERNATIONAL, INC., a Nevada Corporation,</p> <p>Nominal Defendant.</p> <p>Case No. A-15-719860-B</p> <p>Coordinated With: Case No. P-14-082942-E</p> <p>Videotaped Deposition of WILLIAM GOULD,</p> <p>taken at the offices of Sheppard, Mullin, Richter & Hampton, LLP, 16th Floor Conference Room, 1901 Avenue of the Stars, Suite 1600, Century City, California, on Thursday, April 5, 2018 at 9:32 A.M., before Lori Byrd, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, Realtime Systems Administrator, Kansas Certified Court Reporter 1681, Oklahoma Certified Shorthand Reporter 1981, and Certified Shorthand Reporter in and for the State of California 13023.</p>
<p>Page 2</p> <p>DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MARGARET COTTER, et al.,</p> <p>Defendants,</p> <p>and</p> <p>READING INTERNATIONAL, INC., a Nevada Corporation,</p> <p>Nominal Defendant.</p> <p>Case No. A-15-719860-B</p> <p>Coordinated With: Case No. P-14-082942-E</p> <p>Volume 3 Pages 496 to</p> <p>VIDEOTAPED DEPOSITION OF WILLIAM GOULD</p> <p>Thursday, April 5, 2018 9:32 A.M. TO 11:34 A.M. Century City, California</p> <p>Litigation Services Job 461424</p>	<p>Page 4</p> <p>APPEARANCES</p> <p>For the Plaintiff:</p> <p>YURKO, SALVESEN & REMZ, P.C. BY: MARK G. KRUM, ESQUIRE One Washington Mall 11th Floor Boston, Massachusetts 02108 Phone 617-723-6900 E-mail mkrum@bizlit.com</p> <p>For the Witness William Gould:</p> <p>BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C. BY: SHOSHANA E. BANNETT, ESQUIRE 1875 Century Park East Los Angeles, California 90067-2561 PHONE 310-201-2100 FAX 310-201-2110 E-MAIL sbannett@birdmarella.com</p> <p>For the Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams and Edward Kane:</p> <p>QUINN EMANUEL URQUHART & SULLIVAN, LLP BY: NOAH HELPERN, ESQUIRE</p> <p>Phone E-mail</p>

<p style="text-align: right;">Page 13</p> <p>1 MS. HENDRICKS: Join. 2 MR. HELPERN: Join. 3 A. Ordinarily, to put that in context, a 4 ratification in a corporate context means that the 5 Board of Directors of a company approves, after the 6 fact, an action that had been taken earlier, or 7 re-approved that action. 8 In the case of the March -- the December 29 9 ratification, what that was intended to do is have 10 the independent board members of Reading officially 11 re-approve action that had been taken earlier. 12 So what it really did was said, even though 13 we think the action taken earlier was effective, 14 this is suspenders in a belt. We're now going to go 15 back and ratify whatever action had been taken. 16 So that's really the essence of it. 17 BY MR. KRUM: 18 Q. So you refer to "independent board 19 members." 20 What do you mean by independent board 21 members? 22 A. What I really mean, really mean non-Cotter 23 board members. So I would exclude the three family 24 members, Jim, Margaret and Ellen. 25 And I think for the purposes of the</p>	<p style="text-align: right;">Page 15</p> <p>1 either in mid-November, or late November of 2017. 2 Q. With whom? 3 A. Counsel. 4 Q. Who? 5 A. Mike Bonner and Mike Ferrario of Greenberg 6 Taurig. 7 Q. Was this contact in person or telephonic? 8 A. This was a telephonic contact. 9 Q. And it was just the two or three of you, 10 Bonner and Ferrario? 11 A. Yes, I was the chairman of the special 12 committee and they were discussing it with me in my 13 capacity as the chairperson of that committee. 14 Q. Okay. I'm not going to ask you who said 15 what. 16 A. Okay. 17 Q. Let me ask you about all the logistics. 18 Was this call a scheduled call? 19 A. I don't recall. 20 Q. Do you recall who placed or initiated the 21 call? 22 A. No. 23 Q. Okay. When the subject of ratification was 24 raised by Bonner or Ferrario or both of them as the 25 case may be on this call, was that literally the</p>
<p style="text-align: right;">Page 14</p> <p>1 ratification, we excluded Guy Adams because he had 2 not been dismissed by the Nevada court and was 3 still -- and the Nevada court's still evaluating 4 whether he is independent. 5 So to be safe, we just took the people who 6 clearly had evidence that they were independent. 7 Q. And the evidence you're referencing is the 8 Court's summary judgment in their favor? 9 A. Yes. 10 Q. Did you or anybody else on the RDI Board 11 take any steps to make an independent assessment of 12 the independence of those five people? 13 A. Well, this assessment has been going on, 14 actually, since the litigation started. And so 15 there was no -- at the December 29th meeting there 16 was no individual review of each person to make sure 17 they were still independent. But this had been an 18 ongoing process. 19 Q. So when did you first have a communication 20 with someone else with respect to the subject of 21 ratification at RDI with respect to any prior 22 conduct or decisions, including but not limited to 23 the two that were the subject of the December 29 24 ratifications? 25 A. I believe that the first contact I had was</p>	<p style="text-align: right;">Page 16</p> <p>1 first time you had heard the concept, or notion? 2 MS. BANNETT: Assume -- 3 MR. KRUM: In the context of RDI business. 4 MS. BANNETT: Assumes facts not in 5 evidence. 6 A. In the context of RDI business I believe it 7 is. I was vaguely aware that Nevada law had a 8 provision that was kind of unique, but I had never 9 operated under it before, so I wasn't intimately 10 familiar with it. 11 BY MR. KRUM: 12 Q. What was the next -- strike that. 13 Do you have any understanding, exclusive of 14 something you acquired from talking to Bonner and/or 15 Ferrario, about how or why the notion or concept of 16 ratification was raised in mid to late November of 17 2017? 18 A. No. It came solely from Bonner and 19 Ferrario. 20 Q. What was your next communication with 21 respect to the notion or concept of ratification at 22 RDI? 23 A. My next communication was to notify the 24 members of the committee, which was Judy Codding -- 25 Judy Codding and Doug McEachern, that I had had this</p>

<p style="text-align: right;">Page 29</p> <p>1 A. I don't think I gave her much of an 2 explanation. 3 Q. Did she ask any questions? 4 A. I can't -- 5 MS. BANNETT: Objection to the extent that 6 it would call for attorney-client privilege. 7 MR. KRUM: Let me be clear. And I trust 8 that Mr. Gould understands this. 9 MS. BANNETT: Yeah. 10 MR. KRUM: I'm not asking, in any question, 11 for you to disclose the substance of any legal 12 advice, the words any lawyer said, questions that 13 anybody asked to a lawyer seeking advice or anything 14 that you would understand to be privileged. 15 And if you have any questions about that, 16 Mr. Gould, you can ask me to clarify, or you can 17 have a sidebar with Ms. Bennett. 18 Does that work? 19 MS. BANNETT: Yes. 20 THE WITNESS: That's fine. 21 BY MR. KRUM: 22 Q. Okay. So I don't see the answer. It said 23 "I can't". 24 My question was did she ask any questions? 25 A. I started to say, I just can't remember if</p>	<p style="text-align: right;">Page 31</p> <p>1 and the company. 2 Q. When was this -- and by the "special 3 Committee" you're referring to you, Mr. Coster and 4 McEachern. Is that it? 5 A. Yes. 6 Q. And was Mr. Bonner there? 7 A. He's on the phone for the Special 8 Committee. 9 Q. The entire meeting? 10 A. Unless we have to meet with him, we have a 11 session in camera, but that's it. 12 Q. When did this Special Committee meeting 13 occur? 14 A. I would have to think it would be the week 15 immediately right around Christmas. Right around 16 that time. 17 Q. Christmas was on Monday. The notice, I 18 think, you're calling it was set on Wednesday, the 19 27th. And the meeting was on Friday, the 29th. 20 Does that chronology sound right? 21 A. That sounds right to me, yes. 22 Q. Okay. With that in mind, can you identify 23 the date of the Special Committee meeting as the 24 week of Christmas? Or the week before? 25 A. I can't identify it with accuracy but it</p>
<p style="text-align: right;">Page 30</p> <p>1 she asked questions during that meeting. I believe 2 she did but I can't remember what they are, what 3 they were. 4 Q. How long before you transmitted to her 5 whatever document you sent, or had sent, was this 6 call? As best you can recall? 7 A. I'm going to give it a range of maybe four 8 or five days to a week and a half. 9 Q. Now, the next question is intended to make 10 this easier for you and me to not be asking about 11 your personal life. 12 Did you travel over the year-end holidays? 13 A. No. 14 Q. Well, that doesn't help, then. 15 Two prior witnesses did and said they were 16 in different places and it helped them place things 17 in time, is why I asked. 18 A. Uh-huh. Uh-huh. 19 Q. So what was the next communication, or 20 action, you had or did with respect to ratification? 21 A. The next action was a meeting of the 22 Special Committee to request that the Board consider 23 the ratification. 24 And we sent that out, after it had been 25 approved, that notice was then sent to Ellen Cotter</p>	<p style="text-align: right;">Page 32</p> <p>1 was certainly in that range, either the week before 2 or the week of Christmas. 3 MR. KRUM: So I don't know what lawyers 4 should be handling this. I previously asked that 5 the minutes of the Special Committee be produced. 6 So I'll ask it again, and we don't need to 7 talk about whether it's Greenberg Traurig, or 8 whoever else. 9 I just ask that the lawyers at this 10 deposition do what the lawyers didn't, which is 11 follow through and tell me they're going to be 12 produced or they're not. 13 MS. HENDRICKS: Mark, I don't think 14 anybody's made that request to , at least that 15 I've been told. I'll look into it. 16 MR. KRUM: Well, in my view, the documents 17 responsive to our written request requests and it 18 was raised Kara, at a deposition that you did not 19 attend. I think Mark was at that deposition for 20 RDI. 21 All right. So, by the way -- 22 MS. BANNETT: I haven't been present at any 23 other depositions -- 24 MR. KRUM: That's why I didn't ask you and 25 you're not in the litigation.</p>

<p style="text-align: right;">Page 33</p> <p>1 MS. BANNETT: Correct.</p> <p>2 MR. KRUM: Although I think it's responsive</p> <p>3 to the request, let me help you out.</p> <p>4 BY MR. KRUM:</p> <p>5 Q. Have you received the minutes, or draft</p> <p>6 minutes of that meeting? Presumably yes. It's now</p> <p>7 April.</p> <p>8 A. Yes.</p> <p>9 Q. Have they been approved?</p> <p>10 A. Yes, I believe they have.</p> <p>11 Q. Okay.</p> <p>12 A. I believe they have, yes.</p> <p>13 Q. Okay?</p> <p>14 MR. KRUM: So anyway I'll reiterate my</p> <p>15 request for those minutes.</p> <p>16 BY MR. KRUM:</p> <p>17 Q. So to clarify, Mr. Gould, did the Special</p> <p>18 Committee formally take some action with respect to</p> <p>19 ratification?</p> <p>20 A. Yes.</p> <p>21 Q. And what was that?</p> <p>22 A. It requested that the company include the</p> <p>23 subject on the agenda for its next meeting, and call</p> <p>24 for a special meeting if there was not a regular</p> <p>25 meeting being scheduled.</p>	<p style="text-align: right;">Page 35</p> <p>1 MR. KRUM: Mr. Gould I hand you what was</p> <p>2 previously marked as Exhibit 527.</p> <p>3 (PREVIOUSLY MARKED DEPOSITION</p> <p>4 EXHIBIT 527 FIRST REFERRAL)</p> <p>5 Q. Take such time as you need to review it and</p> <p>6 let me know when you've done so.</p> <p>7 A. (Perusing document) I've read it.</p> <p>8 Q. Do you recognize Exhibit 527?</p> <p>9 A. I do.</p> <p>10 Q. What do you recognize it to be?</p> <p>11 A. This is the request for the call on the</p> <p>12 special board meeting to consider the ratification</p> <p>13 of these actions.</p> <p>14 Q. Is this what you were referencing earlier,</p> <p>15 Mr. Gould, when you referenced the word "notice"?</p> <p>16 A. Yes.</p> <p>17 Q. And Ms. Wizelman is your assistant?</p> <p>18 A. Yes, she is.</p> <p>19 Q. She sent this in your direction?</p> <p>20 A. Yes, she did.</p> <p>21 Q. She sent it shortly before 8:00 P.M. on</p> <p>22 December 27th?</p> <p>23 A. Yes.</p> <p>24 Q. Did you draft this?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. What was the next communication or action</p> <p>2 you personally had or did with respect to</p> <p>3 ratification after that Special Committee meeting?</p> <p>4 A. Then we had the December 29th board</p> <p>5 meeting. And I gave a report at that meeting about</p> <p>6 the ratification and why it was being requested.</p> <p>7 Q. What did you say about why it was being</p> <p>8 requested, excluding anything that you understand to</p> <p>9 be privileged?</p> <p>10 A. I indicated that we had been advised by our</p> <p>11 counsel, Greenberg Traurig, that it would be</p> <p>12 advantageous -- I shouldn't even be getting into</p> <p>13 that.</p> <p>14 MS. BANNETT: Yeah --</p> <p>15 THE WITNESS: I should stop. We were</p> <p>16 advised that this was something the corporation</p> <p>17 should consider doing.</p> <p>18 BY MR. KRUM:</p> <p>19 Q. Okay. Well, I knew that already. One can</p> <p>20 infer that from the sequence you described, one's</p> <p>21 not listening.</p> <p>22 So let me show you a document that's been</p> <p>23 marked previously, Mr. Gould. (Perusing documents)</p> <p>24 Okay. Not yesterday.</p> <p>25 (Perusing documents) Okay.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Who did?</p> <p>2 A. Mr. Bonner. And Mr. Ferrario.</p> <p>3 Q. Did you see any drafts of it?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you make any changes to it?</p> <p>6 A. No.</p> <p>7 Q. And when you say that Mr. Bonner and</p> <p>8 Ferrario drafted it, did you discuss with them the</p> <p>9 drafting of it by which I'm asking for a yes or no</p> <p>10 question.</p> <p>11 A. Yes.</p> <p>12 Q. And they said to you in words or</p> <p>13 substance -- one or both of them said in words or</p> <p>14 substance: I'll draft it and send it to you?</p> <p>15 A. Yes.</p> <p>16 Q. And did you provide them -- I'm asking</p> <p>17 nothing other than a yes or no question, Mr. Gould.</p> <p>18 Did you provide them any input about what</p> <p>19 you thought it should say?</p> <p>20 A. No --</p> <p>21 MS. BANNETT: Objection.</p> <p>22 MR. HELPERN: I think that's crossing the</p> <p>23 line of attorney-client privilege.</p> <p>24 MS. HENDRICKS: I would as well join.</p> <p>25 THE WITNESS: I'm not going to comment on</p>

<p style="text-align: right;">Page 45</p> <p>1 Q. Do you recall the substance of the call 2 with Wrotniak? 3 A. Well, my recollection is it was Wrotniak 4 would call me from time to time, because he's not a 5 lawyer, one of the very few people on the Board 6 who's not a lawyer, and he sometimes gets mystified 7 by lawyers' devices and will call me to get a 8 Reading on it. 9 So that's why it's kind of in keeping with 10 our relationship. He calls if he has questions 11 about some legal things that are going on. 12 But I don't remember the specific 13 conversation. 14 Q. Did you have any communications with Ed 15 Kane about ratification prior to the December 29, 16 2017 board meeting? 17 A. I can't recall. 18 Q. Other than what you've already told me, did 19 you have any communications with anyone else, or any 20 additional communications with any other board 21 members, that in any respect concerned either the 22 concept or notion of ratification generally, or the 23 particular matters that were the subject of 24 ratification on December 29, 2017 board meeting, 25 prior to that board meeting?</p>	<p style="text-align: right;">Page 47</p> <p>1 had done a pretty good diligence review of what had 2 happened, and seemed to be pretty much up to speed 3 on what incurred. So she and I never had a 4 conversation about the details of what went on in 5 that period back if 2015. 6 Q. When she said -- when you said she made it 7 clear, was these comments that she made at the 8 December 29 bore meeting? 9 A. No, comments at the Special Committee 10 meeting. 11 Q. What did she say that she had done? 12 A. She didn't say what she had done but it was 13 clear from her -- the extent of her comments at that 14 meeting that she was very well aware of what had 15 happened, how it happened, read the minutes, and 16 felt very comfortable that she knew what the facts 17 were. 18 Q. What did she say that -- from which you 19 draw the conclusion that you just described? 20 A. She said I looked into this and I feel I'm 21 comfortable that I understand what happened at that 22 time. Words to that effect. 23 It's not a direct quote, obviously. 24 Q. Prior to the December 29, 2017 board 25 meeting, had you had any conversations with Michael</p>
<p style="text-align: right;">Page 46</p> <p>1 A. I don't recall anything I specifically said 2 to anybody else on those things, or the people you 3 mentioned. 4 But I think on the day of the Board 5 meeting, during the early parts of the Board 6 meeting, there were conversations going on about 7 this. But they were very fleeting. They were 8 not -- we were sitting in a room and Jim junior was 9 either on the phone or there, so the conversations 10 were obviously not totally candid. 11 Q. When you say they obviously were not 12 totally candid, that's because Jim was there? 13 A. Well, because it was an adversarial lawsuit 14 so we weren't like we were all on the same team. 15 Q. Well, what difference did that make to this 16 particular subject, ratification? 17 A. Because -- because the ratification might 18 be a litigation strategy. 19 Q. Did you have any discussions with Judy 20 Codding about the termination of Jim Cotter, 21 including any and all of the matters referenced in 22 the May 21 and 29, and June 12, 2015 board minutes, 23 in this time frame from mid December up to 24 December 29 board meeting? 25 A. No. Judy -- Judy make it clear that she</p>	<p style="text-align: right;">Page 48</p> <p>1 Wrotniak about the termination of Jim Cotter, Jr.? 2 A. I don't believe I had, no. 3 Q. Did you have any communications with Ellen 4 Cotter about ratification being either the concept 5 or notion generally or ratifications that were the 6 subject of the December 29 board meeting, other than 7 what -- the conversation you've already described 8 this morning, at any time prior to the board meeting 9 on December 29? 10 A. No. 11 Q. Did you have any conversations with 12 Margaret Cotter about ratification, either 13 generally, conceptually or particularly as raised on 14 the 29th of December prior to the December 29th 15 board meeting? 16 A. No. 17 Q. Why did you vote to ratify item 1 on 18 Exhibit 527? 19 A. Because I thought it was in the best 20 interests of the company to do so. 21 Q. As of December 29, 2017? 22 A. Yes. 23 Q. Why? 24 A. Well, going back to, you know, if you'll 25 sort of like I could be called John Cary because I</p>

EXHIBIT 7

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3	JAMES J. COTTER, JR.,)	
4	individually and derivatively)	
5	on behalf of Reading)	
5	International, Inc.,)	
6	Plaintiff,	)	Case No.
7	VS.	)	A-15-719860-B
8	MARGARET COTTER, ELLEN COTTER,	)	Coordinated with:
9	GUY ADAMS, EDWARD KANE, DOUGLAS	)	Case No.
9	McEACHERN, TIMOTHY STOREY,	)	P-14-082942-E
10	WILLIAM GOULD, and DOES 1	)	Case No.
10	through 100, inclusive,	)	A-16-735305-B
11	Defendants.	)	Volume 4
12	and)	
13	<u>READING INTERNATIONAL, INC., a</u>)	
14	Nevada corporation,)	
15	Nominal Defendant.)	
16	<u>(Caption continued on next</u>		
17	<u>page.)</u>		
18	VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN		
19	Wednesday, February 28, 2018		
20	Los Angeles, California		
21			
22	REPORTED BY:		
23	GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR		
24	JOB NO.: 453340-A		
25			

DOUGLAS MCEACHERN, VOL IV - 02/28/2018

<p>Page 495</p> <p>1 T2 PARTNERS MANAGEMENT, LP.,) a Delaware limited) 2 partnership, doing business as) KASE CAPITAL MANAGEMENT,) 3 et al.,))) 4 Plaintiff,))) 5 vs.))) 6 MARGARET COTTER, ELLEN COTTER,) GUY ADAMS, EDWARD KANE,) 7 DOUGLAS MCEACHERN, WILLIAM) GOULD, JUDY CODDING, MICHAEL) 8 WROTONIAK, CRAIG TOMPKINS,) and DOES 1 through 100,) 9) Defendants.) 10) and) 11) READING INTERNATIONAL, INC.,) 12 a Nevada corporation,))) 13 Nominal Defendant.) 14) 15) 16 Videotaped Deposition of DOUGLAS 17 MCEACHERN, taken on behalf of Plaintiff, at 1901 18 Avenue of the Stars, Suite 600, Los Angeles, 19 California, beginning at 11:02 a.m. and ending at 20 12:52 p.m., on Wednesday, February 28, 2018, before 21 GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR. 22) 23) 24) 25)</p>	<p>Page 497</p> <p>1 I N D E X 2 WITNESS EXAMINATION PAGE 3 DOUGLAS MCEACHERN 4 BY MR. KRUM 499 5) 6 E X H I B I T S 7 NO. DESCRIPTION PAGE 8 Exhibit 525 Email from Laura Batista, dated 501 December 27, 2017, with 9 attachment 10 Exhibit 526 Minutes of the Board of Directors 522 Meeting, December 29, 2017 11) 12 Exhibit 527 Email from Marcia Wizelman to 543 Ellen Cotter 13) 14) 15 QUESTIONS INSTRUCTED NOT TO ANSWER 16 PAGE LINE 17 547 3 18) 19) 20) 21) 22) 23) 24) 25)</p>
<p>Page 496</p> <p>1 A P P E A R A N C E S 2) 3 For the Plaintiff: 4 YURKO, SALVESEN, & REMZ BY: MARK G. KRUM, ESQ. 5 One Washington Mall 11th Floor 6 Boston, Massachusetts 02108 (617)-723-6900 7) 8) 9 For the Plaintiff Reading International: 10 GREENBERG TRAUERIG BY: MARK FERRARIO, ESQ. 1840 Century Park East 11 Suite 1900 Los Angeles, California 90067 (310) 586-7700 12 ferrario@gtlaw.com 13) 14 For the Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane: 15) 16 QUINN EMANUEL BY: MARSHALL SEARCY, ESQ. 865 South Figueroa Street 17 10th Floor Los Angeles, California 90017 (213) 443-3000 18 marshallsearcy@quinnemanuel.com 19) 20 Also Present: CORY TYLER, Videographer 21) 22) 23) 24) 25)</p>	<p>Page 498</p> <p>1 Los Angeles, California 2 Wednesday February 28, 2018 3 11:02 a.m. 4) 5 THE VIDEOGRAPHER: This is the beginning 6 of Media 1 in the deposition of Douglas McEachern, 7 Volume IV, in the matter of Cotter, Jr., versus 8 Cotter, et al., held at 1901 Avenue of the Stars, 9 Suite 1600, Century City, California, on February 10 28, 2018, at 11:02 a.m. 11 The court reporter is Grace Chung, and I am 12 Cory Tyler, the videographer, an employee of 13 Litigation Services. 14 This deposition is being videotaped at all 15 times unless specified to go off the video record. 16 Would all present please identify 17 themselves, beginning with the witness. 18 THE WITNESS: Douglas McEachern. 19 MR. SEARCY: Marshall Searcy for 20 Mr. McEachern, Ed Kane, Margaret Cotter, Ellen 21 Cotter, Guy Adams, Judy Coddington, and Michael 22 Wrotoniak. 23 MR. FERRARIO: Mark Ferrario for RDI or 24 Reading. 25 MR. KRUM: Mark Krum for plaintiff.</p>

<p style="text-align: right;">Page 507</p> <p>1 Q. -- to the prior compensation committee 2 decision or decisions. On what basis or bases did 3 you do so? 4 A. Number one, I didn't think there was an 5 issue here at all for the board to deal with. It 6 was delegated to the compensation committee to 7 handle this type of matters. We were approving 8 this. And I believe we had -- I think we had a 9 call to talk about a couple of issues that were 10 still existing in this -- in this derivative case 11 by Jim Cotter, Jr., and we were trying to address 12 them in a fashion to resolve them. 13 Q. When you say you were trying to address 14 them in a fashion to resolve them, what does that 15 mean? Does that mean you were trying to moot the 16 issues? 17 A. I don't know what "moot" means. I'm 18 sorry. I'm not an attorney. 19 Q. Okay. Well, when you say you were trying 20 to address them in a fashion to resolve them, 21 resolve them how? 22 A. To say that the -- the corporation 23 ratified these, and that -- that there was no -- no 24 issue or concern that we approved them. If anybody 25 in the past thought that there was an issue, our</p>	<p style="text-align: right;">Page 509</p> <p>1 particular in Exhibit 525, the December 27 board 2 package, that you considered or valued in making 3 the decision you made to vote in favor of ratifying 4 the September 2015 compensation committee decision? 5 A. Uh-huh. And did you say the December 27th 6 board meeting or the December 29th? 7 Q. I called the package -- the package 8 December 27 because it has a December 27 9 transmission date. But -- so I'm not confusing 10 you, I am referring to the December 29 board 11 meeting and your vote there. 12 So with that clarification, let me ask: Is 13 there anything in Exhibit 525 that made any 14 difference to your vote on December 29 to vote in 15 favor of ratifying or approving the 2015 decision by 16 the compensation committee that's the subject of -- 17 one subject of this package? 18 A. No. 19 MR. SEARCY: Objection. Vague. 20 A. And no. 21 BY MR. KRUM: 22 Q. Okay. Directing your attention back to 23 your prior testimony to the effect that you first 24 heard or learned in early to mid-December that the 25 ratification or approval of the prior compensation</p>
<p style="text-align: right;">Page 508</p> <p>1 action there was to cure any issue anybody might 2 think existed. 3 Q. What did you do, meaning what documents 4 did you review, with whom did you have 5 conversations, or anything else, to inform yourself 6 to make the decision you made to vote in favor of 7 ratifying or affirming the prior compensation 8 committee decision? 9 A. I reviewed whatever documents were handed 10 out, Mr. Krum, in this -- this package. But I had 11 been there at the time that this transaction took 12 place. I was aware of what went on. At the time, 13 I couldn't understand why this was an issue. I 14 still couldn't understand why it was an issue. And 15 it seemed to me to be pretty perfunctory to 16 approve. 17 Q. Directing your attention, Mr. McEachern, 18 to Exhibit 525, that's the board package for the 19 December 29 meeting; correct? 20 A. I believe so, yes. 21 Q. Now, this is not intended to require you 22 to look at every page, but if you think you need to 23 do so, you are welcome to do so. 24 A. Uh-huh. 25 Q. My question is: Was there anything in</p>	<p style="text-align: right;">Page 510</p> <p>1 committee decision might or would be taken on the 2 December 29 board meeting, was that -- did you 3 learn that by speaking to somebody, by receiving an 4 email, or otherwise? 5 A. I just couldn't tell you, Mr. Krum. 6 Q. Okay. What was the next communication you 7 had with anybody, after that initial one, with 8 respect to the possible ratification or approval of 9 the September 2015 compensation committee decision 10 regarding the 100,000 share option, at any time 11 prior to the December 29 board meeting? 12 A. I could have been involved in discussions 13 that predated this. I just can't remember. I'm 14 generally aware that it was raised as an issue. As 15 I said, I still don't understand why. I know that 16 we had a call with Mike Bonner, maybe Mark 17 Ferrario, and maybe somebody from Greenberg, 18 I'm not certain, to discuss this -- 19 MR. SEARCY: Let me just caution you. 20 When you start to get into attorney-client 21 privileged discussions, I want you to be able to 22 answer the question, but I don't want you to get 23 into the specifics of any particular discussions 24 you may have had with Mr. Ferrario or Mr. Bonner. 25 THE WITNESS: Okay.</p>

<p style="text-align: right;">Page 511</p> <p>1 MR. SEARCY: I mean, just to a general 2 level for purposes of answering his question. 3 A. I was generally aware that we were going 4 to be talking about this issue and the ratification 5 or the termination of Jim Cotter, Jr., in this 6 conference call. And the background of that 7 action, of being able to do it, was something that 8 I believe Mr. Bonner communicated to us was the 9 result of a law that he wrote in the state of 10 Nevada. 11 BY MR. KRUM: 12 Q. Who was on this call with Mr. Bonner 13 and/or Mr. Ferrario? 14 A. I'm not certain if this was an entire 15 board meeting or it was a meeting of the special 16 committee of myself, Bill Gould, and Judy Coddling. 17 I suspect it was the three of us. 18 Q. Did the special committee have meetings in 19 person or telephonic in December of 2017? 20 A. I believe so. But there were 12, 14, 15 21 meetings that took place telephonically and in 22 person from July, August of 2017, through the end 23 of December. 24 Q. Of the special committee? 25 A. Uh-huh.</p>	<p style="text-align: right;">Page 513</p> <p>1 Q. Did you have any with Judy Coddling? 2 A. I don't recall a discussion with Judy 3 about that, no. 4 Q. Did you have any such discussions -- 5 strike that. 6 What discussions did you have with Ellen 7 Cotter in December 2017, if any, regarding the 8 subject of the compensation committee's prior 9 approval in September 2015 of the exercise of the 10 100,000 share option? 11 A. I'm not certain. I think I had a 12 discussion with Ellen Cotter about who owned the 13 option, who owned the stock, and what took place in 14 the -- in the transaction. And that was it. But I 15 couldn't tell you if it took place in December. I 16 know I had a chat with -- with Ellen Cotter. I 17 just can't tell you when it was. 18 Q. When you say "who owned the option," you 19 are referring to the 100,000 share option? 20 A. Huh? Yes, I am. 21 Q. And when you say "who owned the stock," 22 you are referring to the Class A stock that was 23 used as consideration for the exercise of the 24 100,000 share option? 25 A. Yes, I am.</p>
<p style="text-align: right;">Page 512</p> <p>1 Q. That's a yes, uh-huh? 2 A. That's a yes. I'm sorry. That's a yes. 3 Q. What discussions, if any, did you have 4 with Bill Gould -- strike that. 5 What discussions did you have with Bill 6 Gould, if any, other than the call with Bonner and/or 7 Ferrario in December of 2017 with respect to the 8 subject of the special committee's prior approval of 9 the exercise of the 100,000 share option? 10 MR. FERRARIO: You said the special 11 committee's prior approval of it? 12 MR. KRUM: Yes, I'm referring to September 13 '15. My mistake. 14 MR. FERRARIO: That was the compensation 15 committee. 16 MR. KRUM: Compensation committee. Thank 17 you, Mark. 18 Let me try it again. 19 Q. Mr. McEachern, what discussions did you 20 have with Bill Gould, if any, excluding the call 21 with Bonner and/or Ferrario in December 2017 about 22 the compensation committee's September 2015 23 approval of the exercise of the 100,000 share 24 option? 25 A. I don't think I had any.</p>	<p style="text-align: right;">Page 514</p> <p>1 Q. And this discussion with Ellen Cotter, who 2 else, if anyone, was present or privy to that? 3 A. I believe it was a phone conversation, and 4 I don't think anybody else participated in the 5 call. 6 Q. Was that the sole subject of that 7 telephone conversation between you and Ellen 8 Cotter? 9 A. I'm not certain. I just don't remember. 10 I have a general impression of having had that 11 discussion with Ellen. I couldn't tell you what 12 else took place in that call. 13 Q. How did it come about that that call 14 occurred? 15 A. I don't know. 16 Q. So you don't recall, for example, if you 17 had a question about who owned the option or who 18 owned the stock and you decided to call her and 19 ask? 20 A. I probably speak with Ellen Cotter once or 21 twice a week. I initiate a call or she calls me. 22 We talk about various things, and different topics 23 come up. I'm certain we had a call about who owned 24 the option and who owned the stock, but we probably 25 talked about other corporate matters that were</p>

<p style="text-align: right;">Page 543</p> <p>1 MR. KRUM: Well, I gave him a birthday 2 present also; right? 3 MR. FERRARIO: That's right, you did. 4 BY MR. KRUM: 5 Q. So I -- 6 A. You gave him wine? 7 Q. No, I didn't give him wine, I -- I told 8 him he didn't -- I told counsel that Mr. Kane did 9 not need to appear for further depositions. So I'm 10 sure he appreciated that. 11 MR. KRUM: Why don't we take a short 12 break. 13 MR. SEARCY: Sure. 14 THE VIDEOGRAPHER: We are off the record 15 at 12:07 p.m. 16 (Recess taken from 12:07 p.m. to 17 12:21 p.m.) 18 THE VIDEOGRAPHER: We are back on the 19 record. The time now is 12:21 p.m. 20 MR. KRUM: I will ask the court reporter 21 to mark as Exhibit 527 a single-page document 22 bearing production number RDI63918. 23 (Deposition Exhibit 527 was marked for 24 identification by the reporter and is 25 attached hereto.)</p>	<p style="text-align: right;">Page 545</p> <p>1 topics at the meeting. 2 Q. Does the special committee take or 3 maintain meeting minutes? 4 A. Yes, they do. 5 Q. Are there minutes of the meeting you just 6 described? 7 A. I believe they are drafts. I don't think 8 we have done anything to approve -- I take that 9 back. I'm not sure if the committee's approved 10 them or not. I know they have not been presented 11 to the board. 12 MR. KRUM: Okay. Mark and Marshall, I 13 would ask getting special meetings minutes that 14 referred to these matters also be produced. 15 Q. What was the conclusion, if any, reached 16 at that meeting with respect to the subject of 17 ratification? 18 A. That we would pursue that activity and -- 19 and present it to the board of directors. 20 Q. Who first raised the subject? 21 A. I believe Mike Bonner. 22 Q. Is Mr. Bonner ordinarily at the meetings 23 of the special committee? 24 A. I believe he's attended all of them. He 25 may have missed one or two.</p>
<p style="text-align: right;">Page 544</p> <p>1 (Miscellaneous discussion.) 2 BY MR. KRUM: 3 Q. Mr. McEachern, take such time as you need. 4 My question is: Have you seen Exhibit 527 before? 5 A. I don't recall having seen this before, 6 but I do recall speaking in our special committee 7 with Bill Gould and Judy Coddling about asking to 8 have this done. 9 Q. When was that conversation with the 10 special committee to which you just referred? 11 A. Sometime in mid to late December. 12 Q. Who said what? 13 A. Generally, I believe it was a special 14 committee meeting. I can't remember if Mr. Kane 15 and Michael Wrotniak were part of it or not, with 16 Michael Bonner of Greenberg Traurig referring again 17 to the law that he wrote for the state of Nevada on 18 ratification matters by the board of director -- 19 directors. 20 Q. Was this meeting scheduled for that 21 purpose, or was the meeting scheduled for other 22 purposes as well? 23 A. The meeting of the special committee? 24 Q. Yeah. 25 A. I don't recall if there were any other</p>	<p style="text-align: right;">Page 546</p> <p>1 Q. Now, the special committee in question, 2 which committee -- which special committee is that, 3 Mr. McEachern? 4 A. It's a committee that was put together by 5 the board in the summer of 2017 to deal with the 6 litigation matters, and specifically the derivative 7 lawsuit, and/or reacting -- figuring out what our 8 reaction would be given actions that may or may not 9 be taken with respect to the trust and the estate 10 case. 11 Q. And the actions that may or may not be 12 taken with respect to the trust and estate case, do 13 those include the appointment of a trustee ad litem 14 with responsibilities with respect to the 15 controlling block of RDI Class B voting stock? 16 A. Can you restate that again? I'm sorry. 17 MR. KRUM: I will ask the court reporter 18 to read it. 19 A. That's fine. 20 (Reporter read back the requested text.) 21 A. I don't know that we have anything to do 22 with the appointment of a trustee ad litem. But in 23 reacting to whatever takes place in that, that's 24 what the committee is of, to react to. I believe 25 we have a charter that was approved by the board</p>

<p style="text-align: right;">Page 547</p> <p>1 that one could get and see what our charter is.</p> <p>2 BY MR. KRUM:</p> <p>3 Q. Has the committee directed counsel,</p> <p>4 Greenberg Traurig, or anybody else, to take action?</p> <p>5 And by "committee," I'm referring to the same</p> <p>6 special committee about which you are testifying.</p> <p>7 MR. FERRARIO: I'm going to object.</p> <p>8 Overbroad.</p> <p>9 A. I remember sometime in the fall of 2017,</p> <p>10 Mike Bonner was -- and when I say "Mike Bonner,"</p> <p>11 I'm not sure if it was Mike Bonner and Bill Gould,</p> <p>12 who is the chairman of the committee.</p> <p>13 MR. FERRARIO: Don't -- don't divulge</p> <p>14 attorney-client communications. Okay. So that's</p> <p>15 what I'm trying to get. If somebody directs a</p> <p>16 lawyer to do something, that to me implicates</p> <p>17 attorney-client communication, because it could be</p> <p>18 reflective of advice or a scope of litigation,</p> <p>19 something like that. I don't want to impede this</p> <p>20 because it's been going very smooth, but that's my</p> <p>21 admonition. I don't really understand the</p> <p>22 question, but go ahead without divulging any</p> <p>23 attorney-client communication.</p> <p>24 THE WITNESS: Can I ask a question? So if</p> <p>25 we asked Mike Bonner to participate with Bill Gould</p>	<p style="text-align: right;">Page 549</p> <p>1 A. Ratification of what? The actions by the</p> <p>2 compensation committee or the ratification of the</p> <p>3 termination of Jim Cotter, Jr.?</p> <p>4 Q. Either or both.</p> <p>5 A. I think it's in late fall sometime of</p> <p>6 2017. But there was nothing that could be done, I</p> <p>7 don't think, until such time as -- as I recall, the</p> <p>8 judge in the derivative case took some action with</p> <p>9 respect to dismissing directors from the lawsuit.</p> <p>10 Q. So the subject was raised in the late fall</p> <p>11 of 2017 and, in effect, it was tabled for the time</p> <p>12 being?</p> <p>13 A. I believe that's correct.</p> <p>14 Q. What did you say, if anything, about that</p> <p>15 subject in the late fall of 2017?</p> <p>16 A. I do not recall.</p> <p>17 Q. What about did Bill Gould say?</p> <p>18 A. I do not recall.</p> <p>19 Q. What did Judy Coddling say?</p> <p>20 A. I do not recall.</p> <p>21 Q. Did it concern the ratification of the</p> <p>22 termination decision or the decision to authorize</p> <p>23 the exercise of the 100,000 share option by way of</p> <p>24 Class A voting stock or both?</p> <p>25 A. I believe the main focus was on the</p>
<p style="text-align: right;">Page 548</p> <p>1 in doing something, that's attorney-client</p> <p>2 privilege?</p> <p>3 MR. FERRARIO: If you're asking -- if you</p> <p>4 are asking him, Bill Gould, to the grocery store</p> <p>5 and pick up sodas for a meeting, I don't care. If</p> <p>6 you are asking him to do something that would</p> <p>7 encompass the giving of legal advice that is going</p> <p>8 be reflective of what -- you know, what was being</p> <p>9 discussed between the lawyer and the client, I</p> <p>10 would instruct you not to answer that.</p> <p>11 A. Then I won't answer that question.</p> <p>12 BY MR. KRUM:</p> <p>13 Q. All right. Well, let me weigh in on this.</p> <p>14 What I'm attempting to ascertain is the scope of</p> <p>15 the actions with respect to the special committee.</p> <p>16 So let me just ask you about a couple of subjects.</p> <p>17 Has the special committee taken any steps</p> <p>18 to communicate any positions in any action, whether</p> <p>19 the derivative action or the California trust action?</p> <p>20 A. No, not to my recollection.</p> <p>21 Q. Directing your attention, Mr. McEachern,</p> <p>22 specifically with respect to the subject of</p> <p>23 ratification, as best as you can recall, sir, when</p> <p>24 and how did that subject first arise before the</p> <p>25 special committee?</p>	<p style="text-align: right;">Page 550</p> <p>1 termination of Jim Cotter, Jr.</p> <p>2 Q. What was said, if anything, at that time</p> <p>3 about the subject of Guy Adams' disinterest in this</p> <p>4 independence or both?</p> <p>5 A. With respect to what?</p> <p>6 Q. The vote to terminate Jim Cotter, Jr., in</p> <p>7 2015.</p> <p>8 MR. SEARCY: Let's have the question read</p> <p>9 back.</p> <p>10 THE WITNESS: I'm sorry?</p> <p>11 MR. SEARCY: I was asking if we could have</p> <p>12 the question read back.</p> <p>13 (Reporter read back the requested text.)</p> <p>14 MR. SEARCY: And you're asking about --</p> <p>15 involved 2017?</p> <p>16 MR. KRUM: Right.</p> <p>17 MR. FERRARIO: It's to non-lawyers.</p> <p>18 A. I don't recall, but the judge dismissed</p> <p>19 five directors from the case, and the case still</p> <p>20 has Ellen Cotter, Margaret Cotter, and Guy Adams as</p> <p>21 defendants. And I believe the discussion was as</p> <p>22 long as he was a defendant in the case, he couldn't</p> <p>23 vote on this type of matter. I don't recall a</p> <p>24 discussion about his independence at that -- in</p> <p>25 connection with that.</p>

EXHIBIT 8

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3	JAMES J. COTTER, JR.,)	
4	individually and derivatively)	
5	on behalf of Reading)	
	International, Inc.,)	
6	Plaintiff,	)	Case No.
7	VS.	)	A-15-719860-B
		)	Coordinated with:
8	MARGARET COTTER, ELLEN COTTER,)	
	GUY ADAMS, EDWARD KANE, DOUGLAS	)	Case No.
9	McEACHERN, TIMOTHY STOREY,	)	P-14-082942-E
	WILLIAM GOULD, and DOES 1	)	Case No.
10	through 100, inclusive,	)	A-16-735305-B
11	Defendants.	)	Volume II
12	and)	
13	<u>READING INTERNATIONAL, INC., a</u>)	
	Nevada corporation,)	
14	Nominal Defendant.)	
15	<u>(Caption continued on next</u>		
16	page.)		
17			
18	VIDEOTAPED DEPOSITION OF JUDY CODDING		
19	Wednesday, February 28, 2018		
20	Los Angeles, California		
21			
22	REPORTED BY:		
23	GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR		
24	FILE NO.: 453340-B		
25			

JUDY CODDING, VOL II - 02/28/2018

<p style="text-align: right;">Page 195</p> <p>1 T2 PARTNERS MANAGEMENT, LP.,) 2 a Delaware limited) 3 partnership, doing business as) 4 KASE CAPITAL MANAGEMENT,) 5 et al.,) 6) 7 Plaintiff,) 8) 9 vs.) 10) 11 MARGARET COTTER, ELLEN COTTER,) 12 GUY ADAMS, EDWARD KANE,) 13 DOUGLAS McEACHERN, WILLIAM) 14 GOULD, JUDY CODDING, MICHAEL) 15 WROTONIAK, CRAIG TOMPKINS,) 16 and DOES 1 through 100,) 17) 18 Defendants.) 19) 20 and) 21) 22 READING INTERNATIONAL, INC.,) 23 a Nevada corporation,) 24) 25 Nominal Defendant.)</p> <p>Videotaped Deposition of JUDY CODDING, taken on behalf of Plaintiff, at 1901 Avenue of the Stars, Suite 600, Los Angeles, California, beginning at 2:22 a.m. and ending at 4:38 p.m., on Wednesday, February 28, 2018, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.</p>	<p style="text-align: right;">Page 197</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <thead> <tr> <th style="text-align: left;">WITNESS EXAMINATION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>JUDY CODDING</td> <td></td> </tr> <tr> <td>BY MR. KRUM</td> <td style="text-align: right;">199</td> </tr> <tr> <td>BY MR. TAYBACK</td> <td style="text-align: right;">273</td> </tr> <tr> <td>BY MR. KRUM</td> <td style="text-align: right;">277</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td colspan="2">(The following previously marked exhibits were referenced: Deposition Exhibits 525, 527, 176.)</td> </tr> </tbody> </table>	WITNESS EXAMINATION	PAGE	JUDY CODDING		BY MR. KRUM	199	BY MR. TAYBACK	273	BY MR. KRUM	277			(The following previously marked exhibits were referenced: Deposition Exhibits 525, 527, 176.)	
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<p style="text-align: right;">Page 196</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>For the Plaintiff: YURKO, SALVESEN, & REMZ BY: MARK G. KRUM, ESQ. One Washington Mall 11th Floor Boston, Massachusetts 02108 (617)-723-6900</p> <p>For the Plaintiff Reading International: GREENBERG TRAUERIG BY: MARK FERRARIO, ESQ. 1840 Century Park East Suite 1900 Los Angeles, California 90067 (310) 586-7700 ferrariom@gtlaw.com</p> <p>For the Defendants Margaret Cotter, Ellen Cotter Guy Adams, Edward Kane: QUINN EMANUEL BY: CHRISTOPHER TAYBACK, ESQ. 865 South Figueroa Street 10th Floor Los Angeles, California 90017 (213) 443-3000 christayback@quinnemanuel.com</p> <p>Also Present: CORY TYLER, Videographer</p>	<p style="text-align: right;">Page 198</p> <p>Los Angeles, California Wednesday February 28, 2018 2:22 p.m.</p> <p>THE VIDEOGRAPHER: And this is the beginning of Media 2 and the beginning of deposition of Judy Coddling, Volume II, in the matter of Cotter, Jr., versus Cotter, et al., held at 1901 Avenue of the Stars, Suite 1600, Century City, California, on February 28th, 2018, at 2:22 p.m.</p> <p>The court reporter is Grace Chung, and I am Cory Tyler, the videographer, an employee of Litigation Services. This deposition is being videotaped at all times unless specified to go off the video record.</p> <p>Would all present please identify themselves, beginning with the witness.</p> <p>THE WITNESS: Judy Coddling.</p> <p>MR. TAYBACK: Christopher Tayback for the witness and director defendants.</p> <p>MR. FERRARIO: Mark Ferrario for Reading or RDI.</p> <p>MR. KRUM: Mark Krum for plaintiff.</p> <p>THE VIDEOGRAPHER: And will the court reporter please swear in the witness.</p>														

<p style="text-align: right;">Page 203</p> <p>1 A. I don't remember that.</p> <p>2 Q. Okay. Did the Highpoint Associates</p> <p>3 document or any information regarding Highpoint</p> <p>4 Associates make any difference to you in any</p> <p>5 decision you made or conclusion you reached?</p> <p>6 A. It's just one small piece of knowledge.</p> <p>7 Q. What's your understanding of what happened</p> <p>8 at Highpoint Associates?</p> <p>9 A. Well, I haven't seen the work order. I've</p> <p>10 only read the contract, and it appears that Jim</p> <p>11 Cotter, Jr., went out and hired a group to help</p> <p>12 him, it appears, with maybe strategy. But it</p> <p>13 wasn't that clear in the contract.</p> <p>14 The contract called for him to -- for</p> <p>15 Highpoint Associates interview directors that had</p> <p>16 access to all materials, et cetera, but it wasn't</p> <p>17 clear to me, since there wasn't a work order, what</p> <p>18 the particulars were.</p> <p>19 Q. Other than what you've already told me,</p> <p>20 have you had any conversations or been privy to any</p> <p>21 conversations about the Highpoint Associates'</p> <p>22 document or documents or Highpoint Associates?</p> <p>23 A. After the meeting, I asked about what --</p> <p>24 who was Highpoint Associates and why they were</p> <p>25 hired.</p>	<p style="text-align: right;">Page 205</p> <p>1 A. Right.</p> <p>2 Q. For ease of reference, Ms. Coddington, I'm</p> <p>3 going to refer to that as the 100,000 share option.</p> <p>4 A. Okay.</p> <p>5 Q. Ms. Coddington, with respect to --</p> <p>6 (Miscellaneous comments.)</p> <p>7 BY MR. KRUM:</p> <p>8 Q. Ms. Coddington, with respect to either of the</p> <p>9 two ratification matters you just identified, when</p> <p>10 did you first hear or learn that either/or both of</p> <p>11 them would be or might be raised at the December</p> <p>12 29, 2017, board meeting?</p> <p>13 A. We had a discussion in the special</p> <p>14 committee about the ratification of Jim Cotter,</p> <p>15 Jr., being the CEO before that meeting -- shortly</p> <p>16 before that meeting.</p> <p>17 Q. And by "that meeting," you're referring to</p> <p>18 the December 29th, 2017 --</p> <p>19 A. Right.</p> <p>20 Q. -- board meeting?</p> <p>21 MR. KRUM: Did you hear the answer?</p> <p>22 THE REPORTER: Yes.</p> <p>23 BY MR. KRUM:</p> <p>24 Q. Who was present for or a party to the</p> <p>25 special committee discussion you just referenced?</p>
<p style="text-align: right;">Page 204</p> <p>1 Q. Who did you ask?</p> <p>2 A. I asked Ellen Cotter, the CEO.</p> <p>3 Q. What did she say, if anything?</p> <p>4 A. She said that she didn't know about it</p> <p>5 during the time and she thinks that Jim Cotter</p> <p>6 hired them to help him think about issues that had</p> <p>7 to be addressed within the company, but she wasn't</p> <p>8 sure since she didn't know anything about it. She</p> <p>9 just knew that there -- we had paid \$60,000, and we</p> <p>10 had received no product as a result.</p> <p>11 Q. The December 29, 2017, board meeting</p> <p>12 included two matters with respect to which you were</p> <p>13 asked to ratify prior decisions; right?</p> <p>14 A. Yes.</p> <p>15 Q. And what were those two matters, in your</p> <p>16 words?</p> <p>17 A. One was on Mr. Jim Cotter as CEO, and the</p> <p>18 second matter had to do with a stock, with Ellen</p> <p>19 Cotter and Mark Cotter.</p> <p>20 Q. It had to do with their request to</p> <p>21 exercise an option to acquire 100,000 shares of RDI</p> <p>22 Class B voting stock; right?</p> <p>23 A. For one of them, yes.</p> <p>24 Q. For the second one you just described;</p> <p>25 right?</p>	<p style="text-align: right;">Page 206</p> <p>1 A. Our attorney, Mike Bonner --</p> <p>2 Q. Uh-huh.</p> <p>3 A. -- and Bill Gould, Doug McEachern.</p> <p>4 Q. Was this in person, by telephone, or both?</p> <p>5 A. By telephone.</p> <p>6 Q. Who raised the subject of ratification?</p> <p>7 A. I don't --</p> <p>8 MR. TAYBACK: You can just answer the</p> <p>9 question who, only because there's a lawyer</p> <p>10 present. So I'm going to make -- make objections.</p> <p>11 So you can answer the question, though, as</p> <p>12 it was phrased.</p> <p>13 A. I don't remember whether it was Bill Gould</p> <p>14 or whether it was Mike Bonner.</p> <p>15 BY MR. KRUM:</p> <p>16 Q. And without saying what was said, meaning</p> <p>17 without speaking to the substance, did one or the</p> <p>18 other of -- or both, Mike Bonner or Bill Gould,</p> <p>19 explain the notion of ratification of these two</p> <p>20 issues?</p> <p>21 A. Yes.</p> <p>22 Q. At the special committee meeting, was</p> <p>23 there any discussion that you viewed as bearing</p> <p>24 upon the merits of either ratification decision as</p> <p>25 distinct from the fact of or reasons for</p>

<p style="text-align: right;">Page 207</p> <p>1 ratification?</p> <p>2 MR. TAYBACK: Object as being confusing.</p> <p>3 A. I'm not -- I'm not sure whether there was</p> <p>4 a distinction in my mind between those two.</p> <p>5 BY MR. KRUM:</p> <p>6 Q. Okay. So -- and what's your best estimate</p> <p>7 of when in time -- meaning how far shortly before</p> <p>8 the December 29, 2017, board meeting -- that the</p> <p>9 special committee telephonic meeting occurred?</p> <p>10 A. Just a couple of days.</p> <p>11 Q. Are there minutes?</p> <p>12 A. There are minutes that have not been</p> <p>13 approved that -- with our attorney. We haven't had</p> <p>14 a meeting with our attorney.</p> <p>15 Q. You have minutes of every special</p> <p>16 committee meeting; is that right?</p> <p>17 A. I think most, if not all.</p> <p>18 Q. And when you say "our attorney," are you</p> <p>19 referring to Mr. Bonner?</p> <p>20 A. I am.</p> <p>21 Q. At Greenberg Traurig?</p> <p>22 A. Yes. And on other occasions, other</p> <p>23 attorneys have joined --</p> <p>24 Q. Who?</p> <p>25 A. -- to explain.</p>	<p style="text-align: right;">Page 209</p> <p>1 engaging its own independent counsel?</p> <p>2 MR. TAYBACK: I'm going to -- I'm just</p> <p>3 going to admonish the witness. If you had a</p> <p>4 discussion about retaining independent counsel with</p> <p>5 counsel for the company or with counsel for any of</p> <p>6 the directors, I suppose, that would be privileged.</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. KRUM:</p> <p>9 Q. So -- so he's instructing you not to</p> <p>10 answer insofar as the answer is yes with Quinn</p> <p>11 Emanuel lawyers or yes with Greenberg Traurig</p> <p>12 lawyers, and I'll understand that you're excluding</p> <p>13 that from your answer.</p> <p>14 So with that understanding, meaning</p> <p>15 excluding those lawyers and those law firms, based on</p> <p>16 the instruction that Mr. Tayback just gave, has the</p> <p>17 special committee ever discussed the subject of</p> <p>18 engaging separate independent counsel for the special</p> <p>19 committee?</p> <p>20 A. No.</p> <p>21 Q. Do you understand that Greenberg Traurig</p> <p>22 represents RDI?</p> <p>23 A. Yes.</p> <p>24 Q. And that Mr. Tayback and Mr. Searcy</p> <p>25 represent you and certain other directors</p>
<p style="text-align: right;">Page 208</p> <p>1 MR. TAYBACK: Let -- let her finish her</p> <p>2 answer. Just --</p> <p>3 BY MR. KRUM:</p> <p>4 Q. Sure. Please go ahead.</p> <p>5 A. To -- to explain whatever issue we were</p> <p>6 dealing with at that time, and I -- because we</p> <p>7 dealt with lawyers in the special committee and we</p> <p>8 dealt with them in other kinds of discussions,</p> <p>9 basically, we have dealt with Chris and with Mark</p> <p>10 and with Marshall and with Mike.</p> <p>11 Q. Okay. Mike is Mike Bonner of Greenberg</p> <p>12 Traurig?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. Chris being Mr. Tayback?</p> <p>17 A. Yes.</p> <p>18 Q. And Marshall being his colleague, Marshall</p> <p>19 Searcy?</p> <p>20 A. Yes.</p> <p>21 Q. And Mark being Mr. Ferrario with</p> <p>22 Greenberg --</p> <p>23 A. Yes.</p> <p>24 Q. -- Traurig?</p> <p>25 Has the special committee ever discussed</p>	<p style="text-align: right;">Page 210</p> <p>1 individually?</p> <p>2 A. Yes.</p> <p>3 Q. And you understand that they represent --</p> <p>4 represented you in connection with this derivative</p> <p>5 lawsuit; right?</p> <p>6 A. Yes.</p> <p>7 Q. And you understand Mr. Tayback and any of</p> <p>8 his colleagues or anyone else at Quinn Emanuel to</p> <p>9 represent you in any context or for any purpose</p> <p>10 other than this derivative lawsuit?</p> <p>11 A. I think that's what they represent us for.</p> <p>12 MR. KRUM: So you weren't here this</p> <p>13 morning, Chris. I asked the minutes for this</p> <p>14 meeting be produced. And I don't know what</p> <p>15 Marshall and Mark have done, but that request</p> <p>16 stands.</p> <p>17 Q. What did you do, Ms. Coddington, if anything,</p> <p>18 other than review Exhibit 525 to prepare yourself</p> <p>19 for the December 29, 2017, board meeting?</p> <p>20 A. For that specific meeting?</p> <p>21 Q. Right.</p> <p>22 A. Nothing.</p> <p>23 Q. Now, directing your attention to the</p> <p>24 ratification decision you've identified earlier</p> <p>25 concerning the termination of Jim Cotter, Jr., as</p>

EXHIBIT 9

1 DISTRICT COURT
CLARK COUNTY, NEVADA

2 -----X

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

5

6 PLAINTIFF,
Case No:
A-15-719860-B
DEPT. NO. XI

7 -against-

8

Consolidated with

9

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

11

Case No:
P-14-082942-E
DEPT. NO. XI

12

DEFENDANTS.

13 -----X

14

15

DATE: March 6, 2018

16

TIME: 9:17 A.M.

17

18

VIDEOTAPED DEPOSITION of the Non-Party
Witness, MICHAEL WROTNIAK, taken by the Plaintiff,
pursuant to a Notice and to the Federal Rules of Civil
Procedure, held at the offices of Lowey, Dannenberg,
Bemporad & Selinger, PC, 44 South Broadway, White
Plains, New York 10601, before Suzanne Pastor, RPR, a
Notary Public of the State of New York.

25 JOB NO.: 455310

MICHAEL WROTNIAK - 03/06/2018

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 YURKO, SALVESEN, & REMZ, P.C.</p> <p>4 Attorneys for the Plaintiff</p> <p>5 One Washington Mall, 11th floor</p> <p>6 Boston, Massachusetts 02108</p> <p>7 BY: MARK G. KRUM, ESQ.</p> <p>8 617.723.6900</p> <p>9 mkrum@bizlit.com</p> <p>10 QUINN EMANUEL URQUHART & SULLIVAN, LLP</p> <p>11 Attorneys for the Defendants and the Witness</p> <p>12 MARGARET COTTER, ELLEN COTTER, DOUGLAS</p> <p>13 McEACHERN, GUY ADAMS and EDWARD KANE</p> <p>14 865 South Figueroa Street</p> <p>15 Los Angeles, California 90017</p> <p>16 BY: MARSHALL M. SEARCY, III, ESQ.</p> <p>17 213.443.3000</p> <p>18 marshallsearcy@quinnemanuel.com</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 CONNOR EICHENBERG, Videographer</p> <p>22</p> <p>23 *</p> <p>24 *</p> <p>25 *</p> <p style="text-align: center;">2</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: This is tape 1. We are</p> <p>2 now on the record at 9:17 a.m., Tuesday, March 6th,</p> <p>3 2018.</p> <p>4 This is the deposition of Michael Wrotniak in</p> <p>5 the matter of Cotter, Jr., versus Cotter, et al. This</p> <p>6 deposition is being held at the offices of Lowey,</p> <p>7 Dannenberg, Bemporad & Selinger, PC, located at 44 South</p> <p>8 Broadway, White Plains, New York.</p> <p>9 The court reporter is Sue Pastor with Diamond</p> <p>10 Reporting and Legal Video. I'm the legal videographer,</p> <p>11 Connor Eichenberg, also with Diamond Reporting and Legal</p> <p>12 Video.</p> <p>13 Would counsel please introduce themselves and</p> <p>14 state whom they represent.</p> <p>15 MR. KRUM: Mark Krum on behalf of plaintiff.</p> <p>16 MR. SEARCY: Marshall Searcy for the witness,</p> <p>17 for Ed Kane, Doug McEachern, Judy Coddling as well as</p> <p>18 Ellen Cotter, Margaret Cotter and Guy Adams.</p> <p>19 THE VIDEOGRAPHER: Will the court reporter</p> <p>20 please swear in the witness.</p> <p>21 M I C H A E L W R O T N I A K, called as a</p> <p>22 witness, having been first duly sworn by a Notary Public</p> <p>23 of the State of New York, was examined and testified as</p> <p>24 follows:</p> <p>25 EXAMINATION BY</p> <p style="text-align: center;">4</p>
<p style="text-align: right;">Page 3</p> <p>1 F E D E R A L S T I P U L A T I O N S</p> <p>2</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED by and between</p> <p>5 the counsel for the respective parties herein that the</p> <p>6 sealing, filing and certification of the within</p> <p>7 deposition be waived; that the original of the</p> <p>8 deposition may be signed and sworn to by the witness</p> <p>9 before anyone authorized to administer an oath, with the</p> <p>10 same effect as if signed before a Judge of the Court;</p> <p>11 that an unsigned copy of the deposition may be used with</p> <p>12 the same force and effect as if signed by the witness,</p> <p>13 30 days after service of the original & 1 copy of same</p> <p>14 upon counsel for the witness.</p> <p>15</p> <p>16 IT IS FURTHER STIPULATED AND AGREED that all</p> <p>17 objections except as to form, are reserved to the time</p> <p>18 of trial.</p> <p>19</p> <p>20 *</p> <p>21 *</p> <p>22 *</p> <p>23 *</p> <p>24</p> <p>25</p> <p style="text-align: center;">3</p>	<p style="text-align: right;">Page 5</p> <p>1 MR. KRUM:</p> <p>2 Q. Please state your name for the record.</p> <p>3 A. Michael Wrotniak.</p> <p>4 Q. Good morning, Mr. Wrotniak.</p> <p>5 A. Good morning.</p> <p>6 Q. Would you spell your last name for us,</p> <p>7 please.</p> <p>8 A. W-R-O-T-N-I-A-K.</p> <p>9 Q. Thank you.</p> <p>10 Have you ever been deposed before?</p> <p>11 A. Yes.</p> <p>12 Q. On how many occasions?</p> <p>13 A. Once.</p> <p>14 Q. When was that?</p> <p>15 A. 2002, 2003, sometime in that time frame.</p> <p>16 Q. Were you a party to a legal proceeding?</p> <p>17 A. Company I worked for had a shipping</p> <p>18 problem, and the company was.</p> <p>19 Q. What did you do to prepare for your</p> <p>20 deposition today?</p> <p>21 A. I read the documents that my counsel</p> <p>22 provided to me and I met with my counsel yesterday.</p> <p>23 Q. That's Mr. Searcy?</p> <p>24 A. Yes.</p> <p>25 Q. For how long?</p> <p style="text-align: center;">5</p>

<p style="text-align: right;">Page 90</p> <p>1 begins with the words "Mr. Wrotoniak also expressed his 2 views." Do you have that paragraph? 3 A. Yes. 4 Q. Let me know when you've finished reading 5 it. 6 A. (The witness reviews the document.) 7 Yes. 8 Q. Does that fairly summarize comments you 9 made? 10 A. Yes. 11 Q. When you said in words or substance that 12 the board has attempted to work with Mr. Cotter but had 13 no alternative to take the action it did, termination, 14 what were you referencing when you said "work" with him? 15 A. They offered him a position as president 16 working under a CEO. 17 Q. When you say they had no -- in words or 18 substance, had no alternative but to vote to terminate 19 him, what exactly were you saying or referencing? 20 A. That if they concluded based on his 21 performance that he was not fulfilling his 22 responsibilities, that he needed to be terminated. 23 Q. I direct your attention to page 6, the 24 last page of Exhibit 526. Do you have that? 25 A. Yes.</p> <p style="text-align: center;">90</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Oh, I did see it yesterday. 2 Q. Do you recall whether you saw it prior to 3 yesterday? 4 A. I don't recall. 5 Q. Do you see that you're not identified as 6 either a -- well, you're not identified on the from, to 7 or cc section. 8 A. Correct. 9 Q. Does that refresh your recollection that 10 the first time you saw Exhibit 527 was yesterday? 11 MR. SEARCY: Objection; lacks foundation. 12 A. I don't recall when I saw it. 13 Q. Did you ever see a draft of Exhibit 527? 14 A. I don't recall. 15 Q. Did you ever have any discussions with 16 anybody about Exhibit 527, excluding any you had with 17 Mr. Searcy yesterday? 18 A. Yes. 19 Q. When and with whom? 20 A. In my conversation with Mike Bonner and 21 Mark Ferrario. 22 Q. This is the telephone call you and 23 Ms. Coddling had with Bonner and Ferrario? 24 A. Correct. 25 Q. Have you had any other communications</p> <p style="text-align: center;">92</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. The first full paragraph on that page 2 reads as follows: "Upon motion duly made by Director 3 McEachern and seconded by Dr. Wrotoniak, the following 4 resolution was adopted." Do you see that paragraph? 5 A. I do. 6 Q. Is that correct, that you seconded the 7 ratification motion with respect to the 100,000-share 8 option? 9 A. Yes. 10 Q. How did that come to pass? 11 A. I don't understand the question. 12 Q. Had you had any discussions about 13 seconding that motion -- 14 A. No. 15 Q. -- prior to doing so? 16 A. No. 17 Q. Mr. Wrotoniak, I show you what previously 18 has been marked as Exhibit 527. It bears production 19 number RDI 0063918. 20 Have you seen Exhibit 527 previously? 21 A. Yes. 22 Q. When? 23 A. I don't recall when the first time I saw 24 it was. 25 Q. You saw it yesterday, correct?</p> <p style="text-align: center;">91</p>	<p style="text-align: right;">Page 93</p> <p>1 regarding Exhibit 527? 2 A. No. 3 Q. In your call with Bonner and Ferrario, 4 did you have 527 or a draft of that in your hand or in 5 front of you at the time of the call? 6 A. No. 7 Q. Had you seen it at that time? 8 A. No. 9 MR. KRUM: Let's go off the record. 10 THE VIDEOGRAPHER: We are now off the record 11 at 12:16 p.m. 12 (Whereupon, a short recess was taken.) 13 THE VIDEOGRAPHER: This is tape 3, part 2 of 14 the deposition of Michael Wrotoniak. We are now on the 15 record at 12:25 p.m. 16 MR. KRUM: Marshall, there was a particular 17 document that was mentioned at the last two depositions 18 that you were going to check on. Were you able to do 19 that? 20 MR. SEARCY: Oh, that was something that 21 Ferrario was going to look into. I'll follow up with 22 him. 23 MR. KRUM: Okay. 24 MR. SEARCY: That had to do with special 25 committee meeting minutes, is that right?</p> <p style="text-align: center;">93</p>

<p style="text-align: right;">Page 94</p> <p>1 MR. KRUM: I believe that was, yes.</p> <p>2 MR. SEARCY: I'll follow up with him on that.</p> <p>3 MR. KRUM: I don't think there's any reason</p> <p>4 to take Mr. Wrotniak's time about that.</p> <p>5 MR. SEARCY: He's not even part of that</p> <p>6 committee, so.</p> <p>7 MR. KRUM: I don't have any further</p> <p>8 questions. All rights are reserved.</p> <p>9 Thank you, sir, for your time and off we go</p> <p>10 to the next one I guess.</p> <p>11 MR. SEARCY: Thank you. No questions from</p> <p>12 me.</p> <p>13 THE VIDEOGRAPHER: This concludes today's</p> <p>14 deposition of Michael Wrotniak. We are now off the</p> <p>15 record at 12:25 p.m.</p> <p>16 (Whereupon, at 12:25 P.M., the Examination of</p> <p>17 this witness was concluded.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">94</p>	<p style="text-align: right;">Page 96</p> <p>1 E X H I B I T S</p> <p>2</p> <p>3 (None)</p> <p>4</p> <p>5</p> <p>6</p> <p>7 I N D E X</p> <p>8</p> <p>9 EXAMINATION BY PAGE</p> <p>10 MR. KRUM 5</p> <p>11</p> <p>12</p> <p>13 INFORMATION AND/OR DOCUMENTS REQUESTED</p> <p>14 (None)</p> <p>15</p> <p>16</p> <p>17</p> <p>18 QUESTIONS MARKED FOR RULINGS</p> <p>19 (None)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">96</p>
<p style="text-align: right;">Page 95</p> <p>1 D E C L A R A T I O N</p> <p>2</p> <p>3 I hereby certify that having been first duly</p> <p>4 sworn to testify to the truth, I gave the above</p> <p>5 testimony.</p> <p>6</p> <p>7 I FURTHER CERTIFY that the foregoing transcript</p> <p>8 is a true and correct transcript of the testimony given</p> <p>9 by me at the time and place specified hereinbefore.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 MICHAEL WROTNIAK</p> <p>15</p> <p>16 Subscribed and sworn to before me</p> <p>17 this ____ day of _____ 20__.</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 NOTARY PUBLIC</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">95</p>	<p style="text-align: right;">Page 97</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 STATE OF NEW YORK)</p> <p>4 COUNTY OF WESTCHESTER) : SS.:</p> <p>5</p> <p>6 I, SUZANNE PASTOR, a Notary Public for and</p> <p>7 within the State of New York, do hereby certify:</p> <p>8 That the witness whose examination is</p> <p>9 hereinbefore set forth was duly sworn and that such</p> <p>10 examination is a true record of the testimony given by</p> <p>11 that witness.</p> <p>12 I further certify that I am not related to any</p> <p>13 of the parties to this action by blood or by marriage</p> <p>14 and that I am in no way interested in the outcome of</p> <p>15 this matter.</p> <p>16 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>17 this 16th day of March 2018.</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 SUZANNE PASTOR</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">97</p>

CC

CC

EXHIBIT 10

From: Mark G. Krum
To: hendricksk@gtlaw.com; ferrariom@gtlaw.com; marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com; nhelpen@quinnemanuel.com; sm@morrislawgroup.com;
al@morrislawgroup.com; Sanford F. Remz; Noemi A. Kawamoto; sheffieldm@gtlaw.com
Subject: RE: RDI
Date: Tuesday, April 17, 2018 2:04:50 PM

Kara,

The advice that the December 21 minutes are the only responsive minutes is surprising, in view of the testimony of two of three committee members that the subject of ratification was first raised prior to December 2017. Given that the December minutes are completely redacted, they are of no use in determining when the subject first was raised and/or whether it was raised previously.

As to those minutes being "appropriately redacted," that remains an open question. Given that literally nothing of substance was disclosed in the redacted version of the December 21 minutes first produced on April 12, the document should have been included in your February privilege logs and now must be logged. Please do so forthwith. Nothing in the foregoing indicates that we agree with the remarkable suggestion that the entirety of those minutes are properly redacted.

I asked all committee members and none of them were able to correctly describe the chronology. My ability to examine them about the chronology and the substance was impaired because the December 21 minutes were neither logged nor produced, which was the result of RDI's counsel and all directors' counsel withholding but not logging the December 21 minutes. Your suggestion that those circumstances do not provide a basis and need for further deposition with the benefit of the improperly withheld information, improperly redacted minutes or both is tantamount to saying that defendants can conceal evidence with impunity. We respectfully disagree.

Mark

Mark G. Krum, Esq.
YURKO, SALVESEN & REMZ, P.C.
One Washington Mall, 11th Floor
Boston, Massachusetts 02108
T: (617) 723 6900
F: (617) 723 6905
<http://www.bizlit.com>

YURKO, SALVESEN & REMZ, P.C.

From: hendricksk@gtlaw.com [mailto:hendricksk@gtlaw.com]
Sent: Tuesday, April 17, 2018 12:37 PM
To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com;
marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelper@quinnemenuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; sheffieldm@gtlaw.com

Subject: RE: RDI

Mark,

We disagree with your interpretation of the facts and what has transpired in recent discovery, but see no purpose in arguing with you regarding the same. I have reviewed the minutes from the Special Committee meetings and confirm that the 12/21 minutes that were appropriately redacted and produced are the only minutes potentially responsive to your requests. You asked all committee members regarding the committee meetings and there is no basis and/or need for you to bring one or more of the directors back for additional deposition. To the extent you are concerned about authentication, we can stipulate to the authenticity of the draft document that was produced.

Kara

From: Mark G. Krum [mailto:mkrum@bizlit.com]

Sent: Friday, April 13, 2018 6:14 AM

To: Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>; Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelper@quinnemenuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Sheffield, Megan (Para-NY-LT) <sheffieldm@gtlaw.com>; Mark G. Krum <mkrum@bizlit.com>

Subject: RE: RDI

Kara,

I am not posturing and I made no "accusations of delay." I described what happened, which indisputably was weeks of delay in producing a responsive document, leaving only the question whether that was by design or oversight. In that regard, I merely observed that had it been by design, it would have been handled as it was handled. Given that Greenberg Traurig ("GT") is responsible for the litigation, including the production and logging of documents, and was involved in the underlying ostensibly corporate advice, it certainly seems unlikely that the document was not produced (or logged) by oversight. That said, I acknowledge the possibility that there is some other explanation, including for example that the person responsible for producing the document could not figure out how to redact it without rendering it nonresponsive and then failed to produce it.

In that regard, last evening we have received the document, redacted minutes of a December 21, 2017 meeting of the so-called special independent committee. It is been so heavily redacted that one cannot tell by looking at it that the subject of the redacted communications was or included ratification. Because we did not have the document to show to the deponents, we now have an unauthenticated document which does not on its face concern ratification. Either we need a document that is not so heavily redacted that, on its face, it shows that the redacted conversation(s) concern ratification, and/or we need to bring back one or more of

Gould, Coddling and/or McEachern to depose them about this meeting. (I note that not having this document to use at their depositions impaired our ability to ask questions to ascertain the chronology of events, which is important, and resulted in different testimony than we would have received had we had the document to show the deponents.)

I worked from a rough of Mr. Gould's deposition transcript, which I received this week. As for your glib response that "[a] telephone call is not a document and we are under no obligation to log the same[,]" it implies that the conversations about which Mr. Gould testified were unscheduled, extemporaneous telephone calls. The testimony, documents produced to date and privilege log entries all make clear that that is not how Mr. Gould, GT attorneys Bonner and Ferrario and, in particular, the so-called special independent committee, scheduled and handled their communications, much less their (typically telephonic) meetings.

To the point, have you or another lawyer who has access to the minutes of this so-called special independent committee reviewed any and all such minutes to identify, and then produce and/or log, others that reference what now is known as ratification? Given that "ratification" appears to have originated at GT acting ostensibly as corporate counsel for the so-called special independent committee (and the Company), GT as counsel of record for the Company is uniquely situated to ensure that any such responsive documents are produced and/or logged. (The foregoing is not a suggestion that the committee members themselves are not obligated to do so, as well.) If the answer to the question I ask at the beginning of this paragraph is negative, would you please be so kind as to have someone on the GT litigation team take the 10 to 30 minutes necessary to accomplish this task today and, if there are additional responsive minutes, produce and/or log them today.

Thank you.

Mark

From: hendricksk@gtlaw.com [<mailto:hendricksk@gtlaw.com>]

Sent: Thursday, April 12, 2018 7:21 PM

To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com; marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelpen@quinnemanuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; sheffielddm@gtlaw.com

Subject: RE: RDI

Mark,

There is no need to posture and make accusations of delay.

We will produce the draft minutes today for "Attorneys' Eyes Only" based on your commitment below that you will not share it with your client.

I do not have a copy of Mr. Gould's deposition yet. However, your email below appears to take issue with telephone calls referenced by Mr. Gould. A telephone call is not a document and we are

under no obligation to log the same.

Kara

From: Mark G. Krum [mailto:mkrum@bizlit.com]

Sent: Thursday, April 12, 2018 3:48 PM

To: Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>; Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelpern@quinnemenuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>

Subject: RE: RDI

Kara,

It may have been one week since you started working on this, but it has been 3 months since we propounded the document requests to which this document is responsive, 2 months since it should have been produced and approximately 6 weeks since I first identified it particularly. Had defendants undertaken to delay the production of the document(s) until after the depositions of the three committee members had been taken, so that we were unable to be fully prepared to take those depositions and unable to examine them about that meeting or those meetings, defendants would have done exactly what was done here.

If we have an "Attorneys' Eyes Only" provision in our stipulated protective order, you are entitled to invoke it. Even if we do not, I will commit to not sharing the document or the substance of it with Mr. Cotter. Whether and how that works with Greenberg Traurig {"GT"} and its corporate client is another issue.

I have made no "new accusations regarding Mr. Gould's communications with Greenberg Traurig." What I did was to reference his deposition testimony, which includes the following:

- At 14:19 – 15:13 of the rough of his transcript, he testified that the first communication he had (in his capacity as the chairperson of the special committee) regarding ratification was telephonically in mid or late November 2017 with Bonner and Ferrario of GT;
- At 16:20 – 17:11, he testified that the next communication he had regarding ratification was telephonically in early December with committee members Coddington and McEachern, with Bonner of GT on the call;
- At 26:22 – 27:3, he testified that the next communications he had regarding ratification after the early December call were follow-up calls with Bonner and Ferrario of GT.

Not one document with respect to the foregoing communications has been produced, and not one such document is listed on a privilege log. Kindly produce and/or log of all such documents and/or explain why no documents have been produced or logged. Please have this completed by close of business Monday, sufficiently in advance of when our next status report is due that we can proceed accordingly.

Thank you.

Mark

From: hendricksk@gtlaw.com [<mailto:hendricksk@gtlaw.com>]
Sent: Thursday, April 12, 2018 4:38 PM
To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com;
marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com; nhelpern@quinnemenueul.com; sm@morrislawgroup.com;
al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto
<nkawamoto@bizlit.com>
Subject: RE: RDI

Mark,

With all due respect, it has been one (1) week. I have been working on it and would have responded today with or without your unfounded accusations.

As I tried to explain to you during the deposition, the issue is complicated.

The Special Committee meeting closest in time to the date you requested occurred on 12/21. We are willing to redact attorney-client privileged information in the draft minutes and will produce for "Attorneys Eyes Only". Please note that to maintain independence of the committee and to permit the committee to function in such a capacity, the following process on minutes has been followed to date (1) No one other than the committee members have seen the minutes—that includes the Cotters and Craig Tompkins (not seeing them); (2) the committee members have individually seen them, but the committee has not formally approved them; and 3) the minutes have not been provided to the RDI BOD. Please confirm you are agreeable to the Attorney Eyes Only production.

As to your new accusations regarding Mr. Gould's communications with Greenberg Traurig all such communication was either produced or is on the privilege log RDI provided.

Best,
Kara

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]
Sent: Thursday, April 12, 2018 12:18 PM
To: Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com;
Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>
Cc: christayback@quinnemanuel.com; nhelpern@quinnemenueul.com; sm@morrislawgroup.com;
al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto
<nkawamoto@bizlit.com>
Subject: RE: RDI

Kara,

With all due respect, that is exactly what you told me a week ago during the deposition of Bill Gould. Likewise, that effectively is what Mark and Marshall told me at the end of February and the beginning of March.

That no one has followed through and circled back to us as promised is particularly troubling in view of the fact that the minutes of the so-called special independent committee meeting of on or about December twenty something should have been included in RDI's production of documents, as well as the productions by individual directors.

Now, of course, we have Bill Gould's deposition testimony of a week ago, which testimony was that there were additional communications between Greenberg Traurig lawyers and Bill Gould as chairperson of the so-called special independent committee, as well as between and among those lawyers, Mr. Gould and the other committee members (Coddling and McEachern). Of course, any and all such written communications should have been produced and/or included on privilege logs.

Kindly let us know when those documents, as well as the referenced minutes of the committee meeting from December 20-something, will be produced, logged, or both.

Mark

Dictated to a smartphone.
Get [Outlook for Android](#)

From: hendricksk@gtlaw.com
Sent: Monday, April 9, 5:10 PM
Subject: RE: RDI
To: Mark G. Krum, ferrariom@gtlaw.com, marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com, nhelpern@quinnemanuel.com,
sm@morrislawgroup.com, al@morrislawgroup.com, Sanford F. Remz, Noemi A. Kawamoto

Mark,

I will look into this.

Kara

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]
Sent: Monday, April 9, 2018 1:52 PM
To: Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>;
marshallsearcy@quinnemanuel.com
Cc: Christopher Tayback <christayback@quinnemanuel.com>;
nhelpern@quinnemanuel.com; Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>;
Steve Morris <SM@morrislawgroup.com>; Akke Levin <AL@morrislawgroup.com>;
Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>
Subject: RDI

Mark and Marshall,
At the depositions of Ms. Coddling and Mr. Wrotniak, I asked that you produce the minutes

of the special committee meeting that occurred on or about December 27, 2017. The testimony was to the effect that that meeting concerned what we have called the ratifications. For example, see the Wrotniak transcript at 93:16-94:2, when Marshall agreed to follow through on this with Mark. This document is responsive to multiple document requests propounded to each of your clients. Would one of you kindly, promptly follow through on this please? Thank you.

Mark

Dictated to a smartphone.

Get Outlook for Android

If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information.

EXHIBIT 11

From: Marshall Searcy
To: Mark G. Krum; Noah Helpern
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz; Noemi A. Kawamoto; Cotter Team; 'ferrariom@gtlaw.com'; hendricksk@gtlaw.com; Shoshana E. Barnett
Subject: RE: RDI
Date: Wednesday, April 18, 2018 7:45:14 PM

Mark,

As set forth in the e-mails I attached, our directors looked for ratification documents without a limitation on time frame. Please let me know if you need anything further.

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]
Sent: Wednesday, April 18, 2018 9:16 AM
To: Marshall Searcy <marshallsearcy@quinnemanuel.com>; Noah Helpern <noahhelpern@quinnemanuel.com>
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Cotter Team <CotterTeam@quinnemanuel.com>; 'ferrariom@gtlaw.com' <ferrariom@gtlaw.com>; hendricksk@gtlaw.com; Shoshana E. Barnett <sbannett@birdmarella.com>
Subject: RE: RDI

Marshall,

My Friday evening email below did not serve to call the question, so I will attempt to do so now.

Did your clients search for documents relating to ratification that pre-dated December 11, 2017? We are obliged to clarify this because your clients did not produce (or log) any such documents, although Mr. McEachern testified that ratification was first raised in the Fall of 2017.

If they did so, as I understood your email to indicate, how far back chronologically did they search?

Mark

From: Mark G. Krum
Sent: Friday, April 13, 2018 6:03 PM
To: Noah Helpern <noahhelpern@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Cotter Team <cotterteam@quinnemanuel.com>; 'ferrariom@gtlaw.com' <ferrariom@gtlaw.com>; hendricksk@gtlaw.com; Shoshana E. Barnett <sbannett@birdmarella.com>
Subject: RE: RDI

Marshall,

Thanks for your prompt response. Without looking at the requests and working through the correspondence, I am not able to see what you describe. Having said that, if you are

representing that your clients searched for documents pre-dating December 11, 2017 regarding what came to be referred to as ratification, then you are telling me that you previously did what my email of this morning asked be done. Of course, let me know if that is not correct. Thanks.

Mark

Get Outlook for Android

From: Marshall Searcy <marshallsearcy@quinnemanuel.com>
Sent: Friday, April 13, 2018 1:34:08 PM
To: Mark G. Krum; Noah Helpern
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz; Noemi A. Kawamoto; Cotter Team; 'ferrariom@gtlaw.com'; hendricksk@gtlaw.com; Shoshana E. Barnett
Subject: RE: RDI

Mark,

I am attaching our old e-mail correspondence from February, wherein we agreed to Plaintiff's position on "relevant time frame." Accordingly, we have already searched for the documents you seem to be referencing below, but please let me know if you think I am overlooking something.

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]
Sent: Friday, April 13, 2018 6:31 AM
To: Noah Helpern <noahhelpern@quinnemanuel.com>
Cc: Marshall Searcy <marshallsearcy@quinnemanuel.com>; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Mark G. Krum <mkrum@bizlit.com>
Subject: FW: RDI

Second transmission of the email below...

From: Mark G. Krum
Sent: Friday, April 13, 2018 9:29 AM
To: marshallsearcy@quinnemanuel.com; 'nhelpern@quinnemanuel.com' <nhelpern@quinnemanuel.com>
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Mark G. Krum <mkrum@bizlit.com>
Subject: RDI

Marshall and Noah,

I do not recall if you stood on the position that the "relevant time period" for the search for what I will for shorthand call ratification related documents commenced on December 11, 2017, the date of the MSJ hearings. What I now know from the testimony is that there were communications relating to ratification prior to that. I therefore ask that you agree (or confirm, as the case may be)

that you and your clients will search (or have searched, as the case may be) for documents responsive to our January 12, 2018 requests for a time period starting September 1, 2017 (not December 11, 2017). You and GT have information and access to information I do not have, so if you think another date should be used, I am happy to consider that and why you do. Thanks.

Mark

From: Mark G. Krum

Sent: Friday, April 13, 2018 9:14 AM

To: 'hendricksk@gtlaw.com' <hendricksk@gtlaw.com>; ferrariom@gtlaw.com; marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelper@quinnemanuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nKawamoto@bizlit.com>; sheffielddm@gtlaw.com; Mark G. Krum <mkrum@bizlit.com>

Subject: RE: RDI

Kara,

I am not posturing and I made no "accusations of delay." I described what happened, which indisputably was weeks of delay in producing a responsive document, leaving only the question whether that was by design or oversight. In that regard, I merely observed that had it been by design, it would have been handled as it was handled. Given that Greenberg Traurig ("GT") is responsible for the litigation, including the production and logging of documents, and was involved in the underlying ostensibly corporate advice, it certainly seems unlikely that the document was not produced (or logged) by oversight. That said, I acknowledge the possibility that there is some other explanation, including for example that the person responsible for producing the document could not figure out how to redact it without rendering it nonresponsive and then failed to produce it.

In that regard, last evening we have received the document, redacted minutes of a December 21, 2017 meeting of the so-called special independent committee. It is been so heavily redacted that one cannot tell by looking at it that the subject of the redacted communications was or included ratification. Because we did not have the document to show to the deponents, we now have an unauthenticated document which does not on its face concern ratification. Either we need a document that is not so heavily redacted that, on its face, it shows that the redacted conversation(s) concern ratification, and/or we need to bring back one or more of Gould, Coddling and/or McEachern to depose them about this meeting. (I note that not having this document to use at their depositions impaired our ability to ask questions to ascertain the chronology of events, which is important, and resulted in different testimony than we would have received had we had the document to show the deponents.)

I worked from a rough of Mr. Gould's deposition transcript, which I received this week. As for your glib response that "[a] telephone call is not a document and we are under no obligation to log the same[.]" it implies that the conversations about which Mr. Gould testified were unscheduled, extemporaneous telephone calls. The testimony, documents produced to date and privilege log entries all make clear that that is not how Mr. Gould, GT attorneys Bonner and Ferrario and, in particular, the so-called special independent committee, scheduled and handled their communications, much less their (typically telephonic) meetings.

To the point, have you or another lawyer who has access to the minutes of this so-called special independent committee reviewed any and all such minutes to identify, and then produce and/or log, others that reference what now is known as ratification? Given that "ratification" appears to have originated at GT acting ostensibly as corporate counsel for the so-called special independent committee (and the Company), GT as counsel of record for the Company is uniquely situated to ensure that any such responsive documents are produced and/or logged. (The foregoing is not a suggestion that the committee members themselves are not obligated to do so, as well.) If the answer to the question I ask at the beginning of this paragraph is negative, would you please be so kind as to have someone on the GT litigation team take the 10 to 30 minutes necessary to accomplish this task today and, if there are additional responsive minutes, produce and/or log them today.

Thank you.

Mark

From: hendricksk@gtlaw.com [<mailto:hendricksk@gtlaw.com>]
Sent: Thursday, April 12, 2018 7:21 PM
To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com;
marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com; nhelpern@quinnemenueuel.com; sm@morrislawgroup.com;
al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto
<nkawamoto@bizlit.com>; sheffieldm@gtlaw.com
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Sent: Thursday, April 12, 2018 3:48 PM
To: Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>; Ferrario, Mark E. (Shld-LV-LT)
<ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com; nhelpern@quinnemenueuel.com; sm@morrislawgroup.com;
al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto

<nkawamoto@bizlit.com>

Subject: RE: RDI

Kara,

It may have been one week since you started working on this, but it has been 3 months since we propounded the document requests to which this document is responsive, 2 months since it should have been produced and approximately 6 weeks since I first identified it particularly. Had defendants undertaken to delay the production of the document(s) until after the depositions of the three committee members had been taken, so that we were unable to be fully prepared to take those depositions and unable to examine them about that meeting or those meetings, defendants would have done exactly what was done here.

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Thank you.

Mark

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Sent: Thursday, April 12, 2018 4:38 PM

To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com;
marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelpen@quinnemanuel.com; sm@morrislawgroup.com;
al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto
<nkawamoto@bizlit.com>

Subject: RE: RDI

Mark,

With all due respect, it has been **one (1) week**. I have been working on it and would have responded today with or without your unfounded accusations.

As I tried to explain to you during the deposition, the issue is complicated.

The Special Committee meeting closest in time to the date you requested occurred on 12/21. We are willing to redact attorney-client privileged information in the draft minutes and will produce for "Attorneys Eyes Only". Please note that to maintain independence of the committee and to permit the committee to function in such a capacity, the following process on minutes has been followed to date (1) No one other than the committee members have seen the minutes—that includes the Cotters and Craig Tompkins (not seeing them); (2) the committee members have individually seen them, but the committee has not formally approved them; and 3) the minutes have not been provided to the RDI BOD. Please confirm you are agreeable to the Attorney Eyes Only production.

As to your new accusations regarding Mr. Gould's communications with Greenberg Traurig all such communication was either produced or is on the privilege log RDI provided.

Best,
Kara

From: Mark G. Krum [mailto:mkrum@bizlit.com]
Sent: Thursday, April 12, 2018 12:18 PM
To: Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com; Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>
Cc: christayback@quinnemanuel.com; nhelper@quinnemanuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>
Subject: RE: RDI

Kara,

With all due respect, that is exactly what you told me a week ago during the deposition of Bill Gould. Likewise, that effectively is what Mark and Marshall told me at the end of February and the beginning of March.

That no one has followed through and circled back to us as promised is particularly troubling in view of the fact that the minutes of the so-called special independent committee meeting of on or about December twenty something should have been included in RDI's production of documents, as well as the productions by individual directors.

Now, of course, we have Bill Gould's deposition testimony of a week ago, which testimony was that there were additional communications between Greenberg Traurig lawyers and Bill

Gould as chairperson of the so-called special independent committee, as well as between and among those lawyers, Mr. Gould and the other committee members (Coddling and McEachern). Of course, any and all such written communications should have been produced and/or included on privilege logs.

Kindly let us know when those documents, as well as the referenced minutes of the committee meeting from December 20-something, will be produced, logged, or both.

Mark

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From: hendricksk@gtlaw.com
Sent: Monday, April 9, 5:10 PM
Subject: RE: RDI
To: Mark G. Krum, ferrariom@gtlaw.com, marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com, nhelpern@quinnemenueel.com, sm@morrislawgroup.com, al@morrislawgroup.com, Sanford F. Remz, Noemi A. Kawamoto

Mark,

I will look into this.

Kara

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]
Sent: Monday, April 9, 2018 1:52 PM
To: Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com
Cc: Christopher Tayback <christayback@quinnemanuel.com>; nhelpern@quinnemenueel.com; Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>; Steve Morris <SM@morrislawgroup.com>; Akke Levin <AL@morrislawgroup.com>; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>
Subject: RDI

Mark and Marshall,

At the depositions of Ms. Coddling and Mr. Wrotniak, I asked that you produce the minutes of the special committee meeting that occurred on or about December 27, 2017. The testimony was to the effect that that meeting concerned what we have called the ratifications. For example, see the Wrotniak transcript at 93:16-94:2, when Marshall agreed to follow through on this with Mark. This document is responsive to multiple document requests propounded to each of your clients. Would one of you kindly, promptly follow through on this please? Thank you.

Mark

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disseminate such information.

EXHIBIT 12

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

JURY TRIAL - DAY 1

MONDAY, JANUARY 8, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

KEVIN JOHNSON, ESQ.
MARSHALL M. SEARCY, ESQ.
CHRISTOPHER TAYBACK, ESQ.
MARK E. FERRARIO, ESQ.
KARA B. HENDRICKS, ESQ.

1 now going to excuse you and return you to Jury Services. I do
2 not know if they will let you go home. I am hopeful they will,
3 but thank you very much for your patience today. I've had to
4 continue this trial based upon the medical issue of a witness.
5 So thank you very much.

6 Dan, if you could help them get over to the third
7 floor to Mariah.

8 (Jury discharged at 2:01 p.m.)

9 THE COURT: Okay. Now that we've finished that part
10 of our day, let me go to the other parts of my day.

11 So, Mr. Ferrario and Mr. Tayback, you had both as
12 part of your inquiry asked if there was a cost issue if your
13 clients could seek any recompense for that. The answer is you
14 can file whatever motions you think are appropriate.

15 And, Mr. Searcy, if you believe there's a written
16 motion related to the qualifications of a class
17 representative, you can, of course, file that.

18 With respect to the motions that I denied this
19 morning because they were too late, let's talk about that
20 issue. I indicated earlier today that if we were going to
21 entertain those motions I was going to reopen discovery and
22 allow discovery on the issues related to the matters that were
23 addressed in those motions. Does anybody want to talk to me
24 about that?

25 MR. FERRARIO: We absolutely want to bring those

1 motions back. To the extent -- I personally don't think
2 there's discovery needed on the demand futility motion, but to
3 the extent you're willing to accommodate them I think they can
4 certainly inquire into the ratification. I think there should
5 be a limited discovery period opened and with appropriate
6 limitations, limited to that ratification process. And then
7 we can bring that to you on a more fulsome record.

8 THE COURT: Mr. Krum, Mr. Morris?

9 MR. FERRARIO: And we will renew the motion, as
10 well, on the demand futility. As Ms. Cowden pointed out to me
11 when we were walking back to the war room, Shoen says "must,"
12 not "may." So I will -- I'll renew that and perhaps address
13 the Court's comments more targeted. Thank you.

14 THE COURT: Mr. Krum.

15 MR. KRUM: Well, Your Honor, obviously creating
16 evidence for use in a case is an unusual circumstance, but
17 obviously we're entitled to discovery if there's any
18 possibility they're going to be allowed to use it.

19 In this particular case we have evidence that is
20 predicated on a ruling that is subject of appeal, so we have
21 multiple moving targets. And I think that, among other
22 considerations that you'll probably describe to us or you may
23 describe to us shortly, such as your schedule --

24 THE COURT: What schedule?

25 MR. KRUM: Yes. Exactly.

1 -- as well as the fact that we don't know -- I think
2 to the extent we assume that seven weeks hence Mr. Cotter is
3 good to go, so to speak, we'll have to see. So we have a lot
4 of uncertainties. And I certainly disagree with any
5 suggestion that we ought to have any expedited limited
6 discovery period, because we're clearly going to have months
7 and months and months before we're on track; right? You're
8 not going to put us on trial in the middle of Wynn-Okada.

9 THE COURT: I was going to see if I could fit you
10 into my March spot, because the Swarovski people claim they're
11 going to settle on Friday.

12 MR. KRUM: Okay. Well, that would be a familiar
13 circumstance for us, Your Honor, that is rushing to complete
14 discovery. So, look, if the point is that they don't object
15 to discovery, we'll promptly propound the document requests,
16 we'll collect documents such as they exist. I think it would
17 be probably prudent to have a couple written requests, as
18 well, to identify witnesses so that we don't waste the time of
19 a deponent doing what we could do by way of an interrogatory
20 identifying who knows about this, that and the other. And
21 then we'll undertake to schedule the depositions.

22 THE COURT: So you're talking about a 75- to 90-day
23 period basically, from what I heard.

24 MR. KRUM: I think it's at least 90 days, Your
25 Honor, yes.

1 MR. FERRARIO: We -- there's no -- it should not be
2 90 days. We can get this done quickly. We're prepared to
3 engage them. And if you want a 16.1 supplement, we'll
4 supplement 16.1.

5 THE COURT: Well, if you intended to use it, one
6 would have thought you would have already done a 16.1
7 supplement, Mr. Ferrario.

8 MR. FERRARIO: Your Honor, with all due respect,
9 this happened very quickly over the holidays. And, you know,
10 we're now here dealing with --

11 THE COURT: You told me about it before it was going
12 to happen, so I would have thought that you would have filed a
13 supplement before you did it.

14 MR. FERRARIO: We needed the written order. But
15 we're here now. So I can tell you we'll supplement the 16.1,
16 and they should have limited discovery on the ratification.
17 There's no way it takes 75 or however many days. And if Your
18 Honor's going to squeeze us in March --

19 THE COURT: I don't know that I can.

20 MR. FERRARIO: I already know what you have in
21 March, okay, and I don't think it's looking real pretty, and
22 it isn't looking pretty for me. So if we're going to squeeze
23 in in March, let's get it done.

24 THE COURT: The trial starts in April, so I have
25 other things I'm going to do in March besides get ready for