IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Appellant, v. DOUGLAS MCEACHERN, EDWARD KANE, JUDY CODDING, WILLIAM GOULD, MICHAEL WROTNIAK, and nominal defendant READING INTERNATIONAL, INC., A NEVADA CORPORATION Respondents.	Supreme Court Case No. 75053 Consolidated with Case Nos. 76981, 77648 & 77733 District Court Case No. A-15-719860-B Coordinated with: Case No. P-14-0824-42-E

Appeal (77648 & 76981)
Eighth Judicial District Court, Dept. XI
The Honorable Elizabeth G. Gonzalez

JOINT APPENDIX TO OPENING BRIEFS FOR CASE NOS. 77648 & 76981
Volume XVI
JA3809 – JA4058

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-04-23	Cotter Jr.'s Motion for Omnibus Relief on OST	XXVI, XXVII	JA6432-JA6561 (FILED UNDER SEAL JA6350A; JA6513A-C)
2018-04-24	Gould's Opposition to Cotter Jr.'s Motion to Compel	XXVII	JA6562-JA6568
2018-04-24	Gould's Declaration ISO Opposition to Motion to Compel	XXVII	JA6569-JA6571
2018-04-24	Bannett's Declaration ISO Gould's Opposition to Motion to Compel	XXVII	JA6572-JA6581
2018-04-27	Cotter Jr.'s Reply ISO Motion to Compel (Gould)	XXVII	JA6582-JA6599
2018-04-27	RDI's Opposition to Cotter's Motion for Omnibus Relief	XXVII	JA6600-JA6698
2018-05-03	Transcript of 4-30-18 Hearing on Motions to Compel & Seal	XXVII	JA6699-JA6723
2018-05-04	Second Amended Order Setting Jury Trial, Pre-trial Conference, and Calendar Call	XXVII	JA6724-JA6726
2018-05-07	Transcript of 5-2-18 Hearing on Evidentiary Hearing	XXVII, XXVIII	JA6727-JA6815
2018-05-11	Cotter Jr.'s Opposition to RDI's Motion for Leave to File Motion	XXVIII	JA6816-JA6937
2018-05-15	Adams and Cotter sisters' Motion to Compel Production of Docs re Expert Fee Payments on OST	XXVIII, XXIX	JA6938-JA7078
2018-05-18	Cotter Jr.'s Opposition to Motion to Compel Production of Docs re Expert Fee Payments	XXIX	JA7079-JA7087
2018-05-18	Adams and Cotter sisters' Pre-Trial Memo	XXIX	JA7088-JA7135
2018-05-18	Cotter Jr.'s Pre-Trial Memo	XXIX	JA7136-JA7157

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

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

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-09-14	RDI's Appendix, Part 4	XLIII, XLIV	JA10802-JA10898
2018-09-14	RDI's Appendix Part 5	XLIV, XLV	JA10899-JA11270
2018-09-14	RDI's Appendix, Part 6	XLV, XLVI	JA11271-JA11475
2018-09-14	RDI's Appendix, Part 7	XLVI, XLVII, XLVIII, XLIX, L	JA11476-JA12496
2018-09-14	RDI's Appendix, Part 8	L, LI, LII	JA12497-JA12893
2018-09-14	Suggestion of Death of Gould Upon the Record	LII,	JA12894-JA12896
2018-09-24	Cotter Jr.'s Reply to RDI's Opp'n to Motion to Retax Costs	LII	JA12897-JA12921
2018-09-24	Cotter Jr.'s Appendix of Exhibits ISO Reply to RDI's Opposition to Motion to Retax Costs	LII, LIII	JA12922-JA13112
2018-10-01	Cotter Jr.'s Opposition to RDI's Motion for Judgment in its Favor	LIII	JA13113-JA13125
2018-10-02	Transcript of 10-01-18 Hearing on Cotter Jr.'s Motion to Retax Costs	LIII	JA13126-JA13150
2018-11-02	Cotter Jr.'s Letter to Court Objecting to Proposed Order	LIII	JA13151-JA13156
2018-11-02	Cotter Jr.'s Errata to Letter to Court Objecting to Proposed Order	LIII	JA13157-JA13162
2018-11-06	Order Granting in Part Motion to Retax Costs & Entering Judgment for Costs ("Cost Judgment")	LIII	JA13163-JA13167
2018-11-06	Notice of Entry of Order of Cost Judgment	LIII	JA13168-JA13174
2018-11-16	Order Denying RDI's Motion for Attorneys' Fees	LIII	JA13175-JA13178

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

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-11-06	Order Denying RDI's Motion for Judgment in Its Favor	LIII	JA13179-JA13182
2018-11-20	Notice of Entry of Order Denying RDI's Motion for Attorneys' Fees	LIII	JA13183-JA13190
2018-11-20	Notice of Entry of Order Denying RDI's Motion for Judgment in Its Favor	LIII	JA13191-JA13198
2018-11-26	Cotter Jr.'s Motion for Reconsideration & Amendment of Cost Judgment, for Limited Stay of Execution on OST	LIII	JA13199-JA13207
2018-11-30	RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution on OST	LIII	JA13208-JA13212
2018-11-30	Adams and Cotter sisters' Joinder to RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution	LIII	JA13213-JA13215
2018-12-06	Order Re Cotter Jr.'s Motion for Reconsideration & Amendment of Judgment for Costs and for Limited Stay	LIII	JA13216-JA13219
2018-12-06	Cotter Jr.'s Notice of Appeal from Cost Judgment	LIII	JA13220-JA13222
2018-12-07	Notice of Entry of Order Re Cotter Jr.'s Motion for Reconsideration & Amendment of Cost Judgment and for Limited Stay	LIII	JA13223-JA13229
2018-12-14	Cotter Jr.'s Notice of Posting Cost Bond on Appeal	LIII	JA13230-JA13232

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

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-06-18	Adams and Cotter sisters' Joinder to RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXII, XXXIII	JA7928-JA8295
2018-11-30	Adams and Cotter sisters' Joinder to RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution	LIII	JA13213-JA13215
2018-01-04	Adams and Cotter sisters' Motion for Judgment as a Matter of Law	XXV	JA6192-JA6224 **(FILED UNDER SEAL JA6224A-F)**
2018-06-01	Adams and Cotter sisters' Motion for Summary Judgment ("Ratification MSJ")	XXIX	JA7173-JA7221
2018-05-15	Adams and Cotter sisters' Motion to Compel Production of Docs re Expert Fee Payments on OST	XXVIII, XXIX	JA6938-JA7078
2018-05-18	Adams and Cotter sisters' Pre-Trial Memo	XXIX	JA7088-JA7135
2018-06-15	Adams and Cotter sisters' Reply ISO of Ratification MSJ	XXXII	JA7841-JA7874
2015-06-18	Amended AOS - Douglas McEachern	I	JA32-JA33
2015-06-18	Amended AOS - Edward Kane	I	JA34-JA35
2015-06-18	Amended AOS - Ellen Cotter	I	JA36-JA37
2015-06-18	Amended AOS - Guy Adams	I	JA38-JA39
2015-06-18	Amended AOS - Margaret Cotter	I	JA40-JA41
2015-06-18	Amended AOS - RDI	I	JA42-JA43
2015-06-18	Amended AOS – Timothy Storey	I	JA44-JA45
2015-06-18	Amended AOS – William Gould	I	JA46-JA47

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 3 & Gould MSJ	XXI, XXII	JA5300-JA5320
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 5 & Gould MSJ	XXI	JA5119-JA5134
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 6 & Gould MSJ	XXI	JA5253-JA5264
2016-10-13	Cotter, Jr.'s Opposition to Partial MSJ No. 2	XVII	JA4084-JA4111
2016-10-13	Cotter, Jr.'s Opposition to Partial MSJ No. 6	XVII	JA4112-JA4142
2017-12-27	Declaration of Bannett ISO Gould's Opposition to Cotter Jr.'s Motion for Reconsideration	XXIV, XXV	JA5987-JA6064
2016-10-21	Declaration of Bannett ISO Gould's Reply ISO MSJ	XIX	JA4636-JA4677
2017-12-05	Declaration of Bannett ISO Gould's Supplemental Reply ISO MSJ	XXII, XXIII	JA5555-JA5685
2018-01-05	Declaration of Krum ISO Cotter Jr.'s Opposition to Motion for Judgment as a Matter of Law	XXV	JA6239-JA6244
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 1 & 2 & Gould MSJ	XXI	JA5108-JA5118
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 5 & Gould MSJ	XXI	JA5135-JA5252
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 6 & Gould MSJ	XXI	JA5265-JA5299

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

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to So-Called MSJ Nos. 2 & 3 & Gould MSJ	XXII	JA5321-JA5509
2016-09-23	Defendant William Gould ("Gould")'s MSJ	III, IV, V, VI	JA576-JA1400
2018-08-14	Findings of Fact and Conclusions of Law and Judgment	XXXIV	JA8401-JA8411
2017-10-04	First Amended Order Setting Civil Jury Trial, Pre-Trial Conference, and Calendar Call	XX	JA4928-JA4931
2015-10-22	First Amended Verified Complaint	II	JA263-JA312
2018-04-24	Gould's Declaration ISO Opposition to Motion to Compel	XXVII	JA6569-JA6571
2017-10-17	Gould's Joinder to Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4975-JA4977
2018-06-18	Gould's Joinder to RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXIII	JA8296-JA8301
2017-12-27	Gould's Opposition to Cotter Jr.'s Motion for Reconsideration	XXIV	JA5982-JA5986
2018-04-24	Gould's Opposition to Cotter Jr.'s Motion to Compel	XXVII	JA6562-JA6568
2016-10-21	Gould's Reply ISO MSJ	XIX	JA4610-JA4635
2017-12-01	Gould's Request For Hearing on Previously-Filed MSJ	XXI	JA5078-JA5093
2017-12-04	Gould's Supplemental Reply ISO of MSJ	XXII	JA5538-JA5554
2017-11-28	Individual Defendants' Answer to Cotter Jr.'s Second Amended Complaint	XX, XXI	JA5048-JA5077

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Re Estate's Option Exercise, Appointment of Margaret Cotter, Compensation Packages of Ellen Cotter and Margaret Cotter, and related claims Additional Compensation to Margaret Cotter and Guy Adams ("Partial MSJ No. 6")	XII, XIII, XIV	JA2861-JA3336
2015-09-03	Individual Defendants' Motion to Dismiss Complaint	I	JA149-JA237
2016-10-26	Individual Defendants' Objections to Declaration of Cotter, Jr. Submitted in Opposition to Partial MSJs	XIX	JA4725-JA4735
2017-12-26	Individual Defendants' Opposition to Cotter Jr.'s Motion For Reconsideration	XXIV	JA5910-JA5981
2018-01-02	Individual Defendants' Opposition to Cotter Jr.'s Motion for Rule 54(b) Certification and Stay	XXV	JA6132-JA6139
2016-10-13	Individual Defendants' Opposition to Cotter Jr.'s MPSJ	XVI	JA3815-JA3920
2016-10-21	Individual Defendants' Reply ISO of Partial MSJ No. 1	XVIII	JA4518-JA4549
2016-10-21	Individual Defendants' Reply ISO Partial MSJ No. 2	XVIII, XIX	JA4550-JA4567
2016-10-21	Individual Defendants' Reply ISO Partial MSJ Nos. 3, 4, 5, and 6	XIX	JA4678–JA4724
2017-12-04	Individual Defendants' Reply ISO Renewed Partial MSJ Nos. 1 & 2	XXII	JA5510-JA5537
2017-11-09	Individual Defendants' Supplement to Partial MSJ Nos. 1, 2, 3, 5, and 6	XX	JA4981-JA5024

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

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

ALPHABETICAL INDEX

CERTIFICATE OF SERVICE

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

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By: /s/ Gabriela Mercado

LEGAL ARGUMENT

This Court should grant RDI summary judgment as to Cotter, Jr.'s First, Second, Third and Fourth causes of action in the SAC to the extent such claims exist. Cotter, Jr. is unable to present evidence sufficient to show that a material issue of fact exists as to RDI's entitlement to judgment as to this issue.

Summary judgment should be granted if the pleadings, admissions, and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.,* 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "[I]f the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by . . . pointing out ... that there is an absence of evidence to support the nonmoving party's case." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). In that event, the non-moving party is then obligated to present admissible evidence to show that there are material issues of fact preventing summary judgment, or summary judgment must be granted. *Id.* Because a plaintiff is required to prove each element of his cause of action, is if any element cannot be proven by admissible evidence, then summary judgment is proper. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992).

Here, Plaintiff Cotter, Jr. bears the burden of proof on his breach of fiduciary duty claims. Accordingly, he can survive this motion for summary judgment only if he affirmatively presents admissible evidence sufficient to persuade a reasonable jury that any of these decisions constituted a breach of fiduciary duty. To do this, he must present direct evidence sufficient to overcome the statutory presumption that a director's decision was made in good faith. NRS 78.138(3). Because Cotter, Jr. is unable to present evidence sufficient to overcome this presumption, RDI is entitled to judgment as a matter of law.

I. COTTER, JR. CANNOT PRESENT EVIDENCE TO OVERCOME THE PRESUMPTION THAT APPROVAL OF THE ESTATE'S EXERCISE OF ITS STOCK OPTION WAS IN GOOD FAITH, OR THAT THE TRANSACTION WAS UNFAIR.

RDI is entitled to judgment in its favor with respect to claims relating to the approval of

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the exercise of its stock option by the Cotter, Sr. Estate. Cotter, Jr. contends that the exercise of the option was improper because the Estate was permitted to exchange its Class A shares of stock for Class B shares, instead of being required to pay with cash. However, the Stock Option plan expressly authorized numerous methods of payment, including payment through exchange of Class A shares. That provision provides:

> 6.1.6 Payment. Except as provided below, payment in full, in cash, shall be made for all stock purchased at the time written notice of exercise of an Option is given to the Company, and proceeds of any payment shall constitute general funds of the Company. The Administrator, in the exercise of its absolute discretion after considering any tax, accounting and financial consequences, may authorize any one or more of the following additional methods of payment:
>
> * * *
>
> Subject to the discretion of the Administrator and the terms of the stock option agreement granting the Option, delivery by the optionee of shares of Common Stock already owned by the optionee for all or part of the Option price, provided the fair market value (determined as set forth in Section 6.1 .9)[1] of such shares of Common Stock is equal on the date of exercise to the Option price, or such portion thereof as the optionee is authorized to pay by delivery of such stock.

See Ex. 3, to Motion, § 6.1.6.(b). As relevant here, § 6.1.9. provided that the fair market value of common stock was to be determined by the closing price of the stock on the exchange in which it is traded. ***Id.* at § 6.1.9.** Thus, the plan expressly authorizes that exercise of an option to purchase Class B stock by presenting Class A stock with the same fair market value. Accordingly, Cotter, Jr. is challenging an action that consisted of RDI selling property of a specific fair market value, and receiving, in return, ***property with the exact same fair market value.***

The Independent Directors have appropriately briefed and argued Nevada law on this issue, pointing out that any challenge to the option exercise decision must overcome the statutory presumption that the decision was made in good faith. NRS 78.138. However, even if such presumption did not exist, the fairness to RDI of this transaction, which consisted of a one to one exchange based on fair market value is obvious.

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[1] As relevant here, § 6.1.9. provided that the fair market value of common stock was to be determined by the closing price of the stock on the exchange in which it is traded.

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II. COTTER, JR. CANNOT PRESENT EVIDENCE TO OVERCOME THE PRESUMPTION THAT THE APPOINTMENT OF MARGARET COTTER TO A POSITION WITHIN RDI WAS IN GOOD FAITH.

Cotter, Jr. contends that the appointment of Margaret Cotter as an Executive Vice President constituted a breach of fiduciary duty, because, he claims, that Ms. Cotter is unqualified for the position, because, he claims, she lacked real estate development experience. However, the RDI Board and committee minutes reflect consideration of Ms. Cotter's service to the corporation as an independent contractor, which services had exceeded the scope of her contractual agreement and extended into other areas. Given satisfaction with her service, and the expressed intention of having her continue with the same sorts of services, but as an employee, her experience is apparently precisely what is required. **See Motion, pp. 4-5.** Accordingly, Cotter, Jr.'s personal objection to this business decision is insufficient to overcome the presumption of good faith.

III. UNDER NEVADA LAW, DIRECTOR DECISIONS REGARDING THEIR OWN COMPENSATION ARE PRESUMED TO BE IN GOOD FAITH, REGARDLESS OF THEIR PERSONAL INTEREST IN SUCH COMPENSATION.

This Court should grant summary judgment in favor of RDI with respect to Cotter, Jr.'s challenges to the compensation approved for the Cotter sisters and Director Adams. The Nevada legislature has determined that any decisions made by directors of a corporation with respect to their own compensation are presumed to be fair to the corporation, regardless of such director's personal interest in the issue. Specifically, Nevada law provides:

> Unless otherwise provided in the articles of incorporation or the bylaws, the board of directors, ***without regard to personal interest***, may establish the compensation of directors for services ***in any capacity***. ***If the board of directors establishes the compensation of directors pursuant to this subsection, such compensation is presumed to be fair to the corporation unless proven unfair by a preponderance of the evidence***

NRS § 78.140(5). RDI's Bylaws permit the Board to award compensation to directors. RDI Bylaws, Art. II, § 12. Accordingly, to prevail on his claims of a breach of fiduciary duty, Cotter, Jr. must present direct evidence showing that the approval of compensation for the Cotter sisters and for Guy Adams was unfair to RDI. *See* NRS 47. 180(1). He is unable to do so.

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Under the presumption created in NRS 78.140(5), a member of the board of directors would be permitted to vote in favor of his own compensation, and such compensation would still be presumed fair. However, here, neither the Cotter sisters nor Director Adams actually participated in the vote awarding them compensation. Instead, Cotter, Jr. contends that their votes were made by directors who were beholden to the Cotter sisters. As shown in the briefing of the Independent Defendants' Motion for Partial Summary Judgment re Director Independence, and RDI's Joinder thereto, Cotter, Jr. cannot support this claim. However, even if his allegations of non-independence were true, the presumption that the compensation was fair to the corporation would still apply. As can be seen, the statute notes that the authorization for determining compensation applies "without regard to personal interest." NRS 78.140(5).

The Independent Director's Motion demonstrates that the compensation paid to the Cotter sisters is well within the range of comparable sized companies for positions of similar responsibility, and moreover, that the Directors voting in on the compensation issue had been so informed at the time the decision was made. In these circumstances, Cotter, Jr. cannot demonstrate unfairness to the RDI.

With respect to the one-time payment to Margaret Cotter, the evidence presented by the Individual Defendants shows that Ms. Cotter had given up the rights to certain future compensation. **See Motion, pp. 9-10**. In such circumstances a one-time payment, which payment is apparently less than that which would otherwise have been owed by the company, is obviously not unfair.

Finally, with respect to the payment of special compensation to Director Adams, Cotter, Jr. cannot show that the payment was not made in consideration of the lengthy list of additional services that Mr. Adams, an outside director, has provided to RDI in 2015, including offering advice to Ellen Cotter in the transition to her position as CEO, offering advice on investor relations, and extensive services related to two board committees. **See Motion, p. 10**. RDI's Bylaws expressly permit approval of compensation to board members for additional services. Cotter, Jr. cannot present evidence showing that this compensation was unfair to RDI.

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CONCLUSION

Cotter, Jr. is unable to present evidence sufficient to rebut the statutory presumption that decisions of the Board of Directors are made in good faith, or the presumption that decisions regarding director compensation, in any capacity, are fair to the corporation. Accordingly, RDI is entitled to judgment as a matter of law.

DATED: this 3rd day of October, 2016.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Partial Summary Judgment No. 6, Re Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams*** to be filed and served via the Court's Wiznet E-Filing system on all registered and active parties. 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 3rd day of October, 2016.

/s/ Andrea Lee Rosehill
An employee of GREENBERG TRAURIG, LLP

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF JAMES J. COTTER JR.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: November 1, 2016
Time of Hearing: 8:30 a.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As set forth in the Individual Defendants' Motion for Partial Summary Judgment No. 1, the material undisputed facts require judgment in favor of the Individual Defendants on Plaintiff's claims arising from the Board of Directors' of Reading International, Inc. ("RDI" or "the Company") termination of him as the Company's CEO and President on June 12, 2015. Plaintiff has filed a cross-motion for partial summary judgment in his favor on the same aspect of his claims. The Individual Defendants' motion should be granted, and Plaintiff's motion denied.

As a matter of law, Plaintiff's arguments challenging his termination and seeking reinstatement are meritless. He cannot identify a single case in which a board's decision to terminate an officer was subjected to *any* "fairness" review (be it fairness to the corporation on behalf of which Plaintiff purports to sue, or anyone else). Nor does he cite any case in which the firing of an officer was determined to be a breach of fiduciary duty. And he has located no case in which a former CEO was *reinstated* as a remedy for a purported breach of fiduciary duty.

Plaintiff ignores both the operative bylaws and Nevada law. RDI's Bylaws specifically provide that the CEO may be terminated *at any time*, *for any reason*, *by a majority of the entire Board* (not just the "non-Cotter" or "independent" Directors). That alone dooms his claim. Moreover, Plaintiff disregards the heightened standard for director liability that under NRS 78.138(7), requiring that he establish "intentional misconduct, fraud, or a knowing violation of the law" to prevail. Indeed, Plaintiff only once cites to *any* of the governing Nevada statutes at issue (NRS 78.138(3), the business judgment rule, cited at Pl's Mem. at 22), which he proceeds to rewrite based on inapplicable Delaware law. Consequently, Plaintiff's entire motion is premised on a requirement that does not exist in Nevada law—that the decision of a corporate board to terminate an executive is ever subject to an "entire fairness" test.

Factually, Plaintiff casts aside the most relevant facts by attempting to confine the record to the period between May 19, 2015 and June 12, 2015. In so doing, he seeks to avoid the many months in which the Board tried to ameliorate the deficiencies of a young, inexperienced CEO who rose to power on an emergency basis, could not work well with key executives, was abusive

to fellow employees and Board members, and displayed a lack of understanding of important aspects of RDI's businesses. That the Board began to openly consider Plaintiff's removal on May 21, 2015 was neither surprising nor improper.

Plaintiff's description of the reasoned review process by which the Board evaluated his continued employment, which took place over three meetings, lasted over 13 hours, and provided Plaintiff with ample opportunities to defend his tenure (and continue as President and/or CEO under certain circumstances), is also woefully incomplete. So too is Plaintiff's skewed description of a potential settlement between him and his sisters, Ellen and Margaret Cotter, that was considered by the Board prior to its termination vote. Indeed, Plaintiff hides from the Court that he specifically sought assistance from Director Kane in "brokering" that "agreement-in-principle." The complete undisputed facts show that the potential negotiated resolution between Plaintiff and his sisters was an appropriate business consideration by the RDI Board because it (1) alleviated the "dysfunction" and "thermonuclear hostility" between Plaintiff and his sisters, who were *all* Board members and key executives, and (2) circumscribed Plaintiff's authority as CEO. Once that agreement fell through, the Board was left with the same intractable problems as before, and properly acted to protect the interests of RDI by ending Plaintiff's brief, ineffective, and divisive tenure.

Ultimately, Plaintiff's motion should be denied, and summary judgment granted in favor of the Individual Defendants, in light of the following flaws in Plaintiff's termination and reinstatement claims, each of which is independently fatal:

First, the Board's termination of Plaintiff cannot support a breach of fiduciary claim as a matter of law. Courts regularly reject attempts by former officers to utilize fiduciary duty law to challenge the propriety of their removals, especially where (as here) a bylaw authorized a majority of the entire Board to fire him "at any time, with or without cause." Plaintiff's attempted expansion of fiduciary duty law to cover purely managerial decisions by a board is bad policy and contrary to settled precedent.

Second, Plaintiff lacks standing to serve as a derivative plaintiff. Economic antagonisms exist between Plaintiff and other stockholders. In fact, the remedy of reinstatement sought by

Plaintiff is *entirely personal*; neither RDI nor its stockholders share Plaintiff's interest in regaining his positions. Other litigation is pending regarding Plaintiff's firing and ultimate control of the Company, and Plaintiff's conduct—both before and after the filing of this suit—indicates that he is simply using his purported derivative claims as vindictive leverage to obtain a favorable global settlement. Not surprisingly, stockholders unrelated to the Cotters have stated that they would not "reinstate" Plaintiff and that he is not "the best adequate representative."

Third, even if the termination of an employee could *theoretically* constitute a breach of a fiduciary duty under RDI's bylaws and Nevada law (which it cannot) *and* Plaintiff had derivative standing (which he does not), Plaintiff's claims still fail. In his motion, Plaintiff has not argued, let alone established, any damages *to RDI* resulting from his termination—an essential element of breach of fiduciary duty. Further, Plaintiff does not contest that, if the business judgment rule were applied, it would be fatal to his action. And here, it clearly does. Under Nevada law, the business judgment rule *always applies* in the context of an employee termination.

Even if Nevada allowed the possibility of a "fairness" review in the context of an officer's removal (which it does not), here it would not be appropriate since no non-Cotter director derived any financial benefit from it "in the sense of self-dealing" or was so "beholden" to Ellen and Margaret Cotter that their discretion was sterilized. Plaintiff has provided no evidence that the RDI Board—which had appointed him as CEO previously—was not vested with the same discretion to terminate him and replace him with another. Indeed, the months-long process in which the Board attempted to train Plaintiff, provided him with an "ombudsman," creatively thought of ways to continue his employment while rectifying his inadequacies, and gave him notice and opportunity to defend his tenure was unquestionably fair as to the Company (and even to Plaintiff, which would be irrelevant in any event since he sues derivatively on behalf of RDI and not in his personal capacity).

Fourth, the relief demanded by Plaintiff—reinstatement—is not available. Equity jurisdiction does not lie where that Plaintiff was removable without cause under both RDI's Bylaws and his own Employment Contract (which Plaintiff is not suing upon in this case in any event). Further, there are strong practical impediments and policy reasons against compelling

the Board to reinstate Plaintiff (and fire Ellen Cotter as CEO) against its wishes. Plaintiff had no vested right to remain President and CEO and, even if reinstated, could simply be terminated again. More time has elapsed since Plaintiff's termination than he served as CEO, and the Company has moved on, which also counsels against reinstatement. Finally, in light of the "irreparable animosity" between Plaintiff and other directors, reinstatement would do nothing more than harm RDI's business.

II. FACTUAL BACKGROUND

A. Plaintiff Had Glaring Deficiencies in His Temperament, Managerial Skills, and Knowledge of RDI's Corporate Affairs

In construing the events leading up to his June 12, 2015 termination as CEO and President of RDI, Plaintiff starts the clock on May 19, 2015—just prior to the first meeting at which the Board formally debated his employment status. (*See* Pl.'s Mem. at 5-8.) Plaintiff has attempted to divert the Court's focus from the events of the previous eight months for good reason; during that time, major problems in Plaintiff's temperament, managerial skills, and knowledge of RDI's business became obvious, forcing RDI's Board to spend innumerable hours trying to rectify his inadequacies through coaching, the use of an ombudsman, and additional training. (Ind. Defs.' MSJ No. 1 at 5-9.)[1] As Director McEachern testified, Plaintiff "knew that his position as CEO was in jeopardy for a longer period of time than just May 21." (HD#1 Ex. 7 at 176:1-9.) Plaintiff avoids the following facts, each of which invalidates his motion:

- Plaintiff Could Be Removed at Any Time, For Any Reason: Plaintiff was elected as CEO pursuant to the RDI's Amended and Restated Bylaws, which provide, *inter alia*, that, as an officer, Plaintiff served "at the pleasure of the Board of Directors," and could "be removed at any

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[1] Given the exact overlap between Plaintiff's Motion for Partial Summary Judgment and the Individual Defendants' Motions for Summary Judgment (No. 1) on Plaintiff's Termination and Reinstatement Claims and (No. 2) on the Issue of Director Independence, the Individual Defendants will refer to the applicable pages (and exhibits cited) in their September 23, 2016 motions where appropriate. Citations to "HD#1" will refer to exhibits attached to the Declaration of Noah S. Helpern in Support of the Individual Defendants' Motion for Summary Judgment No. 1, and citations to "HD#2" will likewise refer to exhibits attached to the Helpern Declaration in Support of the Individual Defendants' Motion for Summary Judgment No. 2. Citations to "HDO" will refer to any new exhibits attached in support of this opposition.

time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof." (HD#1, Ex. 19; *see also* Ind. Defs.' MSJ No. 1 at 4-5.)[2] Plaintiff's Employment Contract, signed in 2013 when he became the Company's President, similarly contemplated that he could be terminated without cause, in which case he was entitled to receive his usual compensation and benefits for 12 months, or "for cause," in which case he would receive nothing. (HD#1 Ex. 20 § 10; *see also* Ind. Defs.' MSJ No. 1 at 4.)

- Plaintiff Was Elected Only Because of an Emergency Vacancy, and Lacked Significant Experience in Areas Critical to RDI: Plaintiff was elected as CEO on August 7, 2014 to fill an emergency vacancy caused by the health-related resignation of his father. (*Id.*) The Board hoped that Plaintiff would develop on the job. (*Id.* at 5.) As Director Adams noted, Plaintiff "was young" and "didn't have that much experience." (HD#1 Ex. 4 at 462:14-25.) Director McEachern similarly recognized that Plaintiff "had no real estate experience, no international experience, no management experience, no cinema experience and no live theater experience" (HD#1 Ex. 7 at 49:25-50:7), while Director Storey believed that "if his last name wasn't Cotter, he wouldn't be CEO." (HD#1 Ex. 4 at 460:12-24.) Given that Storey and others recognized "holes in" Plaintiff's "expertise or ability to function as CEO and where he needed further handling" (HD#1 Ex. 7 at 177:5-11; HD#1 Ex. 32 at 2), RDI's Board—as Plaintiff has conceded—began discussing "the possibility of getting an interim CEO . . . as early as October 2014" to ameliorate his shortcomings. (HD#1 Ex. 11 at 528:9-529:20.)

- Teamwork and Morale Was Poor Under Plaintiff's Abusive Leadership: By early February 2015, Director Storey recognized that under Plaintiff, "morale" within RDI was "poor and needs to be improved," Plaintiff "need[ed] to establish teamwork," and required even more

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[2] Plaintiff's focus on the Board's January 15, 2015 resolution—in which all five non-Cotter directors agreed that in order to terminate "the CEO" (and/or Ellen and Margaret Cotter), a majority of the non-Cotter directors would be required to vote in favor of doing so (Pl.'s Mem. at 1, 4-5)—is misguided. Not only it is black-letter law that bylaws trump board resolutions, *see* 18A Am. Jur. 2d *Corporations* § 253 (2016), a majority of the non-Cotter directors—all of whom were independent and disinterested—ultimately voted to remove Plaintiff as RDI's CEO and President.

"help to lead/develop leadership role." (HD#1 Ex. 33 at 3.) Plaintiff's management style was perceived as "closed door" and unengaged, and the Board saw Plaintiff as being "very reluctant and slow to make decisions." (HD#1 Ex. 3 at 451:25-454:25; HD#1 Ex. 7 at 52:2-5, 285:23-286:11.) Moreover, as Plaintiff admitted, the Board was aware of a "perception at Reading by employees" that he had "a volatile temper" and "an anger management problem." (HD#1 Ex. 11 at 481:24-483:5.) The Board was troubled by Plaintiff's "behavior," "temperament," and "anger issues" (HD#1 Ex. 15 at 55:21-57:5), because Plaintiff's outbursts had caused several female employees or outside workers to be "physically afraid" of Plaintiff and concerned for their "actual physical safety" around him, such that at least one was "carrying mace to the office." (HD#1 Ex. 3 at 419:17-421:23; HD#1 Ex. 5 at 134:1-135:22, 137:12-140:15; HD#1 Ex. 7 at 112:18-113:24, 114:6-15.) As a result, some Board members considered sending Plaintiff to a "psychologist or psychiatrist" or to anger management classes in early 2015. (HD#1 Ex. 6 at 529:22-530:2; HD#1 Ex. 35 at 3.)

- Plaintiff Lacked an Understanding of Key Components of RDI's Business: As CEO, Plaintiff also demonstrated a lack of understanding with respect to costs and margins highly critical to RDI's cinema business. (Ind. Defs.' MSJ No. 1 at 7.) For instance, in a presentation to the Board on which he had worked "for months," Plaintiff failed to adjust his analysis to account for lower film rentals in Australia and New Zealand when comparing margins in those territories to U.S. theaters. (HD#1 Ex. 2 at 84:20-86:1.) Moreover, Plaintiff failed to comprehend the different treatment used in each region when accounting for labor cost allocations. (*Id.* at 86:1-87:23.) As a result, Director Adams and others questioned Plaintiff's "knowledge about the business," whether he "properly investigated" claimed issues in the Company before bringing them before the Board, and whether he was "really learning the business" and "leading us forward." (*Id.*) As CEO, Plaintiff admittedly never presented a business plan before the Board (HD#1 at 198:19-21, 205:19-206:6, 235:18-21), even after it was placed on the agenda (at his request) when the Board began discussing his potential termination. (HD#1 Ex. 29 at 1.) And, during his time as CEO, Plaintiff chose not to visit RDI's operations in Australia and New Zealand, despite their importance (HD#1 Ex. 7 at 292:6-24), preferring

instead to conduct a wasteful trip in which he went incognito to a few cinemas in Hawaii in an effort to embarrass his sister, Ellen Cotter, who was the long-standing executive responsible for that aspect of the business. (HD#1 Ex. 7 at 50:19-51:152:1.)

B. Plaintiff Could Not Work With Key RDI Executives

While Plaintiff in his motion ignores these problems with his managerial skills and temperament as CEO, he recognizes that during his entire tenure he was "at odds with" and had difficulties working alongside his sisters, Ellen and Margaret Cotter. (Pl.'s Mem. at 8-14.) Ellen and Margaret Cotter were key executives at or contractors with RDI, and each were members of the Company's Board. (Ind. Defs.' MSJ No. 2 at 4-5.) During this period, Ellen Cotter served as RDI's Chairman of the Board, had been a RDI employee since March 1998, and had run the day-to-day operations of the Company's domestic cinema operations since 2002. (*Id.*) Margaret Cotter served as the Board's Vice Chairman and, while an outside consultant at the time of Plaintiff's firing, had run RDI's live-theater operations for at least 13 years, managed the underlying real estate issues relating to those theaters (and certain cinemas) for the same period, and was actively involved in the Company's redevelopment of its New York properties for the previous five years. (*Id.*; *see also* Ind. Defs.' MSJ No. 6 at 3-4.)

Almost immediately after becoming CEO, Plaintiff became mired in a dispute with, and ultimately litigation against, Ellen and Margaret Cotter over an amendment to the James J. Cotter Living Trust, purportedly executed on their father's deathbed, which affected whether Margaret alone or Margaret and Plaintiff together controlled a trust into which the majority of RDI's voting shares would ultimately pour. (Pl.'s Mem. at 9-10; Ind. Defs.' MSJ No. 1 at 7.) Plaintiff further alienated the Board when he tried to undermine Ellen Cotter by conducting a secret one-man examination of RDI's cinema operations in the fall of 2014, without any input from or the knowledge of Ellen Cotter (or any other member of RDI's management), and later when he unilaterally tried to hire a food and beverage manager without involving her (despite the fact that he had no experience in food or beverage matters). (Ind. Defs.' MSJ No. 1 at 6.) In addition to these steps, which engendered criticism from the Board both for Plaintiff's duplicity and wasteful spending of his time on matters best left to consultants (HD#1 Ex. 7 at 50:19-51:12),

Plaintiff became further estranged from Margaret Cotter when, rather than work productively with her once the producers of STOMP threatened to vacate RDI's Orpheum Theater, he "attack[ed]" Margaret and attempted to use the dispute to "embarrass" her before the Board—a step that Director Kane felt was "not what a CEO should do when you have two experienced executives." (HD#1 Ex. 4 at 161:4-162:11; HD#1 Ex. 9 at 304:5-23.) Similarly, Director McEachern believed that Plaintiff refused to "mend fences and move forward" with Margaret Cotter, and instead "thr[ew] hand grenades" into their relationship, when he advocated against making Margaret a full RDI employee (HD#1 Ex. 7 at 288:19-289:8), despite the fact that she had long been performing the responsibilities for which she would be hired. (Ind. Defs.' MSJ No. 6 at 3-7.)[3]

As a result of Plaintiff's inability to cooperatively work with these individuals, who were integral to RDI's success, Director Gould and others determined that RDI was faced with "a dysfunctional management team" in which there was "'thermonuclear' hostility" between the Cotters. (HD#1 Ex. 35 at 2-3.) Plaintiff did not disagree; as he testified, the tensions between

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[3] In his motion, Plaintiff makes a host of factual allegations regarding Ellen and Margaret Cotter that are utterly irrelevant to the legal merits of his termination dispute. (Pl.'s Mem. at 10-14.) Not only is this attempt to color the record improper, Plaintiff's half-truths and distortions are undermined by the record. For instance, while Plaintiff notes that his sisters "sought to report to an executive committee of RDI's Board of Directors rather than to" him (*id.* at 10), he omits that this was because they "were having issues with" Plaintiff and "wanted to figure out a way to have a structure in place that would be almost transitional that would help us work together so we could work through any issues we would have." (HDO Ex. 8 at 65:7-13.) The sisters also shared the valid concern that Plaintiff, based on his pattern of conduct, "would color [their] reporting and would put [them] in a bad light." (*Id.* at 92:18-21.) Similarly, while Plaintiff criticizes Ellen Cotter for wanting a new job title, he ignores that her present title did "not reflect" her actual responsibilities, and the "nominal" president was actually just a "senior advisor." (HDO Ex. 11 at 2; HDO Ex. 2 at 14:21-15:13.) In fact, Plaintiff "agreed in principal" that Ellen Cotter should be given the revised title. (HD#1 Ex. 37 at 2.) Nor does he identify why it was improper that Ellen and Margaret Cotter sought employment contracts. Plaintiff had one, and Director Gould recognized that, "given the fact of the factions" in RDI's management, each rightfully "felt their jobs may have been in jeopardy" and that absent such a contract Plaintiff may "take steps to have [them] terminated" irrespective of performance. (HDO Ex. 10 at 79:21-81:3.) And the request by Ellen and Margaret Cotter to have their below-market compensation rectified was consistent with the recommendation of an external industry expert and was subsequently approved by RDI's Compensation Committee. (*See* Ind. Defs.' MSJ No. 6 at 6-9.)

Plaintiff and his sisters had become so intense that RDI was unable to function, such that drastic reform in behavior or potential termination(s) were required to get beyond the current paralysis. (HD#1 Ex. 12 at 696:22-700:3, 704:7-22.) Director Storey specifically informed Plaintiff that RDI needed to operate "more harmoniously," any more "back sliding" was "not acceptable," and "things need to improve and that improvement has to be sustained, otherwise the board will need to look to other steps to protect the company's position." (HD#1 Ex. 37 at 1-2.)

C. The Board Engaged in a Months-Long Reasoned Review Under Which It Evaluated Plaintiff and Sought to Ameliorate His Inadequacies

With respect to Plaintiff, the RDI Board had "an individual who we're very concerned about" such that its "process or evaluation" of him was "constantly going on." (HD#1 Ex. 7 at 219:2-24.) The Board considered engaging an outside consultant to improve Plaintiff's "management and corporate governance" (HD#1 Ex. 11 at 354:23-357:24), and ultimately decided to appoint Director Storey as an "ombudsman" in March 2015—over Plaintiff's initial objections—to work with and coach Plaintiff, and mediate any disputes between him and other executives. (Ind. Defs.' MSJ No. 1 at 8; Pl.'s Mem. at 5 n.1; HD#1 Ex. 11 at 315:22-317:16.) Storey made clear to Plaintiff that "he needs to make progress in the business with Ellen and Margaret quickly, or the board will need to look to alternatives to protect the interests of the company." (HD#1 Ex. 37 at 2-3.) Indeed, Storey emphasized to Plaintiff, "if things don't work out in an acceptable manner, then the [B]oard is resolute in the view that it will then act in the best interests of the company in changing things." (*Id.* at 3.) While some directors wanted the ombudsman process to continue through the end of June 2015 (Pl's Mem. at 6 n.3), the Board "never set a date of June 30 for our intervention" and Director Kane and others felt that "there was no reason for us to wait until June 30" without progress. (HD#1 Ex. 6 at 532:12-533:15.)

The necessary improvement did not take place. While Adams had hoped that Plaintiff "could learn on the job and get up to speed quickly," by April 2015 he "was of the opinion that wasn't working out," as the Board had "been working with [Plaintiff] all these months and I don't see progress." (HD#1 Ex. 2 at 78:18-21, 83:23-87:23.) Similarly, "sometime in mid to late May of 2015," McEachern concluded that Plaintiff had "an inability to operate as a manager,

an inability to create trust, [and] an inability to communicate with people" such that "we're not making progress that our shareholders expect us to make in this organization, and we [have] got to get somebody in here who can help us move the company forward." (HD#1 Ex. 7 at 71:2-18, 293:23-294:15.) Director Kane had not yet "made up my mind" by mid-May, and considered abstaining in the event a motion was made to terminate Plaintiff. (HDO Ex. 12; HDO Ex. 6 at 309:19-310:1 (Kane noting "I wouldn't have invited [Plaintiff] to come down to my house and talk about how he could stay" if he had made up his mind).)[4]

As various directors independently contemplated Plaintiff's removal, they began a series of emails, meetings, and informal straw polls as to a potential termination vote, and commenced discussing what to do on an interim basis in the event that Plaintiff was fired. (HDO Ex. 9 at 175:17-179:7; HDO Ex. 3 at 98:8-99:22; HDO Ex. 4 at 366:14-373:2.) None of this was improper, as Plaintiff suggests. (Pl.'s Mem. at 5-6.) Rather, the Board had to determine if it was even worthwhile to formally discuss Plaintiff's employment status during a Board meeting, and it had an obligation to plan ahead if he was ultimately removed. Given that there was sufficient support to begin an open debate, Plaintiff's continuing role as CEO and President was placed on the agenda for the Board's May 21, 2015 meeting as an item for discussion. (HD#1 Ex. 39.)

Plaintiff, by taking certain emails out of context and omitting the following events, implies that what happened next was a "kangaroo court" to which "Directors Gould and/or Storey objected." (Pl.'s Mem. at 6.) But the only emails cited by Plaintiff pre-date the Board's May 21, 2015 meeting, and merely evince Storey's disagreement with the "apparent view" of certain directors "that no discussion is necessary" and a simple vote on Plaintiff's employment would suffice. (*See, e.g.*, HDO Ex. 14.) Storey instead wanted to "define and address the issue,

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[4] Plaintiff's citation to a May 19 email from Kane to Gould explaining that "the die is cast" is misleading to the extent that it implies Kane had made up his mind and wanted no debate. (Pl.'s Mem. at 6.) During his deposition, Kane explained that he did not mean that Plaintiff was going to be terminated without any discussion, but instead that "I was referring to the agenda . . . that was cast . . . . To me that meant the agenda is set, and that's what we'll discuss, and I see no reason to have a meeting beforehand" with Gould. (HDO Ex. 6 at 356:10-25, 360:5-12.)

discuss it, and come to a conclusion," which was "a separate issue [as] to the merits of the decision before us." (HDO Ex. 1 at 134:9-135:1; HDO Ex. 13 at 1-2.)

What Plaintiff leaves out is that the Board actually adopted and followed Storey's advice as to "proper procedure." The Board first met on May 21, 2015 to discuss potentially removing Plaintiff as CEO and President. (HD#1 Ex. 29.) Its discussion lasted nearly five hours, during which it utilized both outside counsel retained by the Company and additional outside counsel engaged by the non-Cotter directors. (*Id.*) That Plaintiff's employment was up for discussion was not a mystery to him, as Plaintiff hints. (Pl.'s Mem. at 5.) It was unambiguous that this was going to happen, as evidenced by the presence of Plaintiff's current litigation counsel at the May 21, 2015 Board meeting (HD#1 Ex. 29 at 1), and the fact that, in the days prior, both Plaintiff and his counsel had threatened to sue each director "and ruin them financially" if they voted for removal. (HD#1 Ex. 3 at 426:19-427:9; HD#1 Ex. 7 at 78:14-79:2.) At the May 21 meeting, Director Gould raised one possible solution to the problems being experienced by RDI under Plaintiff's leadership, which would be to have Plaintiff resign as CEO but "continue as President of the Company," with the Board to then "commence a search for a new Chief Executive Officer"—a proposal that Plaintiff "twice refused." (HD#1 Ex. 29 at 4.) Ultimately, after much debate in which Plaintiff was given the opportunity to discuss his performance (and actually did so "at length"), the Board chose not to terminate Plaintiff on May 21, 2015, and instead continued its deliberations for the next scheduled Board meeting. (*Id.* at 1-4.)

D. The Board Properly Considered a Potential Settlement That Would Have Resolved the Trust Litigation and Reduced Plaintiff's Authority as CEO

As planned, the Board discussed Plaintiff's performance and the possibility of his removal for another seven hours on May 29, 2015, once again in the presence of counsel. (HD#1 Ex. 30.) For a third time, Plaintiff refused the opportunity "to remain employed as President of the Company under the leadership of a new Chief Executive Officer." (*Id.* at 1-3.) Adams then made a motion, seconded by McEachern, to remove Plaintiff from his position as President and CEO, "principally based on Plaintiff's lack of leadership skills, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes." (*Id.* at 2.)

Plaintiff's defense was limited to an assertion "that it was the intention of his father . . . that he run the Company and the Board should observe his wishes." (*Id.* at 3.)

Prior to a final vote, the Cotters informed the Board of an important development: they had reached an "agreement-in-principle," subject to review by counsel, documentation to their mutual satisfaction, and approval by the Board as to certain issues, that (1) addressed "the structure of the senior management of the Company" (a fact that Plaintiff noticeably leaves out of his motion (*see* Pl.'s Mem. at 6-8)) and (2) would resolve their pending trust litigation. (HD#1 Ex. 30 at 3-4.) Under the agreement, Plaintiff would remain as CEO, but his decisions would be subject to oversight by an Executive Committee composed of Ellen Cotter, Margaret Cotter, and Guy Adams, to which certain decisions were delegated—such as the hiring, firing, and compensation of senior personnel. (HD#1 Ex. 40.)[5] The Board saw this as a positive step, as the agreement had the potential to assuage the performance concerns regarding Plaintiff, "resolve issues relating to the control of the Company," "provide certainty to management and stockholders," and "reduce or eliminate the tension and obstacles" that had prevented Plaintiff from working with his sisters. (HD#1 Ex. 30 at 3.) As such, the Board adjourned the May 29, 2015 meeting without a vote to allow the documentation of the potential settlement. (*Id.* at 4.)

Director Kane, who had been aware of the possibility of a negotiated resolution in the previous days, did not "pressure" Plaintiff to accept the settlement, as Plaintiff wrongly claims. (Pl.'s Mem. at 18-20.)[6] Instead, it is clear from the evidence that Plaintiff reached out to Kane first to involve him in the settlement discussions, telling Kane on May 22, 2015 that he was the

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[5] The "agreement-in-principle" reached was not a "take-it or leave-it offer," as Plaintiff incorrectly claims. (Pl.'s Mem. at 7.) Indeed, the Cotters made revisions and exchanged drafts to the "Confidential Settlement Memo of Understanding" over the course of several days. (*See* HD#1 Ex. 40 (May 27, 2015 version); HDO Ex. 16 (June 3, 2015 revision).)

[6] To the extent that Plaintiff makes allegations challenging the independence of Directors Kane and Adams, those assertions are fully rebutted in the Individual Defendants' Motion for Partial Summary Judgment (No. 2) on the Issue of Director Independence and need not be repeated here. To the extent that Plaintiff relies on these distortions and inaccuracies to maintain that his summary judgment motion should be granted, Section III(C)(2)(b) below identifies the many factual and legal failings in Plaintiff's argument on the issue of director independence.

"most thoughtful director" who was the "only one I have now who can broker peace" (HDO Ex. 18 at 1), and begging Kane on May 27, 2015: "Is there anything you can do to broker this?" (HDO Ex. 15 at 2.) While Kane "strongly advise[d]" Plaintiff to come to a negotiated resolution (*id.* at 1), his encouragement was not motivated by a desire that Margaret Cotter remain the sole trustee of the Voting Trust, as Plaintiff asserts. (Pl.'s Mem. at 18-19.) Rather, the evidence is that, as of late May 2015, Kane had "not seen or heard the particulars" as to who would control the Trust (HDO Ex. 15 at 1), did not know that Margaret Cotter would be left as the sole trustee under the settlement, and "didn't want to know it." (HDO Ex. 7 at 597:9-22.) Rather, Kane told Plaintiff that he supported the general idea of a cooperative deal because it would "benefit you and your sisters and allow you to work together going forward," help end all "ill feelings," and allow Plaintiff to prove that he does "have the leadership skills to run this company." (HDO Ex. 15 at 1-2.) When Kane later learned that Margaret Cotter would control the trust under the proposed deal, he reemphasized to Plaintiff on June 11, 2015 that he would "much prefer that [Plaintiff] bend a bit and work it out between you to build the trust that is necessary so that you don't lose control of the company, as you presently have." (HDO Ex. 17.) Kane was well aware that "there were votes there to terminate [Plaintiff]" and that he himself would be "voting against him" by mid-June due to Plaintiff's deficiencies if they were not alleviated by the kind of further oversight and more harmonious management structure contemplated in the pending settlement. (HDO Ex. 7 at 596:13-25; HDO Ex. 5 at 193:3-195:2.)

Ultimately, the "agreement-in-principle" broke down by early June 2015 when the Cotters attempted to document its final form, and, there being no resolution of the ongoing management issues, Plaintiff's employment was placed back on the agenda for the Board's June 12, 2015 meeting. (Ind. Defs.' MSJ No. 1 at 11.) At that meeting, the Board once again discussed Plaintiff's management skills and experience, following which Directors Adams, Kane, and McEachern, as well as Ellen and Margaret Cotter, voted in favor of the pending motion to remove Plaintiff as the Company's CEO and President; directors Gould and Storey voted against the removal motion, while Plaintiff abstained. (HD#1 Ex. 31 at 1-2.) None of the directors—including Storey and Gould—believed that Plaintiff's failure to settle the trust and

estate litigation between him and Ellen and Margaret Cotter caused his termination as CEO and President of the Company. (Ind. Defs.' MSJ No. 1 at 11-12.) Instead, as both Storey and Kane testified, the majority felt that "things should be dealt with now," "[t]hey had come to a head and there was no point in delaying," "the current disharmony within the business was untenable going forward," "[t]here was a polarization in the office among the employees, and it had to be resolved one way or another." (HD#1 Ex. 1 at 119:25-120:12, 154:2-14; HD#2 Ex. 5 at 331:11-332:17.) As McEachern testified, "from August of 2014 until [Plaintiff's] termination, I cannot tell you one thing that we did that created value for the company, one thing that Jim Cotter, Jr. managed to do. Nothing." (HD#1 Ex. 7 at 292:2-5.) Following Plaintiff's removal, Ellen Cotter was elected interim and ultimately permanent CEO and President of RDI. (HD#1 Ex. 25.)

III. ARGUMENT

A. Plaintiff's Termination Cannot Support a Breach of Fiduciary Duty Claim

Plaintiff's motion fails because it has no basis in the law, ignores the relevant law, and focuses instead on inapplicable law and facts. Plaintiff avoids any mention of RDI's Bylaws, the governing Nevada corporate statutes (or even his own Employment Contract) on his fiduciary duty claims. Indeed, he does not identify *a single case* in which *any court* (let alone a Nevada court) has found members of a board liable for breaching fiduciary duties of care or loyalty by terminating a corporate officer. Every case cited by Plaintiff is inapposite—such as where a board is alleged to have breached its duties when faced with a corporate merger or sale, or where there is an accusation that corporate assets have been misused; noticeably absent is any case law in which the employment of an officer is at issue. *See, e.g.*, *McMullin v. Brand*, 765 A.2d 910, 917 (Del. 2000) (proposed sale of corporation); *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1163 (Del. 1995) (two-stage tender offer/merger transaction); *Paramount Commc'ns Inc. v. QVC Network*, 637 A.2d 34, 42 (Del. 1994) (merger); *Venhill Ltd. P'ship v. Hillman*, C.A. No. 1866-VCL, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008) (partner accused of improper investments and misuse of trust assets). Under the governing law and undisputed material facts, Plaintiff's claims related to his termination should be rejected.

1. RDI's Board Had the Undisputed Right to Remove Plaintiff at Any Time, With or Without Cause

First, pursuant to the RDI Bylaws, and the broad latitude afforded decisions by a board of directors under Nevada law, Plaintiff's claim fails.

Under Nevada law, officers such as Plaintiff "hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors," and may remain in office until the "expiration of his or her term" or "until the officer's resignation or removal before the expiration of his or her term." NRS 78.130(3)-(4). "[T]here is no vested right to retain one's office in the face of a properly executed removal." *Cooper v. Anderson-Stokes, Inc.*, 571 A.2d 786, 1990 WL 17756, at *2 (Del. 1989) (table). RDI's Amended and Restated Bylaws mirror NRS 78.130, and provide that Plaintiff could hold office as the Company's CEO and President only until the appointment of his successor, his death, or until he shall resign or "is removed in the manner as hereinafter provided for such term as may be prescribed by the Board of Directors." (HD#1 Ex. 19, Art. IV § 1.)

The Company's Bylaws expressly provide that Plaintiff served solely "at the pleasure of the Board of Directors," and that he could "be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof." (*Id.*, Art. IV § 10.) Plaintiff's Employment Contract similarly recognized that the Board had an undiminished right to terminate him "with cause," in which event he was owed no relief, or "without cause," in which case he was due a specified sum. (HD#1 Ex. 20 § 10.)

A corporation's charter and bylaws "are contracts among the shareholders of a corporation." *Centaur Partners, IV v. Nat'l Intergroup, Inc.*, 582 A.2d 923, 928 (Del. 1990). Here, because the Board had an *express, unrestricted right* to terminate Plaintiff's employment at any time, for any reason, under both Nevada law and RDI's Bylaws, as a matter of law it cannot be liable for breaching its fiduciary duties and violating any fundamental covenant between the Company and its stockholders. *See, e.g.*, *Nahass v. Harrison*, C.A. No. 15-12354, 2016 WL 4771059, at *6 (D. Mass. Sept. 13, 2016) (terminated officer could not maintain fiduciary duty claim where his termination was authorized under "the Bylaws"); *In re Eagle Corp.*, 484 B.R.

640, 654 (Bankr. D.N.J. 2012) (removal of officer and director could not be a breach of fiduciary duty where "Delaware General Corporation Law provides for removal . . . with or without cause"); *Goldstein v. Lincoln Nat'l Convertible Sec. Fund, Inc.*, 140 F. Supp. 2d 424, 438 (E.D. Pa. 2001) (plaintiff could not maintain fiduciary duty claim "[g]iven the express statutory authorization for the Board's action"), *vacated on other grounds*, 2003 WL 1846095 (3d Cir. Apr. 2, 2003); *Quadrant Structured Prod. Co., Ltd. v. Vertin*, C.A. No. 6990-VCL, 2014 WL 5465535, at *3 (Del. Ch. Oct. 28, 2014) (dismissing action, in part, because the company's "governing documents authorized" the challenged "strategy"); 2 Fletcher Cyc. Corp. § 360 (2015) ("a court has no right or jurisdiction to review the discretionary action of the board in removing an officer, unless the contract rights of the person removed are involved"); *id.* § 363 ("where a bylaw provided that any officer might be removed by a majority vote of the entire board whenever the best interests of the company require it, it was for the directors to determine what was in the best interests of the company; the courts will not interfere unless for fraud or illegality"). To hold otherwise would effectively rewrite the RDI's Bylaws and fundamentally alter the "contract" between Company and its stockholders. Given the clear authority of the Board to terminate him without cause, Plaintiff's motion should be denied.

2. <u>Courts Routinely Reject Attempts to Transform the Termination of an Officer's Employment Into a Breach of Fiduciary Claim</u>

<u>Second</u>, Plaintiff's inability to locate direct authority supporting the availability of a fiduciary duty claim in the context of an officer termination decision is not surprising. Most courts regularly reject attempts to use "an appeal to general fiduciary law" to transform cases involving the dismissal of an officer into claims that a company's directors "breached a fiduciary duty as corporate officers." *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 190 (1989) (rejecting effort by operating manager and minority shareholder, upon his firing, to assert fiduciary duty violations); *see also Hackett v. Marquardt & Roche/Meditz & Hackett, Inc.*, Civ. No. 02-990166881S, 2002 WL 31304216, at *2 (Conn. Sup. Ct. Sept. 17, 2002) (rejecting breach of fiduciary duty claim, and holding that "the law of employment relations seems to provide sufficient protection for any civil wrongs" in the event of a purportedly unlawful termination).

Such courts have found that claims of fiduciary breaches by terminated officers represent "novel argument[s]" for which there is "no case in support." *Carlson v. Hallinan*, 925 A.2d 506, 540 (Del. Ch. 2006) (plaintiff could not "articulate a theory as to how Carlson's removal as President . . . could be a breach of fiduciary duty"); *see also Datto Inc. v. Braband*, 856 F. Supp. 2d 354, 384 (D. Conn. 2012) (allegations of "breach of fiduciary duty" based on "allegedly wrongful termination . . . fail to state a claim").

These courts instead have barred breach of fiduciary duty claims against corporate directors arising from their decision to terminate the employment of an officer. *See, e.g.*, *Berman v. Physical Med. Ass'n, Ltd.*, 225 F.3d 429, 433 (4th Cir. 2000) (affirming dismissal of fiduciary duty claim that directors did not follow fair procedures in deciding to terminate stockholder/doctor's employment because "any injury caused by the termination decision itself would be an injury to his interests as an employee, not as a stockholder"); *In re Eagle Corp.*, 484 B.R. at 654 (a stockholder "who is also an employee cannot recover on a breach of fiduciary duty claim when the claim is grounded solely in an employment dispute"); *Wall St. Sys., Inc. v. Lemence*, No. 04 Civ. 5299, 2005 WL 2143330, at *8 (S.D.N.Y. Sept. 2, 2005) (dismissing third-party claims against directors because "they are essentially employment disputes that cannot sustain a claim of fiduciary breach under Delaware law"); *Dweck v. Nassar*, No. 1353-N, 2005 WL 5756499, at *5 (Del. Ch. Nov. 23, 2005) (finding that "[the shareholder's] allegations of wrongdoing in connection with her termination as President and CEO" by the Board of Directors "are insufficient to support a claim for breach of fiduciary duty").

In fact, "under Delaware law," which Plaintiff maintains is "persuasive authority" (Pl.'s Mem. at 22 n.6), courts are emphatic that "there can be no breach of fiduciary duty stemming from the termination of [an officer's] employment." *Kasper v. LinuxMall.com, Inc.*, No. Civ. A. 00-2019, 2001 WL 230494, at *3 (D. Min.. Feb. 23, 2001) (applying Delaware law in context of termination of president); *see also Riblet Prods. Corp. v. Nagy*, 683 A.2d 37, 39-40 (Del. 1996) (no liability for breach of fiduciary duty where stockholder/plaintiff was "an employee of the corporation under an employment contract with respect to issues involving that employment").

The Court need not proceed any further. Given that Plaintiff's termination was explicitly

authorized at any time, for any reason, under RDI's Bylaws by a simple majority "of the entire Board," and courts are virtually unanimous in rejecting attempted fiduciary duty claims arising out of an employee's termination, Plaintiff's fiduciary duty claims relating to his firing are not supportable. Plaintiff's motion should be denied, as summary judgment in favor of the Individual Defendants as to Plaintiff's termination claims is immediately warranted instead.

B. Even If the Termination of an Employee Could Constitute a Breach of Fiduciary Duty, Plaintiff Lacks Standing to Maintain His Derivative Action

Even assuming that, contrary to the great weight of established caselaw, it is theoretically possible for a plaintiff to maintain a viable breach of fiduciary duty claim relating to the termination of a corporate officer, Plaintiff himself lacks standing to derivatively assert breach of fiduciary duty claims against the Individual Defendants arising out of his termination. Elements of standing are not merely pleading requirements, but are an "indispensable part of the plaintiff's case" on which "the plaintiff bears the burden of proof" at each of "the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Plaintiff cannot meet his burden with respect to his standing now that discovery has occurred.

For the reasons set forth in detail in the Individual Defendants' Motion for Summary Judgment (No. 1), Plaintiff lacks the necessary standing to assert derivative claims on behalf of RDI and its stockholders relating to his termination because: (1) clear economic antagonisms exist between Plaintiff and RDI's stockholders; (2) the injury alleged to, and the remedy sought by, Plaintiff is entirely personal, and is not a harm suffered by RDI itself or its stockholders; (3) other significant litigation is pending covering the same conduct at issue, and the overlap indicates that Plaintiff is personally using this derivative suit to attempt to obtain a more favorable global settlement; (4) Plaintiff is clearly driven by vindictiveness; and (5) significant unaffiliated stockholders in RDI do not support Plaintiff's derivative action as it relates to his termination or to the extent it demands his belated reinstatement. (*See* Ind. Defs.' MSJ No. 1 at 23-28.) Plaintiff's inability to satisfy the standing requirements for his derivative action as it relates to his termination and reinstatement merits not only the denial of his partial summary judgment motion, but also the entry of summary judgment against him.

C. Even If the Termination of an Employee Could Constitute a Breach of Fiduciary Duty and Plaintiff Had Standing, Plaintiff's Claims Fail as a Matter of Law

Even assuming *arguendo* that the termination of an employee could *ever* support a breach of fiduciary duty claim *and* Plaintiff has standing to maintain a derivative action on behalf of RDI itself and its stockholders that asserts fiduciary duty claims relating to his termination, Plaintiff—to sustain his suit—must produce cognizable evidence showing (1) "the existence of a fiduciary duty"; (2) the decision by the Board to terminate him as CEO and President of the Company represented a "breach of that duty" to RDI itself as a matter of law; and (3) "that the breach proximately caused the damages" to the Company alleged. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008). Moreover, under NRS 78.138(7), in order for the Individual Defendants to be liable, Plaintiff must prove that the fiduciary breach "involved intentional misconduct, fraud or a knowing violation of the law." Yet Plaintiff cannot meet *any*—let alone all—of these requirements. His motion for partial summary judgment fails for four additional and independent reasons.

1. Plaintiff Has Not Argued, Let Alone Established, Any Damages to RDI as a Result of His Termination

In his Second Amended Complaint, Plaintiff has asserted claims on behalf of the Company relating to his termination against the Individual Defendants for the breach of the duty of care, the breach of the duty of loyalty, and aiding and abetting these alleged breaches. (Pl.'s Mem. at 1; SAC Counts I, II, IV.) An essential element to pleading (and establishing) each of these causes of action under Nevada law is the requirement that Plaintiff show that the purported breaches proximately caused damages to RDI. *See Olvera v. Shafer*, No. 2:14-cv-01298, 2015 WL 7566682, at *2 (D. Nev. Nov. 24, 2015) ("A claim for breach of fiduciary duty under Nevada law requires a plaintiff to demonstrate a fiduciary duty exists, that duty was breached, and the breach proximately caused the damages."); *In re Amerco Deriv. Litig.*, 127 Nev. 196, 225 (2011) (adopting the Delaware standard for "aiding and abetting a breach of a fiduciary duty," for which one of the "four elements" is "the breach of the fiduciary relationship resulted in damages"). In his motion for summary judgment, however, Plaintiff does not argue—let

alone provide any evidence—that the alleged breaches caused *any* damages, let alone proximately caused damages to the Company. This failure alone is immediately fatal to Plaintiff's motion.[7]

2. The Board's Decision to Terminate Plaintiff Is Protected by the Business Judgment Rule

In his motion, Plaintiff does not contest that, if the business judgment rule were to apply, his fiduciary duty claims arising out of his termination would automatically fail as a matter of law. (*See also* Ind. Defs.' MSJ No. 1 at 18-22 (establishing why the business judgment rule bars Plaintiff's action).) Instead, his sole argument is that "the business judgment rule has no application here" because certain Board members purportedly "had an interest in the challenged conduct" or lacked "independence" from those that had such an interest. (Pl.'s Mem. at 21-22.) According to Plaintiff, *Delaware's* "entire fairness test"—rather than Nevada law—should be applied when evaluating any breach of fiduciary duty relating to his termination. (*Id.* at 25-28.) Plaintiff's attempt to avoid the application of the business judgment rule fails for two reasons.

(a) Under Nevada Law, the Business Judgment Rule Applies in the Context of an Employee Termination

Plaintiff's entire argument rests upon his assumption that if either Director Kane or Director Adams was not "independent" with respect to the Board's decision to terminate his employment, then the Individual Defendants automatically lose the presumptive application of the business judgment rule. (*See* Pl.'s Mem. at 21-25.) But Plaintiff cites no Nevada law or statute in support of this assumption. Instead, he relies only on general Delaware common law principles focused on—as noted above—inapposite situations, such as merger transactions or corporate asset sales. (*Id.*) Plaintiff's complete avoidance of Nevada law is telling, because the text of Nevada's actual corporate statutes fatally undermines his unsupported analysis.

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[7] Of course, Plaintiff cannot raise a new argument in his reply brief that was not made in his opening brief, and has waived his ability to argue damages for the purposes of his motion. *See Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 261 n.13 (Nev. 2012); *Leonard v. State*, 114 Nev. 639, 662 (1998); *United States v. Bez*, 740 F.2d 903, 916 (11th Cir. 1984).

NRS 78.138(3) codifies Nevada's business judgment rule, providing that "[d]irectors and officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." *Id.* (emphasis added). Under Nevada's corporate law, the presumptive application of the state's business judgment rule may be called into question in only two scenarios, both of which are inapplicable here (and neither are cited by Plaintiff).

Directors are "given the benefit of the presumptions established by subsection 3 of NRS 78.138" in "connection with a change or potential change in control of the corporation," but may lose that shield if they take certain actions "to resist a change or potential change in control of a corporation" and specified elements are not met. *See* NRS 78.139(1)(b), 2-4. *The Board's termination of Plaintiff as a corporate officer does not implicate this provision*, as it did not involve a change in the stockholder control of RDI.

NRS 78.140 sets forth the only other way that the benefit of the business judgment rule may be removed under Nevada law. NRS 78.140(1) provides that "[a] contract or other transaction is not void or voidable solely because the contract or transaction is between a corporation and one or more of its directors or officers; or another corporation, firm or association in which one or more of its directors or officers are directors or officers or are financially interested"—even if "a common or interested director or officer" is present, that director "authorizes or approves the contract or transaction," and the director's vote is counted—as long as certain conditions in NRS 78.140(2) are met. NRS 78.140 on its face *also is not implicated by Plaintiff's termination*; instead it is limited to so-called "related party transactions" in which potential "self-dealing" by the director or officer doing business with the corporation must be evaluated. *See Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 86 (1987) (NRS 78.140 is focused on when "a corporate officer or director may contract directly with the corporation"); *Pederson v. Owen*, 92 Nev. 648, 650 (1976) (applying NRS 78.140 to transaction between corporation and another entity owned by one of its officers); *Schoff v. Clough*, 79 Nev. 193, 196 (1963) (noting, under previous iteration of statute, "[a] contract between a corporation and an officer is not void or voidable except for unfairness or fraud"); *Foster v. Arata*, 74 Nev. 143,

153-54 (1958) (corporation's execution of an outside contract with one of its officers does not invalidate the contract, but subjects it to a close scrutiny as to the good faith of the deal); *Kruss v. Booth*, 185 Cal.App.4th 699, 710 (2010) (describing NRS 78.140 as addressing "self-dealing"); *In re Sec. Asset Capital Corp.*, 390 B.R. 636, 647-48 (Bankr. D. Minn. 2008) (applying NRS 78.140 to evaluate outside consulting contracts between company and directors).

The RDI Board's termination of Plaintiff clearly falls outside the scope of NRS 78.140. Plaintiff's firing was not a "related party transaction": it was a purely intra-company matter that did not involve a deal between RDI and another entity, or a relationship between RDI and Plaintiff acting outside of his role as an RDI employee. Plaintiff's termination was also not a "related party transaction" with respect to Director Kane or Director Adams (the only two Directors whose "independence" Plaintiff challenges in his motion) since they were not the subject of the decision and they "did not stand on both sides of the transaction or receive any personal financial benefit." *La. Mun. Police Emps.' Ret. Sys. v. Wynn*, No. 2:12-cv-509 JCM, 2014 WL 994616, at *4 (D. Nev. Mar. 13, 2014) (applying Nevada law).

Accordingly, the RDI Board's business decision to remove a divisive, poorly-performing officer is entitled to the Nevada statutory presumption of reasonable business judgment under NRS 78.138(3). *See Nahass*, 2016 WL 4771059, at *5 (questioning how the "entire fairness" doctrine ever "would apply to employment decisions or decisions of non-controlling shareholders," and rejecting fiduciary duty claim by officer terminated by company's directors). Because the business judgment rule applies as a matter of law, and Plaintiff has not even contested the availability of his termination claims under that rule, Plaintiff's motion should be denied and judgment entered against him.

(b) Directors Kane and Adams Were Both "Disinterested" and "Independent"

Even if the disinterestedness and/or independence of RDI's directors could have an impact on whether the business judgment rule applies to the Board's termination of a corporate

officer (which they do not), Directors Kane and Adams were clearly "disinterested" and "independent" with respect to their decisions to support Plaintiff's removal from office.[8]

First, with respect to disinterestedness, Plaintiff's motion misstates the law. Taking two quotations out of context, Plaintiff assumes that a director is "interested" and there is a "conflict of interest" that necessitates Delaware's "entire fairness" test anytime personal considerations might be among the many motivating factors behind a director's decision. (*See* Pl.'s Mem. at 22-23.) But that is not the test for whether there is directorial "interest" in either Delaware or Nevada. Rather, under both Delaware and Nevada law, "interest" is limited to meaning: (1) "directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally"; or (2) "a corporate action will have a materially detrimental impact on a director, but not on the corporation and the stockholders." *Orman v. Cullman*, 794 A.2d 5, 23 (Del. Ch. 2002) (summarizing Delaware law); *In re Amerco Deriv. Litig.*, 127 Nev. at 232 (applying same test); *Wynn*, 2014 WL 994616, at *4 (same).

Plaintiff does not—and cannot—satisfy these requirements. With respect to Director Kane, his only allegation is that Kane "acted as 'Uncle Ed' throughout to effectuate what he thought were JJC, Sr.'s wishes" with respect to the Cotter Voting Trust. (Pl.'s Mem. at 23.) There is no allegation (or evidence) that Kane somehow stood "on both sides of" Plaintiff's termination, or that he engaged in "self-dealing" such that he derived any "personal financial benefit" from Plaintiff's removal. Similarly, with respect to Adams, Plaintiff simply makes the unsupported assertion that he "separately stood to benefit" from Plaintiff's firing "in a manner not shared with other RDI shareholders." (Pl.'s Mem. at 14.) But Plaintiff is unable to identify a

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[8] The Individual Defendants, for the purposes of this motion, do not contest the disinterestedness or independence of Ellen and Margaret Cotter as RDI directors with respect to Plaintiff's termination. (*See* Ind. Defs.' MSJ No. 2 at 14 n.2.) For the purposes of his motion, Plaintiff also does not contest the fact that Director McEachern "was disinterested and/or independent" (Pl.'s Mem. at 23 n.7)—a concession that Plaintiff had to make given his deposition testimony that McEachern is "independent" and has "no relationship" or "business relationship" with Ellen and/or Margaret Cotter that would lead him to question McEachern's independence. (HD#2 Ex. 7 at 84:21-86:4.)

single financial benefit to Adams resulting from Plaintiff's termination. Adams did not become interim CEO of RDI (instead, he voted for Ellen Cotter to assume that role (HD#1 Ex. 31 at 2)); his contractual financial ties to family entities controlled by Plaintiff and his sisters continued unchanged following Plaintiff's termination (as they had since 2012); and there is no evidence that Adams' ongoing relationship with the Cotter Family Farms or the contractual sums he was owed under his real estate ventures with James J. Cotter, Sr. were ever threatened by Plaintiff. As such, Adams did not have a disabling "interest" in Plaintiff's potential removal.

Second, with respect to independence, Plaintiff must overcome the "presumption that directors are independent," *In re MFW S'holders Litig.*, 67 A.3d 496, 509 (Del. Ch. 2013), and show that Kane and/or Adams are so "beholden" to Ellen and Margaret Cotter "or so under their influence that their discretion would be sterilized." *Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993); *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 639 (2006) (same). For the reasons set forth in the Individual Defendants' Motion for Partial Summary Judgment (No. 2) on the Issue of Director Independence, incorporated by reference hereto, Plaintiff cannot make this showing. (*See id.* at 6-10, 15-19, 22-27.) In sum:

- Plaintiff has conceded that director Kane does not have a business relationship with either Ellen or Margaret Cotter that would lead him to question Kane's independence. (HD#2 Ex. 7 at 85:2-5.) The "deep friendship" of which Plaintiff complains with respect to director Kane was actually between Kane and the now-deceased James J. Cotter, Sr.—not between Kane and the Cotter sisters. While Margaret and Ellen Cotter at times have called Kane "Uncle Ed," so has Plaintiff.[9] There is simply no evidence that the outside relationship between Kane and the Cotter sisters is of such "a bias-producing nature" that Kane would be more willing to risk his well-earned reputation rather than jeopardize his relationship with them. Instead, Kane has stressed that he does not "take into account the Cotter children" when evaluating what is best for

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[9] Of course, as the Supreme Court of Nevada has noted, an actual "uncle/nephew relationship does not establish the parties as members of one another's immediate families" and is considered a "more remote family relationship[]" that is not disqualifying to a director. *See In re Amerco Deriv. Litig.*, 127 Nev. at 232-33.

RDI, and Plaintiff himself "reviewed" and approved materials filed by RDI with the SEC weeks prior to his termination that identified Kane as "independent." (*See* Ind. Defs.' MSJ No. 2 at 6-8, 15-19.) Moreover, Kane did not "extort" Plaintiff into resolving the trust litigation, as Plaintiff incorrectly asserts (Pl.'s Mem. at 25); rather Kane—who gave advice on the matter at Plaintiff's request—supported a negotiated compromise because it would "benefit you and your sisters and allow you to work together going forward," and he was aware that, due to Plaintiff's inadequacies as a CEO, there were sufficient votes to remove Plaintiff absent both the creation of an Executive Committee to oversee Plaintiff and demonstrable progress in Plaintiff's relationship with key RDI executives such as Ellen and Margaret Cotter. (*Supra* Section II(D).)

- The financial ties of which Plaintiff complains with respect to director Adams are clearly insufficient to render him "beholden" to Margaret and Ellen Cotter as a matter of law. There is nothing unusual about the fees that Adams has earned as an RDI director: the amounts paid to him by the Company are consistent with the compensation paid to all other non-employee directors who have spent substantial time in the past two years addressing the deficiencies in Plaintiff's performance as CEO, Plaintiff's ultimate termination, and the various challenges encountered by the Company in its normal course of business and as a result of Plaintiff's baseless personal attacks. To the extent that Adams has ties to certain Cotter family entities outside of his Board service, those dealings originated years before his election to the RDI Board, were the result of dealings with James J. Cotter, Sr. (rather than any of the Cotter siblings), were well-known to Plaintiff (who worked with Adams on some of these outside ventures), and the funds from those ventures are either contractually-owed to him (and thereby immune from present-day pressures) or immaterial to his overall economic situation. Plaintiff has identified no financial reason why Adams would be biased in favor of Margaret and Ellen Cotter and against him. Indeed, Adams is of retirement age, has a substantial net worth, and has been repeatedly found to be "independent" under the NASDAQ standards for the purposes of his general service as an RDI director, including in materials "reviewed" and approved by Plaintiff. (*See* Ind. Defs.' MSJ No. 2 at 8-10, 22-27 & n.7.)

Because there is no reasonable legal basis upon which the presumed disinterestedness or independence of Directors Kane and Adams can be questioned, not only must Plaintiff's summary judgment motion be denied, but judgment as a matter of law should be entered against him, as the business judgment rule applies and definitively acts to bar his termination claims.

3. The Board's Termination of Plaintiff Was Fair

Nevada law does not recognize Delaware's "entire fairness" standard and does not employ a "fairness review" outside of the inapplicable circumstances of NRS 78.140(2)(d), and specifically not for "employment decisions." *See also Nahass*, 2016 WL 4771059, at *5 (questioning whether a "fairness" review of employment decisions would ever be appropriate). Even assuming, *arguendo*, that this Court should evaluate the fairness of the process or decision, no colorable argument can be made that Plaintiff's removal was not "fair" to RDI (which is the actual "derivative plaintiff"). *See* NRS 78.140(2)(d) (a vote involving a transaction with an interested director is not void or voidable simply because of the vote of that director if "the contract or transaction *is fair as to the corporation* at the time it is authorized or approved" (emphasis added)).[10]

First, the process involved in Plaintiff's removal was clearly fair. (*See also* Ind. Defs.' MSJ No. 1 at 21-22.) Prior to formally discussing Plaintiff's removal at any Board meeting, the RDI Board worked cooperatively with Plaintiff over several months in an attempt to rectify and alleviate his many deficiencies, including appointing Director Storey as an "ombudsman" to help coach him. Storey had warned Plaintiff months prior to May 21, 2015 that he faced removal absent significant short-term improvement. Indeed, Plaintiff "knew that his position as CEO was in jeopardy for a longer period of time than just May 21," (HD#1 Ex. 7 at 176:1-9), and was aware that there was "the possibility of getting an interim CEO . . . as early as October 2014." (HD#1 Ex. 11 at 528:9-529:20.) Though it was not required and Plaintiff could be removed "at

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[10] Because Plaintiff's claim is derivative, the only basis to evaluate "fairness" is fairness to the Company (which Plaintiff ignores). Indeed, the process of Plaintiff's termination under his employment contract is the subject of a separate arbitration proceeding. That said, the facts show that the process was fair to everyone—including Plaintiff.

any time" under RDI's Bylaws (as he recognized (HD#1 Ex. 12 at 705:13-706:9)), the Board gave Plaintiff advance notice on May 19, 2015 that his continued employment was going to be debated at the May 21 Board meeting. Far less notice has routinely been found "fair."[11]

Once the formal Board review process began, there was no "kangaroo court," as Plaintiff misleadingly claims. (Pl.'s Mem. at 27.) Rather, the Board took the advice of Storey and Gould, engaged outside counsel to assist it in its fiduciary duties, and rigorously debated the merits of Plaintiff's termination in three different Board meetings held over a three-week period that lasted a combined 13 hours. The Board gave Plaintiff the opportunity to speak "at length" regarding his tenure, and the chance to present a business plan (which he was unable to do). His response was an appeal to nepotism (*see* HD#1 Ex. 30 at 3 (plaintiff asserting "that it was the intention of his father . . . that he run the Company and the Board should observe his wishes") and an attempt to intimidate the Board by threatening to "ruin them financially" if RDI's directors challenged his entrenchment. (HD#1 Ex. 3 at 426:19-427:9.) The Board properly deferred a final termination decision when it appeared that Plaintiff agreed to a revised management structure, which would have created oversight over his responsibilities and had the potential to end his adversarial relationship with his sisters, who were key RDI employees and also sat on the Board. And the Board gave Plaintiff three separate chances to stay on as President under a new CEO so that he could better learn the business and gain the management skills he so sorely lacked. The extensive review process utilized by the Board went far above any "fair procedure" requirement.

Second, the decision to terminate Plaintiff was unquestionably fair on the merits. (*See* Ind. Defs.' MSJ No. 1 at 18-20). With respect to Plaintiff, the Board faced a CEO that was "young," chosen on "short notice," and lacked significant hands-on experience in numerous, highly-relevant business areas. RDI's Board and stockholders recognized that "nepotism" may

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[11] *See Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043-44 (Del. 2014) (rejecting claim that CEO's firing was improper because of lack of agenda item giving advance notice); *OptimisCorp. v. Waite*, C.A. No. 8773-VCP, 2015 WL 5147038, at *66-67 (Del. Ch. Aug. 26, 2015) (rejecting argument that directors "breached their duty of loyalty by not advising [CEO] in advance of his potential termination"); 2 Fletcher Cyc. Corp. § 357.20 (2015) (board's failure to give CEO advance notice of removal plan does "not invalidate his termination").

have benefitted Plaintiff in his selection as CEO, but all hoped that he could grow into the role and develop on the job. Within two to three months, the Board saw that Plaintiff needed help, which it attempted to provide. But Plaintiff had significant weaknesses: he could not work well with certain key executives, and some Board members came to believe that he was more interested in undermining central figures within the Company rather than in addressing pending issues; he acted—or was perceived to act—in a manner that was violent and abusive to employees and fellow Board members; and he demonstrated a lack of understanding with respect to metrics critical to evaluating RDI's businesses.

Plaintiff's insinuation that his termination was somehow "improper" because he was fired after he ultimately declined to settle the Cotter trust litigation is baseless. (Pl.'s Mem. at 27.) The Board's support for and consideration of a potential deal between the Cotter siblings was far from "extortion"; rather, the accord made business sense because it could have (1) alleviated the admitted "dysfunction" and "thermonuclear' hostility" within the management ranks that was clearly affecting the Company and stockholder value; and (2) rectified some of the otherwise-terminal problems in Plaintiff's CEO tenure, while also providing him a structure within which to grow and gain experience. Once that agreement fell through, the Board was left with the same intractable problems as before. Given that it was faced with a CEO that could not perform adequately, lacked experience and expertise, required close supervision, did not process the requisite leadership skills, and could not work well with various directors or executives, the Board's decision to terminate Plaintiff on June 12, 2015 was objectively fair. Plaintiff's motion should therefore be denied, and judgment entered against him on his termination claims.

4. Plaintiff Cannot Show That His Termination Involved Intentional Misconduct, Fraud, or a Knowing Violation of the Law

Even if Plaintiff's termination was somehow unfair (it was not), another independent reason to deny Plaintiff's motion is that the Individual Defendants are statutorily immune from individual liability where, as here, any "breach" did not involve intentional misconduct, fraud, or a knowing violation of law. Under Nevada law, "directors and officers may only be found personally liable for breaching their fiduciary duty of loyalty if that breach involves intentional

misconduct, fraud, or a knowing violation of the law." *Shoen*, 122 Nev. at 640 (citing NRS 78.138(7)); *see also In re AgFeed USA, LLC*, 546 B.R. 318, 330-31 (Bankr. D. Del. 2016) (citing *Shoen* and concluding that "the second cause of action fail[ed] to state a claim for breach of the duty of loyalty because the complaint [fell] well short of alleging intentional misconduct, fraud, or a knowing violation of the law."). "As for the terms *knowing violation* and *intentional misconduct*," "both require knowledge that the conduct was wrongful." *In re ZAGG Inc. S'holder Deriv. Action*, No. 15-4001, 2016 WL 3389776, at *7, 11 (10th Cir. June 20, 2016).

Plaintiff again completely avoids any mention—let alone discussion—of NRS 78.138(7) in his motion. This is not surprising. There can be no "knowing violation" or "intentional misconduct" where the RDI Board weighed the propriety of Plaintiff's termination over several meetings, considered his attempted defense of his tenure, engaged outside counsel to assist it in exercising its fiduciary duties, and articulated a wide variety of business-specific reasons motivating its removal decision. Even the directors that voted not to terminate Plaintiff on June 12, 2015 recognized significant problems with his performance, and objected more to the timing of his removal than to the underlying basis. (*See* Ind. Defs.' MSJ No. 1 at 8-12, 19.) Plaintiff has not identified a single case anywhere in which directors have been held liable for breaching their fiduciary duties in the context of an employee termination, let alone under the strict requirements set forth in NRS 78.138(7). Because Plaintiff has not attempted to (and cannot) meet the showing required under NRS 78.138(7) to establish individual liability, his motion must be denied and judgment entered in favor of the Individual Defendants.

D. Plaintiff's Reinstatement Demand Is Unsupportable and Untenable

Even if the Board's removal of Plaintiff somehow constituted a breach of fiduciary duty, the relief sought by Plaintiff—an order that his termination "was and is of no legal force and effect" and full reinstatement (Pl.'s Mem. at 28)—is both unsupportable and untenable. Plaintiff has not identified a single case in any jurisdiction in which the firing of a corporate officer was reversed following a breach of fiduciary duty claim. Indeed, in *Kendall v. Henry Mountain Mines, Inc.*, 78 Nev. 408 (1962), the only Nevada case that Plaintiff cites for the general proposition that a conflict of interest can result in the voiding of a transaction, the court noted

that transactions involving a conflict of interest "are not absolutely void" and "are only voidable at the instance of the corporation . . . or its stockholders," who can "elect to confirm a transaction which could have been repudiated." *Id.* at 410-11. Thus, even if the decision to terminate Plaintiff was "voidable," RDI as a corporation (and Ellen and Margaret Cotter, who control a majority of its voting shares) could simply elect to "confirm" his firing. Indeed, the court in *Kendall* refused to void the challenged transaction at issue in that case.

For the reasons set forth in detail in the Individual Defendants' Motion for Summary Judgment (No. 1), Plaintiff's attempt to achieve, via this derivative action, a reinstatement remedy beyond what is available under his Employment Contract fails because: (1) equity will not assume jurisdiction for the purpose of reinstating a removed officer; (2) Plaintiff's remedy at law is adequate; (3) there are strong policy reasons against compelling a company to retain an employee against its wishes; (4) Plaintiff could simply be re-terminated if reinstated, as he has no vested right to the positions he seeks; (5) the fact that over 15 months have passed since Plaintiff's termination (far longer than he served as CEO) counsels against his reinstatement; and (6) reinstatement is not proper here given the irreparable animosity between the parties. (*See* Ind. Defs.' MSJ No. 1 at 28-30.) Accordingly, to the extent that Plaintiff's partial summary judgment seeks to void his termination and obtain reinstatement, it also fails as a matter of law.

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IV. CONCLUSION

For the foregoing reasons, the Individual Defendants respectfully request that the Court deny Plaintiff James J. Cotter Jr.'s Motion for Partial Summary Judgment and grant both their Motion for Summary Judgment (No. 1) re: Plaintiff's Termination and Reinstatement Claims and their Motion for Partial Summary Judgment (No. 2) re: the Issue of Director Independence.

Dated: October 13, 2016

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, and Edward Kane

DECLARATION OF COUNSEL NOAH S. HELPERN IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF JAMES J. COTTER, JR.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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 the law firm of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), attorneys for the Individual Defendants. I make this declaration based upon personal, firsthand knowledge, except where stated to be on information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this Declaration, I am legally competent to testify to its contents in a court of law.

2. Attached hereto as Exhibit 1 is a true and correct copy of transcript excerpts from the deposition of Timothy Storey, taken on February 12, 2016.

3. Attached hereto as Exhibit 2 is a true and correct copy of transcript excerpts from the deposition of Timothy Storey, taken on August 3, 2016.

4. Attached hereto as Exhibit 3 is a true and correct copy of transcript excerpts from the deposition of Guy Adams, taken on April 28, 2016.

5. Attached hereto as Exhibit 4 is a true and correct copy of transcript excerpts from the deposition of Guy Adams, taken on April 29, 2016.

6. Attached hereto as Exhibit 5 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on May 2, 2016.

7. Attached hereto as Exhibit 6 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on May 3, 2016.

8. Attached hereto as Exhibit 7 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on June 9, 2016.

9. Attached hereto as Exhibit 8 is a true and correct copy of transcript excerpts from the deposition of Ellen Cotter, taken on May 18, 2016.

10. Attached hereto as Exhibit 9 is a true and correct copy of transcript excerpts from the deposition of Ellen Cotter, taken on June 16, 2016.

11. Attached hereto as Exhibit 10 is a true and correct copy of transcript excerpts from the deposition of William Gould, taken on June 8, 2016.

12. Attached hereto as Exhibit 11 is a true and correct copy of an email from Ellen Cotter to Guy Adams, Timothy Storey, and William Gould re: "Corporate Framework Notes," dated October 14, 2014, previously marked as Exhibit 61 during Guy Adams' deposition.

13. Attached hereto as Exhibit 12 is a true and correct copy of an email from Edward Kane to Guy Adams, dated May 18, 2015, previously marked as Exhibit 81 during Guy Adams' deposition.

14. Attached hereto as Exhibit 13 is a true and correct copy of an email from Timothy Storey to Edward Kane, William Gould, Guy Adams, Ellen Cotter, Margaret Cotter, Douglas McEachern, and Plaintiff, dated May 19, 2015, previously marked as Exhibit 116 during Edward Kane's deposition.

15. Attached hereto as Exhibit 14 is a true and correct copy of an email from Timothy Storey to Douglas McEachern re: "Reading," dated May 20, 2015, previously marked as Exhibit 131 during Douglas McEachern's deposition.

16. Attached hereto as Exhibit 15 is a true and correct copy of an email chain that includes emails from Plaintiff, Edward Kane, and Margaret Cotter re: "Confidential," dated May 28, 2015, previously marked as Exhibit 305 during Edward Kane's deposition.

17. Attached hereto as Exhibit 16 is a true and correct copy of a draft "Confidential Settlement Memo of Understanding," dated June 3, 2015, previously marked as Exhibit 167 during Margaret Cotter's deposition.

18. Attached hereto as Exhibit 17 is a true and correct copy of an email from Edward Kane to Plaintiff, dated June 11, 2015, previously marked as Exhibit 306 during Edward Kane's deposition.

19. Attached hereto as Exhibit 18 is a true and correct copy of an email from Plaintiff to Edward Kane, dated May 22, 2015, previously marked as Exhibit 402 during Plaintiff's deposition.

20. This declaration is made in good faith and not for the purpose of delay.

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

Executed on the 13th day of October, 2016, in Los Angeles, California.

/s/ *Noah Helpern*
Noah Helpern

CERTIFICATE OF SERVICE

I hereby certify that, on October 13, 2016, I caused a true and correct copy of the foregoing **INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF JAMES J. COTTER, JR.'S MOTION FOR SUMMARY JUDGMENT** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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

EXHIBIT 1

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

No. A-15-719860-B
Coordinated with:
P-14-082942-E

DEPOSITION OF TIMOTHY STOREY, a defendant herein, noticed by LEWIS ROCA ROTHGERBER CHRISTIE LLP, at 1453 Third Street Promenade, Santa Monica, California, at 9:28 a.m., on Friday, February 12, 2016, before Teckla T. Hollins, CSR 13125.

Job Number 291961

and the first full paragraph there, you see it talks about, "We would look to review his progress as CEO in June"?

A. Yes.

Q. And that was your understanding as to what had been agreed previously in connection with the work you were doing as ombudsman; correct?

A. Yes.

Q. Going down two paragraphs, there's a short paragraph that said, "This is a matter of urgency. I, for one, don't want to take part in a kangaroo court or what might appear to be a kangaroo court." Do you see that?

A. I do.

Q. Was that your way of communicating to the recipients of this e-mail that you thought the process had been inadequate?

MR. SEARCY: Objection. Vague. Assumes facts. Lacks foundation.

THE WITNESS: It was a comment of my view that we needed to do things properly in my view and, as I said earlier, define and address the issue, discuss it, and come to a conclusion.

MR. KRUM:

Q. Okay.

A. Separate battle to the merits of the issue.

Q. And did any of Messrs. Adams, McEachern and Kane ever tell you what process, if any, they went through to determine to vote to terminate Jim Cotter, Jr. as president and CEO?

A. I don't recollect.

Q. And the next paragraph, you say, "To be clear, my concern here is that we act with appropriate procedure." Is that the same notion that you're suggesting to them that a proper procedure and process has to be undertaken independent of the merits in the decision making?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yes.

MR. KRUM:

Q. Directing your attention to the top of the second page of Plaintiff's Exhibit 25, that's the page bearing production number 364 in the lower left, do you see the May 20, 3:40 p.m. e-mail reply by Mr. Kane to you?

A. Yes.

Q. Do you see where it says, quote, "We have heard from Nevada counsel via those memos," closed quote?

A. Yes.

Q. What's your understanding as to what memo or

EXHIBIT 2

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF TIMOTHY STOREY

Wednesday, August 3, 2016

Wednesday, California

REPORTED BY:

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

Job No.: 323867

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of TIMOTHY STOREY taken on behalf of Plaintiff, at 3993 Howard Hughes parkway, Suite 600, Las Vegas, California, beginning at 9:39 a.m. and ending at 12:19 p.m., on Wednesday, August 3, 2016, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

Mr. McEachern express any views to you with respect to the progress or lack of progress arising from those discussions?

A. I think he was happy with the process. I think, you know, they, like me as well, were somewhat frustrated that it would take time, but it was expected to take time. We were dealing with difficult issues, potentially difficult issues, which needed to be drawn out and discussed.

Q. What were those issues?

A. I'm sure there are a whole lot of issues. But the ones that spring to mind immediately were predominantly around the employment status or otherwise of Ellen and Margaret Cotter; and also -- I'm going from memory, I think around the request that we put in place business plans and budgets for the business for each of the divisions; and then, also from memory, around reporting lines and the process for which plans and budgets would be adopted and had to be reported upon.

Q. What were the issues regarding the employment status or otherwise for Ellen Cotter?

A. Ellen Cotter did not have a formal employment contract, and sometime earlier we put in place -- a formal employment contract being in

place for Jim Cotter, Jr. And she wanted a -- or looked for a formal employment contract.

Secondly, I think that there was a discussion around what her role actually was. I think her designation was Vice President of U.S. Cinemas, and Bob Smerling, who was in his 80s, was nominally president, and I think there was a view around how best to describe or how Ellen should be described. Talked about the issues around employment, and also, of course, issues around remuneration and the fact that she felt that she was underpaid, given the job that she was doing and had been for some time.

Q. What were the issues regarding the employment or lack of employment status for Margaret Cotter?

A. As it became clearer, Margaret was, in fact, in my view, not employed by the company, but was, in fact, providing services to the company through a company called "Liberty." So Liberty had a contract to manage the live theaters on behalf of Reading, and she was remunerated through that. So on analysis, it became clear that she wasn't employed by the -- by the company.

THE REPORTER: She was or wasn't?

EXHIBIT 3

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B P-14-082942-E
T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al., Plaintiffs, vs. MARGARET COTTER, ELLEN COTTER, GUY WILLIAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive, Defendants, and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

time?

A. I strongly suspected she had spoken with Ed Kane.

Q. And had either you or Ed Kane spoken to Doug McEachern about that?

A. I haven't, no. I don't know if Ed did.

Q. Okay. When was the first time you spoke with Doug McEachern about either terminating Jim Junior as CEO or about a subject of -- the subject of an interim CEO?

A. That I talked to McEachern? I would say it was maybe -- again, I can only approximately guess. Maybe two weeks before the meeting.

Q. And you're referring to the May 18th -- May 21st meeting, it was, wasn't it?

A. Yes. I don't know the exact date, but yeah.

Q. So what else did Ellen say and what else did you say during this approximate hour-plus breakfast meeting?

A. My recollection, we talked about Jim Junior and the CEO position, and Ellen, I guess, talked to other people because she was feeling that there was support for Jim Junior to be removed.

Q. What did she say that caused you to

conclude she had talked to other people about Jim Junior being removed?

A. I don't know specifically what she said. Maybe it was innuendos that she maybe talked to McEachern, maybe. But it wasn't specific.

Q. Did you ever learn after the fact whether that was the case?

A. Considering McEachern, when I did call him, like two weeks before the vote, he said he was on board with that. I suspect she called and talked to him. I sure didn't. So I suspect -- I suspect she did or maybe Ed Kane did. I don't know.

Q. What else, if anything, did you discuss with Ellen Cotter at the breakfast meeting at the Peninsula in April?

A. Nothing further that I can remember at this time.

Q. What, if anything, did she say about why she wanted Jim Junior removed as CEO?

A. I think she felt he wasn't doing an adequate job as CEO.

Q. Excuse me. My question is, what did she say?

A. What did she say about -- I'm sorry.

EXHIBIT 4

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

FRIDAY, APRIL 29, 2016

VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER 305149

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Plaintiffs,

vs.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

(Exhibit 82 was marked for identification.)

THE WITNESS: Yes, I remember this.

BY MR. KRUM:

Q. You recognize Exhibit 82?

A. Yes.

Q. This is an email exchange you had with Mr. Kane on May 18 and 19?

A. Yes.

Q. During the telephone conversation you had with him on May -- Sunday or Monday, May 17 or 18, did the two of you discuss other motions?

A. Evidently not.

Q. What was your understanding as of the date of -- as of May 18 and 19, what the other motions were or might be?

A. Well, there were like two other motions. One was the removal of Jim Junior as CEO and president. Another motion -- there were three motions. One of them was to -- if you remove the CEO, you have to appoint an interim CEO. And there was a third motion which, I apologize, for the life of me, I can't remember what it is. There must be a board agenda or something with those items.

Q. The subject of interim CEO, where did

that stand as of May 19th?

A. Ellen, Margaret and Ed and Doug McEachern were of the opinion, yes, on an interim basis.

Q. Yes what?

A. Yes to Guy Adams being the interim CEO on a short-term basis.

Q. What about Ed Kane?

A. As interim?

Q. Okay. I'm sorry.

So how did you know that each of Ellen, Margaret, Ed Kane and Doug McEachern were agreeable to you being appointed CEO on an interim -- interim CEO or a short-term basis?

MR. TAYBACK: Objection to the extent it's asked and answered.

You can answer.

THE WITNESS: My recollection -- and I can't remember if it was Ellen or Ed Kane -- one of them told me and I followed up with a phone call to Doug McEachern to confirm it. So that's how I knew.

BY MR. KRUM:

Q. Okay. When did you have the follow-up phone call with Doug McEachern?

A. Help me -- what was the date of the meeting, that meeting? We're up to May 19. What

was the date of the meeting?

Q. I think it was May 21st.

A. 21st?

Q. Yes.

A. I called Doug either one or two days before the meeting.

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

A. I said, I understand you're going to vote for the removal of Jim Junior. He said yes. And I said, Are you comfortable with me being interim CEO for a short duration? He said yes. And I said, Okay. I'll see you in Los Angeles.

Q. That was it?

A. That was pretty much it.

Q. When did you first come to understand that Mr. McEachern had agreed or determined to vote to remove Jim Cotter Junior as president and CEO?

A. Again, either Ellen or Ed Kane informed me of that.

Q. When?

A. I'm not sure. Maybe -- I mean, I could guess.

Q. Well, if you would --

A. It was prior to this date.

Q. If you would do this, Mr. Adams, I don't

want you to guess a date but if you can put it in context or sequence of time or point of reference to a date we can -- an event we can date.

A. My recollection would be two weeks, three weeks before May 19th.

Q. And at that point in time, it was either Ellen Cotter or Ed Kane who told you that Doug McEachern had --

A. Yes, I didn't have conversations with Ed about it.

Q. I'm sorry. Let me finish.

So you learned that McEachern --

A. I apologize.

Q. No, it's okay. It happens. I've done it, too.

You were told by one or the other of Ellen Cotter or Ed Kane that Doug McEachern had determined to vote to terminate Jim Cotter Junior as president and CEO; correct?

A. Yes.

Q. And as you sit here today, do you recall if it was Ellen Cotter or Ed Kane who told you that?

A. It may have been both.

Q. And do you recall that as happening in a

single conversation with the two of them or separate conversations --

A. Separate.

Q. -- with each?

A. Separate conversation with each, yes.

Q. Okay. So as best you can recall, in the conversation with Ellen, was that in person or telephonic?

A. Ellen, could have been in person.

Q. Okay. And what did she say and what did you say?

A. I said, Well, if we're going to go through this stress of replacing a CEO, it's a very weighty decision. Before you have a board meeting call, you better make sure there are people that think like you do to remove him.

Q. To remove Jim Junior as president and CEO?

A. Yes.

Q. What was her response?

A. Well, she said, Well, Ed's going to vote, you're going to vote and I'm talking to Doug McEachern tomorrow. I talked to him earlier last week, or something like that. So she was clearly talking to him.

Q. Okay. And so you understood her to communicate that her expectation was that Doug McEachern also was going to agree to vote or had indicated that he might agree or would agree?

A. Yes.

Q. What exactly was your takeaway from that conversation?

A. That she felt that Doug McEachern would vote to remove Jim Junior. And I had -- I don't remember a specific but I had a notion there was another phone call in which she was talking to him again to reconfirm it.

Q. And directing your attention, Mr. Adams, to your conversation with Ed Kane in which he communicated to you his understanding that Mr. McEachern had agreed to vote to terminate Jim Cotter Junior as president and CEO --

A. Yes.

Q. -- what did Mr. McEachern say and what did you say?

A. You mean what did Mr. Kane --

Q. Thank you.

What did Mr. Kane say and what did you say?

A. He said, I'll talk to Doug and something

to the effect he's on board or sees things the way we do, something to that effect.

Q. Now, you haven't mentioned Margaret.

A. Yes.

Q. Was it your understanding that Margaret was prepared to vote to terminate Jim Cotter Junior as president and CEO?

A. Yes.

Q. And did that understanding develop sometime in the fall of 2014?

MR. TAYBACK: Objection; assumes facts.

You can answer.

THE WITNESS: No, not to my knowledge.

BY MR. KRUM:

Q. When did you come to understand that Margaret Cotter was prepared to vote to terminate Jim Cotter Junior as president and CEO?

A. When they asked me to be interim CEO, and what I didn't want was Ellen to want me, and if we terminated Jim Junior, he wouldn't be my friend anymore, and if Margaret didn't want me to be it -- I wanted to make sure they were both on board.

And when he said, Oh, Margaret and I both want you to be interim CEO, I said, Okay, here are the three conditions. When Margaret said that, I

was of the opinion that Margaret would vote to terminate Jim Junior.

MR. TAYBACK: I think he misspoke. I think he meant Ellen when he said Margaret, but maybe not.

MR. KRUM: Well, let me go through this.

Q. Directing your attention, Mr. Adams, to the telephonic -- strike that.

Directing your attention to the conversation you had with Ellen Cotter in which she inquired if would serve as interim CEO and you indicated that you would, subject to the three conditions you described, do you have that in mind?

A. Yes, sir.

Q. During that conversation, did Ellen Cotter indicate to you that she was asking on her behalf and Margaret's behalf?

A. Yes, sir.

Q. And as best you can recall, what did she say in that respect?

A. Margaret and I would both like you to be interim CEO.

Q. Now, in that conversation with Ellen Cotter about which you're testifying presently, did either of you talk about a process to search for a permanent CEO?

EXHIBIT 5

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION OF: EDWARD KANE

TAKEN ON: MAY 2, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

Cotter, Jr.

But I know there were other emails.

Q. And what communications did you have with Jim Cotter, Jr., regarding a resolution with his sisters during the time frame commencing with the supposed board meeting of May 20, 2015, through the supposed board meeting of June 12, 2015?

MR. SEARCY: Objection. Argumentative.

THE WITNESS: I was told that -- and it may have been by one of the Cotter sisters, that -- and in fact at a meeting, one of the last meetings we had, my recollection is Bill Gould suggested that Jim take the title of president, giving up the C.E.O. He refused.

Then Margaret Cotter -- and that may have been the May 29th -- said, "No. Keep the title of C.E.O., and we'll have a committee, executive committee, Margaret, Ellen, Jimmy" -- and initially they said Guy Adams -- and he would keep the title because it was important to him.

And I communicated with him. He -- usually my communications were not me advising. It was him asking my advice or they'd ask my advice. I didn't want to lecture them and tell them what to do.

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

I did not want him to go.

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

BY MR. KRUM:

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

A. Right.

Q. -- why did you vote against him?

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

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

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

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

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

MR. SEARCY: Objection. Vague.

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

After all they were the operating executives of this company.

BY MR. KRUM:

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

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

MR. SEARCY: Objection. Vague.

THE WITNESS: He rejected it, yes.

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

BY MR. KRUM:

Q. And he got himself terminated, right?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yes.

EXHIBIT 6

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF EDWARD KANE

TAKEN ON MAY 3, 2016

VOLUME 2

Job no. 305191

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

terminate Mr. Cotter.

Q. Okay. Does that refresh your recollection that no later than May 18, 2015, you agreed to vote to terminate Mr. Cotter as president and C.E.O.?

MR. SEARCY: Objection. Misstates testimony.

THE WITNESS: No.

BY MR. KRUM:

Q. Okay. The next sentence says, quote, "If the vote is five/three, I might wants to abstain and make it four/three," period.

It continues, quote, "If it's needed, I will vote," period, close quote.

You see those two sentences?

A. Yes.

Q. What is it you're agreeing to vote if it's needed?

A. If it came to the point that we would vote to terminate him, I didn't want to vote to terminate him.

But I obviously had not made up my mind, because I wouldn't have invited him to come down to

my house and talk about how he could stay.

Q. Well, Mr. Kane, when you --

A. Yes.

Q. -- said to Mr. Adams in Exhibit 81 on May 18th --

A. Yes.

Q. -- quote,

"If the vote is five/three I may want to abstain and make it four/three. If it's needed, I will vote," period, close quote.

A. Yes.

Q. Is that not telling Mr. Adams that if your vote is required to carry the vote to terminate James Cotter, Jr., as president and C.E.O. of RDI, that you would cast that vote to terminate him?

A. If there were a motion to do so and there were no other way of getting him to work with his sisters, I would have.

But I don't think Mr. Adams -- or at least my recollection is it would -- it hadn't got to that point on May 18th.

Q. Well, I direct your attention, Mr. Kane, to the last sentence of Exhibit 81 --

A. Uh-huh.

Q. And I direct your attention to the last sentence of your email reply above it. That sentence reads, quote,

"The dye is cast and we will meet as a full board. And if you don't like it, don't show up," close quote.

Do you see that?

A. Yes.

Q. Were you telling him that the outcome of the vote on the question of whether to terminate Jim Cotter, Jr., as president and C.E.O. had already been set and that what remained was to show up, vote and be done with it?

MR. SEARCY: Objection. Argumentative, vague.

THE WITNESS: No. I think I was referring to the agenda --

BY MR. KRUM:

Q. So, when --

A. -- that was cast.

Q. When you're said "the dye is cast," you're referring simply to the agenda?

A. We have a meeting and an agenda. And that's enough.

MR. SEARCY: Objection. Vague.

THE WITNESS: That -- that's his position, yes.

BY MR. KRUM:

Q. Okay. And were you respond -- you were responding to that position with which you disagreed when you said "the die is cast," correct?

MR. SEARCY: Objection. Argumentative, misstates the document and testimony.

THE WITNESS: To me that meant the agenda is set, and that's what we'll discuss, and I see no reason to have a meeting beforehand.

BY MR. KRUM:

Q. Okay. Do you recall that the supposed board of directors meeting on May 21st concluded without a resolution of the question of whether Jim Cotter, Jr., would be terminated as president and C.E.O.?

A. Sir, we had several meetings at that point. I can't in my mind figure out when we did A and when we did B or C.

I do know we had meetings and there was adjournment and a meeting just with Mr. Cotter and his sisters. He asked me to participate in that meeting. I refused to do so.

EXHIBIT 7

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF EDWARD KANE

TAKEN ON JUNE 9, 2016

VOLUME 3

Job No.: 315759

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

there's a sentence in the middle of it --

A. Uh-huh.

Q. -- that reads as follows, quote,

"If it is take it or leave it, then I strongly advise you to take it."

And the words "I strongly advise you to take it" are all caps.

Do you see that?

A. Yes.

Q. Why was that?

MR. SEARCY: Objection.

BY MR. KRUM:

Q. I mean why did you so advise Mr. Cotter?

A. I was looking out for his interests. I felt that if he didn't take what they offered, and leaving him as C.E.O. was a big concession, that he would be terminated; that there were votes there to terminate him. And I didn't want him to be terminated.

And I felt that if he could retain his title and work with his sisters for -- for a period of time on an equal footing, a lot of the issues would disappear.

And in the long run the stock goes to the kids anyway.

Q. The kids being the grandkids?

A. His kids and Margaret's kids.

Q. His being Jim Cotter, Jr.?

A. Uh-huh.

Q. You need to answer audibly.

A. Yes. Yes.

Q. Okay. Thank you.

A. Yes.

Q. As of the time you sent this email, approximately 2:00 P.M. on May 28, 2015, did you know that one of the terms of the proposal was that Jim Cotter, Jr., agree that Margaret would be the sole trustee of the voting trust that voted the RDI class B voting stock?

A. I don't --

MR. SEARCY: Objection. Vague, lacks foundation.

THE WITNESS: Sorry.

MR. SEARCY: It's all right. Go ahead.

THE WITNESS: I don't think I knew that. I didn't want to know it.

BY MR. KRUM:

Q. Did you subsequently learn that?

A. I don't think I did.

Q. Does that surprise you that that was a

EXHIBIT 8

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF ELLEN COTTER

TAKEN ON MAY 18, 2016

VOLUME 1

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

seek to report to an executive committee of the RDI board of directors rather than to report to your brother Jim as C.E.O.?

A. I don't remember exactly when that request was developed, but it was sometime during the fourth quarter of 2014.

Q. How did it come to pass that you developed that request?

A. We were having issues with Jim, and we wanted to figure out a way to have a structure in place that would be almost transitional that would help us work together so that we could work through any issues that we would have.

Q. Prior to your father's resignation as C.E.O., to whom had you reported during the time you had been an executive at RDI?

A. Jim was the president at the time. My father was the chairman and C.E.O. So, technically I probably reported to Jim; or probably technically to Bob.

But we never operated that way.

Q. Was the way you operated since 2000 and up to the point when your father resigned as C.E.O. that you reported to him?

MR. SEARCY: Objection. Vague.

EXHIBIT 9

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Index No. A-15-179860-B
READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

VIDEOTAPED DEPOSITION OF ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

MR. TAYBACK: Objection. Asked and answered.

A No.

Q So when you use the same phraseology status to refer to the president and CEO in Item 1 as you use to refer to Craig Tomkins and Robert Smerling in Item 6, and yourself and Margaret Cotter in Item 7, were you attempting to obscure or conceal the fact that Item 1 was actually about terminating Jim Cotter as president and CEO?

MR. TAYBACK: Objection; argumentative, compound.

You can answer.

A I mean, there was no intention on my part to deceive anybody.

Q Well, in point of fact, prior to distributing Exhibit 338, you already had had discussions with Ed Kane, Guy Adams, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as president and CEO, correct?

A Prior to this meeting we did have discussions about whether Jim would remain as the CEO and president.

Q Well, you had discussions with each of -- Guy Adams, Ed Kane, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as CEO prior to distributing Exhibit 338 on May 19th, correct?

MR. TAYBACK: Objection. Asked and answered.

A Yes.

Q You had no such discussions with Tim Storey, correct?

A I did have discussions with Tim Storey.

Q What discussions did you have with Tim Storey and when did you have them?

A I had had discussions with Tim Storey about Jim and his performance.

Q Okay. The question is: What discussions did you have with Tim Storey, if any, prior to distributing Exhibit 338 on May 19, 2015, about terminating Jim Cotter, Jr. as president and CEO?

A I don't remember the specific discussion that I had with Tim.

Q Did you have any conversation with Tim Storey prior to distributing Exhibit 338 on May 19, 2015, in which the subject of

terminating Jim Cotter, Jr. as president and CEO of RDI was discussed?

A Prior to this agenda being sent out, Tim and I had had discussions about whether Jim would continue as CEO and president.

Q What discussion did you have with Tim Storey in that regard, and when did they occur?

A I don't remember the specific conversation, but I remember Tim taking the position that he -- he understood that Jim was inexperienced and it wasn't -- Jim's position would be under review and under evaluation.

Q When did you have that discussion?

A As I said, I don't remember.

Q Was it in person?

A I probably did have -- Tim came to Los Angeles a lot. I probably did have some of these discussions in person.

Q What is it that you said during that discussion or those discussions with respect to the subject of Jim Cotter, Jr. continuing as president and CEO or being terminated?

A I don't remember the specifics of the discussion.

Q Do you remember, generally, anything you said, if anything, with respect to Jim Cotter, Jr. continuing as president and CEO or being terminated?

MR. TAYBACK: To Mr. Storey?

MR. KRUM: Yes, thank you.

A I remember having conversations with Tim about whether Jim was the right person to lead Reading.

THE VIDEOGRAPHER: Counsel, I have less than five minutes left on this DVD.

Q Anything else?

A I don't remember the specifics.

Q What discussions did you have with Bill Gould, if any, prior to distributing Exhibit 338 on May 19 about terminating Jim Cotter, Jr. as president and CEO?

A My conversations with Bill would have been similar to what they were with Tim, questioning whether Jim was the right person to lead Reading.

Q As you sit here today, do you recall actually having had such conversation or conversations with Bill Gould?

A I do recall having conversations with

Bill Gould about it.

Q Was anyone else present?

A We had a meeting -- my sister and I had a meeting with Tim Storey and Bill Gould at his office where we discussed Jim's performance.

Q When was that?

A I don't remember when it was.

Q Do you recall that Tim Storey and Bill Gould met separately with Jim on the one hand, and either separately with Ellen and Margaret or together with the two of you at Bill Gould's office in March 2015?

A Yes.

Q And do you recall what followed from that was that Tim Storey assumed the role of ombudsman?

A Well, that's eventually what -- what transpired.

MR. KRUM: I'll ask the court reporter to mark as Exhibit 339, what purports to be a May 16th e-mail from Ellen Cotter to -- at her Reading address to her private e-mail address.

(Deposition Exhibit 339, E-mail dated May 16, 2015, from Ellen Cotter to nelle1438@gmail.com, marked for identification

EXHIBIT 10

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF WILLIAM GOULD

TAKEN ON JUNE 8, 2016

VOLUME 1

JOB NUMBER 315485

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

A. Yes.

Q. Do you recall when you first heard or learned that?

A. Early in 2015, my recollection.

Q. Did you ever hear or learn or were you ever told that Margaret Cotter wanted to become an employee of RDI?

A. Yes.

Q. When did you first hear or learn that?

A. Same period.

Q. And did you also hear or learn that she wanted to have an employment contract with RDI?

A. Yes.

Q. Did you understand whether that was a point of contention between Margaret on one hand and Jim Cotter, Jr., on the other hand?

MR. SWANIS: Objection. Form.

THE WITNESS: I'm not so sure it was a point of contention. I think it was something that was under consideration.

Jim, Jr. And I talked about it. I had my own views on it. I couldn't understand why any Cotter family member needed to have an employment contract.

But I did see it could be -- on the

other side why, given the fact of the factions, that they were -- they felt their job may have been in jeopardy.

BY MR. KRUM:

Q. And the "they" is Ellen and Margaret?

A. Ellen and Margaret. Pardon me.

Q. Did either or both of them ever communicate to you in words or substance that either or both thought their jobs were or might be in jeopardy?

A. Yes.

Q. What did Ellen communicate to you?

A. She felt that the relationship was such with her brother that -- and since he was the C.E.O., that he would take steps to have her terminated.

Q. When did she communicate that to you?

A. The same time frame, early 2015.

Q. Was that in person or --

A. Both -- it was in person, it was a meeting at my office, where she expressed that, and I think over the telephone, as well.

Q. Did Margaret Cotter communicate to you that she was concerned that Jim Cotter, Jr., might terminate her whether as an RDI employee if she

became one or as the third-party contractor she was at the time?

A. Yes, she did.

Q. And when did she advise you that? When did she communicate that to you?

A. I can't recall exactly when. It was during the same time frame as I mentioned, early 2015.

Q. How did she communicate that to you?

A. I can't remember.

Q. Whether in words or substance, what did she communicate?

A. That she felt her job was in jeopardy because of the -- the fighting going on between the two factions.

Q. And by the fighting, was she referring to the trust and estates dispute, to interpersonal dynamic --

MR. SWANIS: Objection. Form.

THE WITNESS: I think -- I think she referred --

MR. HELPERN: Join.

THE WITNESS: I think she referred to both.

///

EXHIBIT 11

Confidential – Filed Under Seal

EXHIBIT 12

From: Kane <elkane@sanrr.com>
Sent: Monday, May 18, 2015 10:16 PM
To: Guy Adams

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

EXH 81
DATE
WIT
PATRICIA HUBBARD

81

GA00005500

EXHIBIT 13

Confidential – Filed Under Seal

EXHIBIT 14

Confidential – Filed Under Seal

EXHIBIT 15

Confidential – Filed Under Seal

EXHIBIT 16

Confidential – Filed Under Seal

EXHIBIT 17

From: Kane <elkane@san.rr.com>
Sent: Thursday, June 11, 2015 1:43 PM
To: Cotter Jr. James

This morning, without the wine I was drinking last night during and after talking with your mother, I'm thinking more about your call to me last night and our conversation. I can see that from your point of view having Guy in on the meetings with your sisters could be a problem and doesn't solve the need to be able to work with them cohesively going forward. If you explain that to them they may be willing to accommodate you.
But, the main question is what are you going to do to accommodate them?
1. For now, I think you have to concede that Margaret will vote the B stock. As I said, your dad told me that giving Margaret the vote was his way of "forcing" the three of you to work together. Asking to change that is a nonstarter. Again, you need to compromise your "wants" as they have been willing to do. If you can work together than it becomes a non-issue and eventually your and her kids will have the vote. What's wrong with that?
2. For now you need ASAP to agree on the nominees for the Board going forward. As I told you months ago, changes are necessary and you need some quality people with expertise in fields where it is needed and lacking. You also need to get rid of divisive persons.
3. I do believe that if you give up what you consider "control" for now to work cooperatively with your sisters, you will find that you will have a lot more commonality than you think. You all want the same things: a vibrant growing business. After trust is established you can all go back to where you want to be.
4. I think if you make the proper and needed concessions, they might well relent on having Guy in the meetings as they can easily see there is great animosity between the two of you.
5. Bottom line: recognize you are not dealing from strength right now and be willing to compromise as they are rational and reasonable people who have been hurt and demeaned and you need to help heal the family. Otherwise you will be sorry for the rest of your life, they and your mother will be hurt and your children will lose a golden opportunity.
6. I am willing to help but I'd much prefer that you bend a bit and work it out between you to build the trust that is necessary so that you don't lose control of the company, as you presently have.

EXH 304
DATE
WIT
PATRICIA HUBBARD

EK00001613

EXHIBIT 18

Message

From: Kane [elkane@san.rr.com]
Sent: 5/22/2015 7:36:11 PM
To: James Cotter JR [james.j.cotter@readingrdi.com]
Subject: Re:
Flag: Follow up

Without question I would like to help bring back unity and respect. Margaret certainly was trying when she suggested you take what the Board offered and held out the possibility that after a few years of working together you could again be considered for the role of CEO. It would be similar to Dev, hiring an experienced CEO the same age as Dev. Further, there would be no need for any negative announcement and if everyone's attorneys are so instructed, perhaps it could lead to a global settlement. Unfortunately you rejected that out of hand. You might think about it on the drive down here. Two immediate suggestions: (1) don't threaten or list faults, like your e-mail to me that "we will have war" and the tentative employment agreement sent to Margaret preceded by a list of her supposed faults; (2) "Aunt" Maddy suggests you invite your mother and sisters to your house for a family get-together with no business to be discussed but only some adoration of your kids and, if present, their aunt Margaret's kids.
If you are not opposed to driving down here, a good time to get together would be for lunch on Monday.We could meet at La Jolla Country Club around 1:00 pm. I have committed to your dad's personal urologist and friend, Warren Kessler, to play golf in the morning at 7:30 so we should be finished by 11:30-12:00. Meeting at 1:00 will insure I will be done and have paid off my bets. If I'm in a pissy mood it will not be because of you but because I lost my usual $5 bet with Warren.

-----Original Message-----
From: James Cotter JR
Sent: Friday, May 22, 2015 9:32 AM
To: 'Kane (elkane@san.rr.com)'

Thank you for not pulling trigger yesterday. I know I have lost your support. You are most thoughtful director and one with most heart and emotion. I have made mistakes with my sisters and mother. They have made mistakes. It is now time for us to try to heal and I need your help. Last words my father said to me were, "your mother is good woman...be good to her." I know I have not been. I realize we have passed breaking point. We will not have another chance. I would like to sit down with you in SD for breakfast, lunch or dinner Saturday, Sunday, Monday...whatever works. You are only one I have now who can broker peace with company and family's interests in mind respecting what my Dad would have wanted. There is a balance. If not, we will have war and our company and family will be forever destroyed over the next week. I know I have one last shot and would like your help and thoughts.

OPPS
MARK E. FERRARIO, ESQ.
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hendricksk@gtlaw.com

Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

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

Coordinated with:

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

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

RDI's JOINDER TO THE INDIVIDUAL DEFENDANTS' OPPOSITION TO JAMES J. COTTER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

HEARING
Date: Nov. 1, 2016
Time: 8:30 a.m.

Reading International, Inc., a Nevada corporation ("**RDI**"), by and through its attorneys of record, the law firm of Greenberg Traurig, LLP, respectfully joins in the Individual Defendants' Opposition to the Motion for Partial Summary Judgment ("**Motion**") filed by Plaintiff James J. Cotter ("**Plaintiff**" and/or "**Cotter, Jr.**"). RDI joins in the arguments made by the Individual Defendants, and supplements those arguments as set forth in the following Memorandum of Points and Authorities, the pleadings and papers filed in this action, and any oral argument of counsel made at the time of the hearing of this Motion.

DATED this 13th day of October, 2016.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
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MEMORANDUM AND POINTS OF AUTHORITY

Cotter, Jr.'s Motion for Partial Summary Judgment must be denied, as he has failed to show there is an absence of material disputed fact with respect to his theory for relief, and has failed to show that he is entitled to judgment as a matter of law. Indeed, Cotter, Jr.'s motion is premised on his theory that he was terminated as President and CEO of RDI in retaliation for his failure to settle a law suit with his sisters. However, the evidence shows that the reason for the termination was his ineffective performance in the position of CEO.

Cotter Jr.' motion is flawed. First, it is not supported by any Nevada authority. Second, it is not supported by the Delaware authority he cites. Third, it is not supported by the facts of the case. Simply put, his motion must be denied.

I. MATERIAL FACTS IN SUPPORT OF OPPOSITION

RDI joins and adopts as though set forth in their entirety the Statement of Facts contained in the Individual Defendants' Opposition to the Motion for Summary Judgment. RDI supplements those facts as set forth below.

1. Ellen Cotter has been employed by RDI or its predecessor since 1997. **Ex. A, Depo. of Ellen Cotter, 16:24**

2. Ellen Cotter has run the day-to-day operations of the Company's domestic cinema operations since 2002. ***Id.* at 34:2-20.**

3. Margaret Cotter has been working with RDI since 1998. **Ex. B, Deposition of Margaret Cotter, 14:18-15:8.**

4. While not an employee of RDI itself, Margaret Cotter was an employee of what is now known as Liberty Theaters, which is owned by RDI. *Id.* at **15:9-13; 39: 20-25.**

5. In that capacity, Margaret Cotter oversaw RDI's live-theater operations for 13 years; including management of four properties, management of the staff, booking of shows, overseeing regulatory licensing, and prior efforts at redevelopment of one of the properties in the face of risks of historical designation. Id. at **21:7-24:4**.

6. Cotter, Jr. was appointed to RDI's board in 2000, Vice Chairman of the Board in 2007, and President of RDI in 2013. The position of President had been vacant for many years and was reactivated solely for Cotter, Jr. **Ex. C, Deposition of J.J. Cotter, Jr. 133:21-25; 151:20-22; 162:7- 9.**

7. Cotter, Jr. has called Edward Kane "Uncle Ed." ***Id.*. 83:6-12**

II. OBJECTION TO COTTER, JR's CLAIMS UNCONTESTED FACTS

NRCP 56(c) requires that the party seeking summary judgment set forth a "concise statement of each fact material to the disposition of the Motion," with citations to the evidence that supports the fact. In the introductory section of his Motion, Cotter, Jr. did provide a bullet point list of "facts" he claims are uncontested. Motion, pp. 1-2. However, he did not provide the Court with citations to the evidence he claims supports these purportedly undisputed facts. RDI

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objects to Cotter, Jr.'s bullet pointed list of facts as follows:

Cotter, Jr.'s Second Bullet Point – Plaintiff contends that in January of 2015 there was a resolution that required the majority of outside directors to vote in favor of terminating him as President and CEO. To the extent the resolution purported to require that only certain directors could vote to determine RDI's CEO, the resolution conflicted with RDI's bylaws and was therefore void. RDI's bylaws provide:

> The officers of the Corporation shall hold office at the pleasure of the Board of Directors. Any officer elected or appointed by the Board of Directors, or any member of a committee, may be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof or by written consent. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

Ex. D, RDI Bylaws, Art IV, § 10.

Cotter, Jr.'s Third Bullet Point- Contrary to Plaintiff's assertion, the evidence does *not* reflect that Cotter, Jr. was told that he needed only to resolve certain disputes with his sisters to avoid termination. The minutes of the May 21, 2015 meeting show that four members of the Board of Directors favored the termination of Cotter, Jr. as CEO, due to observed deficiencies in his "leadership, understanding of the Company's business, temperament, managerial skills, decision-making, and other attributes in the role of Chief Executive Officer." **Ex. E, RDI Minutes, May 21, 2015, p. 3**. Additionally, following an executive session among the non-Cotter directors, Director Gould –who had not advocated for Cotter, Jr.'s termination– proposed that Cotter, Jr. continue as President, and the Company appoint a new CEO; Cotter, Jr. "twice refused to continue in the role of President under a new Chief Executive Officer." *Id*. at 3. The board then determined to delay the decision. Subsequent to the May 21, 2015 meeting, a proposal outlining the terms under which Ellen Cotter and Margaret Cotter would agree to Cotter, Jr.'s continuation as CEO was provided to Cotter, Jr. However, the proposal contained the following relevant language:

> The proposal outlined below set forth the basis on which Ellen Cotter ("EMC") and Margaret Cotter ("AMC") would be willing to proceed towards a negotiated settlement, but, with respect to the items related to the Company's management

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> structure only, is subject to the ultimate approval of the independent directors, in the exercise of their fiduciary duties and obligations. Nothing herein is intended to interfere with the appropriate exercise by the directors of their fiduciary duties and obligations.

Ex. F, Confidential Settlement memo of Understanding, p 1. While the proposal included terms that addressed the litigation between the siblings, and the employment of Ellen Cotter and Margaret Cotter by RDI, it also proposed means to remedy the risk to the company arising from Cotter, Jr.'s deficient performance, by curtailing the authority of the CEO and President, as follows:

> JJC would continue to serve as CEO and President under the terms of his existing contract, but in the overall management structure and subject to the limitation set forth below:
>
> *Executive Committee Structure*
>
> The existing Executive Committee would be renewed as a standing committee of the Board of Directors, as follows:
>
> - Members: MC, AMC, JJC, and Guy Adams (Chairman)
> - Delegated Authority to the Executive Committee to be determined by the Board of Directors, but would include, at a minimum, the following:
>
> - (i) Approval over the Hiring/Firing/Compensation of all senior level consultants/employees;
> - (ii) Review and approval/disapproval of all contracts/commitments have an overall exposure to the Company in excess of $1 million; and
> - (iii) Review and approval of annual Budget and Business Plan.
>
> Meetings would be held on a regularly scheduled basis weekly. Executive Committee member would naturally be free to attend and participate in internal meetings called by the CEO, and would endeavor to make themselves reasonably available to attend such meetings as to which they may be invited by the CEO.
>
> Unless approved in advance by the Executive Committee, all investor relations would be handled by CFO in consultation with the GC, and CEO. App press releases and public filings would be subject to review by the Executive Committee and the GC.

***Id.*, at pp. 1-2.**

The May 29, 2016 Minutes reflect that counsel for Cotter, Jr. had previously indicated an intent to file suit against the Company and its directors. **Ex. G, RDI Minutes, May 29, 2016, p. 1**. The proposal accordingly, also included the following term: "Immediate Release and Waiver signed by JJC with respect to all litigation, included any matters covered by the specified

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litigation." The specified litigation included not only the California trust litigation and the Nevada probate litigation filed by JJC, but also:

* * *

3. All threats against Directors

4. All threats of Company Derivative Action;

5. Agreement that Reading International, Inc. can drop the interpleader action in Nevada and recognize the Estate as the owner of Class B Shares and Option;

6. JJC further agrees not to sue Company over these matters or participate in any lawsuit related to the Company.

Ex. C, p. 2. Another condition that would result in benefit to RDI was the following:

> AMC, JJC, and EMC will engage in professional counseling to determine to work cooperatively together and with respect.

Id. at p. 3.

Furthermore, Cotter, Jr. fails to disclose to the court that he also proposed treatment of the trust and estate litigation as an element of an agreement that would allow him to remain as CEO. **Ex. H, Email Exchange, May 27, 2015**. Cotter, Jr. asked Kane to broker the agreement, which included numerous other elements, including professional counseling, employment of a "CEO consultant," limitations on reports to him, and monitoring of his performance. Cotter asked that everyone consider what Cotter, Sr. would have wanted, as this was best for the corporation. *Id.*

Cotter Jr.'s Seventh Bullet Point – In his seventh bullet point, Cotter, Jr. uses the term "recurring income" with respect to Guy Adams' in an attempt to show Adam's purported dependence on income received from Cotter related entities. This is apparently an attempt to disguise the existence of other assets held by Mr. Adams. In fact, testimony shows that in 2015, Mr. Adams had income from the sale of real property and stock in an amount that exceeded the entirety of his "recurring income." **Ex. I, Depo. Of Adams, 13:17-14:12.** Furthermore, Cotter, Jr. has presented no evidence to show that either Ellen Cotter or Margaret Cotter have actual discretionary control over the income received by Mr. Adams, which is derived from contractual

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arrangements made during the lifetime of Cotter, Sr.

III. LEGAL ARGUMENT

The Motion for Partial Summary Judgment must be denied. The entire premise of Cotter, Jr.'s claim that his termination constituted a breach of fiduciary duty relies on an analysis that simply has no application to a corporation's decision to fire an officer. Even though this Court gave Cotter, Jr. ample opportunity to flesh out his claim that the Board of Directors' decision to terminate him as CEO constituted a breach of the duty of loyalty, Cotter, Jr. has failed to show that his termination was the result of anything other than his own poor performance. Here, Cotter, Jr.'s termination was the result of the Board of Directors making an informed decision that RDI would benefit more without Cotter Jr. than with him.

A summary judgment motion may be granted only when the evidence shows both that there is no genuine issue as to any material fact, and that the movant is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The substantive law controls which factual disputes are material, and a factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.* In determining whether there are material issues of fact, all of the non-movant's statements must be accepted as true and all reasonable inferences that can be drawn from the evidence must be admitted *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). If there is conflicting evidence on a material issue, or if reasonable persons could draw different inferences from the facts, the question is one of fact for the jury. *Broussard v. Hill*, 100 Nev. 325, 327, 682 P.2d 1376, 1377 (1984).

When the moving party bears the burden of proof at trial, that party must present evidence sufficient to entitle it to judgment as a matter of law. *Cuzze v. Univ. and Comm. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). If the moving party fails to meet its burden, the nonmoving party has no obligation to produce rebuttal evidence. *Tom v. Innovative Home Sys., LLC*, 132 Nev. Adv. Op. 15, 368 P.3d 1219, 1225 (Nev. App. 2016).

Here, it is statutorily presumed that the Board of Director's decision to terminate Cotter,

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Jr. was made "in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3). Cotter, Jr.'s Motion for Partial Summary Judgment may not be granted unless this Court determines that the evidence he has presented is such that reasonable minds "would necessarily agree" that it is more probable than not that the decision was not made with a *subjective* good faith belief that it was in the best interests of RDI. *See* NRS 47.200(1); NRS 78.138. The evidence presented by Cotter, Jr. is not even sufficient to present the question to a jury, let alone to decide the issue as a matter of law.

Furthermore, even if the evidence presented could somehow satisfy Cotter, Jr.'s burden with respect to the statutory presumption, he would then need to show that there is no material dispute over whether the termination decision was fair to RDI, or whether the decision was ratified by persons holding the majority of the stockholder voting power. *See* NRS 78.140. Cotter, cannot satisfy this burden. Indeed, as a matter of law, the termination decision was so ratified. Accordingly, even if Cotter, Jr. could overcome the business judgment rule, his Motion would still fail on this basis alone.

Cotter, Jr. did not present sufficient evidence to even raise an inference that the business judgment presumption has been rebutted, let alone establish a lack of good faith as a matter of law. Indeed, his entire claim is based on the incorrect notion that an employment decision is a "transaction" in which the directors could have an improper personal interest. Furthermore, he fails to present sufficient evidence of the purported improper personal interest, or show that any director was "beholden" to an interested director. Because Cotter, Jr. has failed to satisfy his burden to show entitlement to judgment as a matter of law, his Motion must be denied.

A. COTTER, JR.'S TERMINATION IS NEITHER VOID NOR VOIDABLE.

As shown in greater detail below, Cotter, Jr. has failed to show that the decision to terminate him was the product of interested director action. However, even if he had made such a showing, he still could not obtain his requested relief. This is true because, under Nevada law, actions involving interested directors cannot be voided when a majority of the voting stockholders have ratified the action, or when the challenged action is fair to the corporation. As

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set forth in **NRS 78.140:**

> 1. A contract or other transaction is not void or voidable solely because:
>
> * * *
>
> (c) The vote or votes of a common or interested director are counted for the purpose of authorizing or approving the contract or transaction,
>
> → if one of the circumstances specified in subsection 2 exists.
>
> 2. The circumstances in which a contract or other transaction is not void or voidable pursuant to subsection 1 are:
>
> * * *
>
> (b) The fact of the common directorship, office or financial interest is known to the stockholders, and stockholders holding a majority of the voting power approve or ratify the contract or transaction in good faith. ***The votes of the common or interested directors or officers must be counted in any such vote of stockholders***.
>
> * * *
>
> (d) The contract or transaction is fair as to the corporation at the time it is authorized or approved.
>
> * * *

NRS 78.138(1) and (2). Here, *both* circumstances exist. Accordingly, Cotter, Jr. cannot receive the relief he requests.

i. The Votes of Ellen and Margaret Cotter in Favor of Termination Constituted Ratification by Majority Voting Shareholders.

On June 12, 2015, there were approximately 1,580,590 shares of RDI Class B voting stock outstanding. [1] As executors of the estate of Cotter, Sr., Ellen and Margaret Cotter jointly held the right to vote 327,080 shares, a fact that this court has acknowledged. ***See*** **Ex. J, Transcript, July 22, 2015, 4:9-5:5, Minute Order, September 18, 2015, Ex. K, Order on JJC Jr.'s Amended Petition for Decree of Partial Distribution.** Similarly, pursuant to NRS 78.352(3)(b), where there are multiple fiduciaries entitled to vote shares, a majority of said

[1] In June, 2015, the Estate had not yet exercised its option for 100,000 shares of Class B stock, and therefore, there were 100,000 shares fewer outstanding than at the November 2015 Annual Meeting.

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fiduciaries are entitled to determine the vote. There is no dispute that Ellen Cotter and Margaret Cotter are co-trustees of the James J. Cotter Living Trust, and thus represent the majority of the trustees, even if Cotter, Jr. is also a trustee. Indeed, in denying the T2 Plaintiffs request for a preliminary injunction, this Court essentially acknowledged that Ellen Cotter and Margaret Cotter together have the right to vote the 696,080 shares held by the James J. Cotter Living Trust. ***See* Ex. L, Transcript on T2 Plaintiffs Motion for Preliminary Injunction, May 26, 2016, pp. 15-16.** Leaving aside any Class B voting shares personally held by Ellen Cotter or Margaret Cotter, the combined total from the Estate and the Trust constitute a majority of the voting power for RDI.

Ellen and Margaret Cotter each voted in favor of the termination of Cotter, Jr. As they control the majority of the voting power in the corporation, that action constituted a ratification of the termination. This is true even if the Court determines that Ellen Cotter and Margaret Cotter were "interested" in the issue of termination, because, under Nevada law, the shares of "interested directors" must be counted in a stockholder vote. NRS 78.140(2)(b).

ii. The Termination Was Fair To RDI.

There is no basis for asserting that the termination was unfair to RDI. Nevada's statutory scheme recognizes that a transaction can be fair to the corporation, even if directors voting for it are "interested." Accordingly, a decision cannot be deemed unfair simply because of the purported interest. Instead, some harm to the corporation must be shown to have resulted for the transaction to be unfair.

Generally, fairness issues involve an aspect of financial injury to the corporation, such as inadequate consideration paid for stock or other assets; *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1134, 1143 (Del. Ch. 1994), *aff'd,* 663 A.2d 1156 (Del. 1995); a transaction constitutes waste of corporate funds, s*ee In re INFOUSA, Inc. Shareholders Litig.*, 953 A.2d 963, 997 (Del. Ch. 2007); or a corporation is precluded from an opportunity that should have been its. See *Leavitt v. Leisure Sports Incorporation*, 103 Nev. 81, 87, 734 P.2d 1221, 1225 (1987), citing *Klinicki v. Lundgren,* 298 Or. 662, 695 P.2d 906, 910 (1985). None of those situations exist

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here.

Cotter, Jr. has not cited any case authority related to a fairness determination of a decision to terminate an officer, and for good reason, as operational decisions such as terminating a CEO are not subject to a fairness analysis. Nonetheless, here there is significant evidence to support the conclusion that the termination was fair, and indeed, even essential to RDI. The evidence shows that Cotter, Jr.'s performance was harming morale at RDI, and preventing forward progress of the Company. **SUF.13-22.** As there is no evidence to rebut RDI's showing of fairness, Cotter, Jr.'s summary judgment motion must be denied.

iii. Nevada Law Does Not Support Application of the "Entire Fairness" Analysis.

Cotter, Jr. contends that Defendants must establish that his termination was "entirely fair." However, no such obligation exists under Nevada law. To the contrary, As shown above, Nevada expressly provides that transactions between interested fiduciaries and the corporation are neither void nor voidable where any one of four separate and distinct circumstances apply. NRS 78.140. Only one of those four circumstance is that it is "fair as to the corporation at the time it is authorized or approved." NRS 78.140(2)(d). Accordingly, there is clearly not any requirement that any party must prove such a transaction is "entirely fair."

However, as shown above, another circumstance that prevents voiding the termination is that the transaction is ratified by stockholders holding a majority of the voting power of the corporation. NRS 78.140(2)(d). Indeed, the Nevada Supreme Court acknowledged that such ratification will actually trump any wrongdoing in *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 17, 62 P.3d 720, 731 (2003). There, the Court stated:

> The shareholder bears the initial burden of proving facts that would support a finding that the merger was accomplished through unlawful means or wrongful conduct. Once the shareholder meets the threshold requirement, the burden shifts to the defendants to prove that the doctrines of acquiescence or estoppel apply. That is, the defendants must prove that the shareholder voted for the merger or tendered his or her shares with full knowledge of the wrongful acts.

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Id. Conspicuously absent from this analysis is any requirement that the defendants must *also* prove the "entire fairness" of the transaction. ***To the contrary, the reference to knowledge of "wrongful acts" is a straightforward assertion that the transaction need not be fair.*** Thus, *Cohen* plainly refutes Cotter, Jr.'s contention that if a transaction is shown to have involved interested directors, the Defendants must prove the transaction was "entirely fair" to all stockholders and the corporation.

Cotter, Jr. ignored Nevada law on this issue, instead relying on Delaware law. However, Delaware law differs from that of Nevada in terms of the voidability of interested transactions, because in Delaware, even informed ratification by shareholders will not necessarily prevent an interested transaction from being invalidated, if that transaction is unfair. See *Solomon v. Armstrong*, 747 A.2d 1098, 1113 (Del. Ch. 1999), *aff'd,* 746 A.2d 277 (Del. 2000) ("The power of fully informed shareholder ratification to cloak transactions in the business judgment rule, or to extinguish a breach of fiduciary duty claim entirely, is by no means absolute."). Moreover, Cotter, Jr. ignores the fact that under Delaware law, when ratification of a transaction by shareholders does not extinguish the breach of fiduciary duty claim, it shifts the burden of proof of fairness to the plaintiff. *Id.* at 1116-1117.

Given these significant differences between Nevada and Delaware law, it is questionable that Delaware law could be considered persuasive here. However, as shown in the next section, even under Delaware law, Plaintiff's claim would fail, because an employment decision is simply not the sort of "transaction" that requires an entire fairness review.

iv. Even under Delaware Law, Neither Ellen Cotter nor Margaret Cotter would have a disqualifying interest.

Cotter, Jr. looks entirely to Delaware law to support his contention that Ellen Cotter or Margaret Cotter had disqualifying interests in Cotter, Jr.'s termination. Significantly, however, he has failed to cite a single instance where an employment termination decision was challenged for purported director interest. His failure to do so can be explained by the fact that "interest" in the context of corporate decision making is not applicable to the removal of an officer. "The

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Delaware Supreme Court has defined 'interest' under a business judgment rule analysis as meaning 'that directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally.'" *Roselink Inv'rs, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 217 (S.D.N.Y. 2004) (applying Delaware law), citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984). Thus, it is apparent that to be disqualifying, an "interest" in a transaction means that the transaction yields a financial benefit to the director.

Here, the decision in question was whether or not Cotter, Jr. would be terminated. This is not a "transaction" on which either Ellen Cotter or Margaret Cottter were, or indeed, could be, "on both sides." Nor has it been shown that Ellen or Margaret would (or did) receive some personal financial benefit from the termination itself. Indeed, Cotter, Jr. cannot point to a single financial benefit accruing to Ellen or Margaret as a result of the decision to terminate him as CEO of RDI. Instead, he claims that he opposed his sisters' ambitions for certain positions within RDI, and his termination as CEO removed his opposition to those ambitions.

For example, Cotter, Jr. has asserted that both Ellen Cotter and Margaret Cotter were concerned that he might try to terminate their relationships with RDI, or would oppose their respective goals for certain employment positions within in the company. However, as Cotter, Jr. himself has pointed out, such terminations were not actually within his power, due to the resolution passed by the non-Cotter directors in January 2015. Significantly, that resolution could not override the Bylaw grant of authority to the Board of Directors to remove any officer. See *Brennan v. Minneapolis Soc. for Blind, Inc.*, 282 N.W.2d 515, 523 (Minn. 1979). Moreover, the portions of the resolution that relate to Ellen Cotter and Margaret Cotter did not address removal of officers. Accordingly, while the Resolution was ineffective in requiring a majority of the non-Cotter board members to approve the termination of a CEO,[3] the resolution

[3] While the resolution was ineffective with respect to the limitations on the Board's termination of Cotter, Jr., because five of eight board members voted in favor of the termination, the resolution's ineffectiveness is irrelevant to the issues here.

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was effective in elimination of any power Cotter, Jr. would have had to termination his sisters.

Furthermore, that same resolution demonstrated that a majority of Non-Cotter directors could, ***wholly without any input from Cotter, Jr.,*** terminate the relationships of Ellen Cotter or Margaret Cotter with RDI. Accordingly, it cannot be said that by voting in favor of the termination of Cotter, Jr., Ellen and Margaret *eliminated* the possibility that one or both could have their relationships with RDI terminated.

Similarly, it is apparent that Cotter, Jr. did not have the ability, without the agreement of the Board of Directors, to permit or prevent his sisters from achieving their respective goals, whether it be Ellen Cotter's wish to be "President of U.S. Cinemas," or Margaret Cotter's wish to be "VP of Real Estate Development NYC," as the appointment of officers was within the purview of the entire Board of Directors, and not the CEO. **Ex. D**, Bylaws, Article IV, § 1.

And, indeed, terminating Cotter, Jr. did not result in Ellen Cotter instantaneously becoming President of U.S. Cinema Operations, or of Margaret Cotter immediately becoming VP of Real Estate Development, or Margaret being employed by RDI. Instead, in subsequent board actions, a majority of the entire Board of Directors voted for these actions. Significantly, Cotter, Jr. remained on the board, and thus was able to vote against the actions.

Finally, Cotter, Jr. contends that Ellen Cotter and Margaret Cotter were motivated by their personal disputes with him in other litigation. But Cotter, Jr.'s termination did not, and could not, provide any advantage to Ellen Cotter or Margaret Cotter in other litigation involving the family trust.

Ultimately, Cotter, Jr. rests his claims upon his assumption that his goals and vision for RDI are superior to those of his sisters, and accordingly any opposition to his vision must necessarily be contrary to RDI's best interests. Cotter, Jr. apparently discounts the possibility that disagreement with him could possibly be in good in faith, and that his sisters could believe that they can and would perform well for RDI in their desired positions. Notably, Cotter, Jr. has failed to present any evidence that shows that his sisters' personal ambition for positions within RDI constituted a motive that was, as a matter of law, contrary to RDI's best interests.

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Accordingly, Cotter, Jr. has failed to show that Ellen Cotter or Margaret Cotter received a benefit from his termination that differed from that received by RDI or the stockholders. Furthermore, he has failed to show that the motivations he imputes to them could not be consistent with RDI's best interests.

v. Cotter Jr. has Failed to Show that Proposing the Settlement was a Breach of Fiduciary Duty.

Cotter, Jr. also contends that the attempts by his sisters to reach a resolution that would allow him to retain the title of CEO while also addressing the performance issues constituted a breach of fiduciary duty. This argument fails for several reasons. First, as the Confidential Memo that outlines the proposal shows, the proposal did not involve any decision that even purported to have been made on behalf of RDI. To the contrary, it made clear that the proposal had not been approved by RDI's Board of Directors and was subject to such approval. Since Cotter, Jr. did not accept it, the proposal never received consideration by the Board as a whole, and never had any effect on RDI.

Second, Cotter, Jr. has wholly mischaracterized the proposed resolution. Indeed, under Cotter, Jr.'s theory, he was told that if he did not settle the trust and probate litigation on his sisters' terms, then he would be terminated from RDI. In effect, he contends he was terminated in retaliation for refusing to settle the other litigation. But the evidence does not support this conclusion.

Instead, it became clear that, after months of efforts to guide and train Cotter, Jr. into better performance, a majority of the Board of Directors believed Cotter, Jr. should be terminated. However, at the first meeting at which the termination was proposed, other proposals to resolve the problem of a deficient CEO were suggested, and a decision delayed to allow for exploration of other options. Cotter, Jr. himself participated in negotiations to effect an agreement. Ellen Cotter and Margaret Cotter proposed a multifaceted agreement that addressed both Cotter, Jr.'s deficiencies by placing limitations on his authority, and providing for oversight, and also proposed settlement of the outside litigation between the siblings, which would, in turn,

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assist in alleviating the tension among the siblings at RDI. Significantly, the proposal provided that Cotter, Jr. would receive other benefits, including favorable restructuring of a loan, ***but none of those other benefits would be at RDI's expense.*** RDI would, however, receive releases from claims threatened by Cotter, Jr, as would all of RDI's Directors, whom RDI was obligated to indemnify. Furthermore, approval of a majority of the Non-Cotter Directors would have been required.

Certainly it can be argued that giving a litigant a corporate position in which he has already proven himself incapable, in return for settling a lawsuit in which the corporation is not a party is an improper use of corporate positions. ***But that is not what was offered here***. Instead, Cotter, Jr. was offered a corporate position that contained sufficient restrictions and oversight to allow him to perform capably, in return for his release of claims against the corporation and its directors and a preclusion against bringing any lawsuit against the RDI. Additionally, the prospect of future tension among the three members of RDI's Board (and the persons who, between them, undoubtedly control a majority of the voting power) would have been decreased by the agreement that was proposed. Moreover, RDI would actually benefit from the resolution of the litigation that created uncertainty over the future of RDI's voting power. A resolution that places the voting power in the hands of a single person would be more beneficial to RDI than a resolution that results in the control of the majority voting power being passed back and forth yearly from one person to another. The prospect of a yearly change in the make up its board of directors and officers is a frightening vision for any company. Cotter, Jr. has presented no evidence that the proposed settlement itself was somehow contrary to RDI's interests. Nor has he presented any evidence as to how the members of the Board of Directors (other than, presumably his sisters) would have voted on it. And, since he did not accept the proposed settlement, he has not shown that RDI was injured by it being proffered.

It is apparent that Cotter, Jr. and his sisters do not work well together. Cotter, Jr. has presented no evidence to show that Ellen Cotter and Margaret Cotter did not sincerely believe that his termination was in the best interests of RDI.

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Cotter, Jr. has failed to show that, as a matter of law, his sisters had a disqualifying interest in his termination. A reasonable fact finder could not, based on the evidence presented by Cotter, Jr., determine that Ellen or Margaret stood to receive a personal financial benefit from Cotter, Jr.'s termination, and voted in favor on the termination on the basis of such personal financial benefit. Accordingly, the Motion for Partial Summary Judgment must be denied.

B. COTTER FAILED TO SHOW THAT DIRECTOR ADAMS LACKED INDEPENDENCE.

Cotter, Jr. has failed to present sufficient evidence of a disqualifying interest by Guy Adams. Indeed, Cotter, Jr.'s claims against Mr. Adams depend upon his theory that Adams is "beholden" to Ellen and Margaret Cotter. But even if true, such dependence becomes an issue only if the controlling director also has a disqualifying interest. As shown above, Cotter, Jr. has failed to show that, as a matter of law, Ellen Cotter and Margaret Cotter had disqualifying interest with respect to his termination. Accordingly, Cotter, Jr.'s attacks on Mr. Adams's independence are without merit.

Cotter, Jr.'s challenge to Mr. Adams's independence also fails, because Cotter, Jr. has not shown that Mr. Adams's is beholden to Ellen Cotter or Margaret Cotter. As relevant here, in order to be considered beholden to another director, there must be evidence that:

> the allegedly controlling entity ***has the unilateral power*** (whether direct or indirect through control over other decision makers), ***to decide whether the challenged director continues to receive a benefit,*** financial or otherwise, ***upon which the challenged director is so dependent or is of such subjective material importance to him that the threatened loss of that benefit might create a reason to question whether the controlled director is able to consider the corporate merits of the challenged transaction objectively.***

Orman v. Cullman, 794 A.2d 5, 25 (Del. Ch. 2002)(emphasis added). Cotter, Jr. has failed to present sufficient evidence to establish these circumstances.

Cotter, Jr. has not shown that Ellen Cotter and Margaret Cotter had such unilateral power over any financial benefit received by Mr. Adams. Indeed, Cotter, Jr. has done nothing more than present evidence that Mr. Adams received payments based on contracts held with

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companies currently controlled by the Executors of the Cotter, Sr. Estate. Cotter, has not presented any evidence, however, that Mr. Adams' s *right to receive those payments is discretionary* with Ellen Cotter or Margaret Cotter.

Nor has Cotter, Jr. shown that, at the time the termination vote was taken, Mr. Adams was so dependent on payments from the Estate owned companies that such payments were of subjective material importance to him. To the contrary, the evidence shows that in 2015, Mr. Adams received considerable income other than the payments in question, including more than $300,000 from the sale of real property. That income was more than three times the amount received from the Estate-owned companies. Furthermore, Cotter, Jr. completely ignores Mr. Adams net worth, which approaches $1 million. Accordingly, Cotter, Jr. has not presented sufficient evidence to raise an inference that Adams was dependent upon the income from the Estate-owned companies, let alone proven such dependence as a matter of law.

As Cotter, Jr. has failed to present evidence sufficient to establish, as a matter of law, that Mr. Adams was so dependent on income within the unilateral discretion of Ellen Cotter and Margaret Cotter, his Motion for Partial Summary Judgment must be denied.

C. Cotter Failed to Show that Director Kane Lacked Independence.

Cotter, Jr. has wholly failed to present evidence of any lack of disinterest or independence in Mr. Kane. Cotter, Jr.'s assertions regarding Mr. Kane's relationship with Cotter, Sr. apply equally to any of the Cotter children, including Cotter, Jr. himself. Moreover, even a ***blood*** avuncular relationship is not sufficient to establish "interest" *See In re Amerco Derivative Litig.*, 127 Nev. 196, 232–33, 252 P.3d 681, 706 (2011), citing with approval 1 *Principles of Corp. Governance* § 1.26 (1994) (an uncle/nephew relationship does not establish the parties as members of one another's immediate families, as child/parent or sibling relationships do). Accordingly, Cotter, Jr.'s claim that Mr. Kane was motivated by familial interest fails as a matter of law.

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IV. CONCLUSION

As shown above, Cotter, Jr. has failed to satisfy his burden to show there is an absence of material facts, and that he is entitled to judgment as a matter of law. He has failed to overcome the statutory presumption that corporate decisions are made in good faith, with adequate information, and for the best interests of the corporation. He has failed to show that the decision to terminate him was the product of self-dealing.

Cotter, Jr.'s efforts to show that some directors "took sides in a family dispute" are futile, because even if the decision were viewed in that light, it is entirely appropriate for a corporation to consider which "faction" offers greater value. Based on the evidence presented, it is clear that Ellen and Margaret Cotter, who had actually each been working for and with RDI for more than 15 years, offered more substantive value to RDI than did Cotter, Jr. Indeed, the sole basis for Cotter, Jr.'s sense of entitlement to be CEO is that he was Cotter, Sr.'s son. However, the position of CEO of RDI is not a family heirloom, and primogeniture does not govern the appointment of corporate officers. The Board of Directors was and is entitled under RDI's bylaws to remove and appoint officers, regardless of cause. Here, the evidence is sufficient to show that Cotter, Jr. gave a poor performance right from the start, and failed to show significant improvement over the course of ten months. Cotter, Jr. cannot refute the evidence of his poor performance and his request for summary judgment must be denied.

DATED this 13th day of October, 2016.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
MARK E. FERRARIO, ESQ. (NV Bar No. 1625)
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***RDI's Joinder to the Individual Defendants' Opposition to James J. Cotter, Jr.'s Motion for Partial Summary Judgment*** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 13th day of October, 2016.

/s/ Andrea Lee Rosehill

AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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EXHIBIT A

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF ELLEN COTTER

TAKEN ON MAY 18, 2016

VOLUME 1

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

and how long were you a corporate associate?

A. I don't -- I don't remember. But I did not spend a lot of time in the litigation department.

Q. Okay. What did you do in terms of the nature of your work when you were a corporate associate at White and Case?

A. I worked on M and A transactions.

Q. M and A meaning mergers and acquisitions?

A. Yes.

Q. So these were transactions in which the White and Case client was either acquiring another company or was being acquired typically?

A. Correct.

Q. What kind of work did you do personally on those -- those M and A matters?

A. Reviewed contracts, marked them up, compared them to send out to our clients.

Q. Are you done?

A. Yes.

Q. Okay. So, what did you do after you left White and Case?

A. I moved to Los Angeles and worked for Craig Corporation at the time.

Q. I understood you to indicate in a prior answer that your responsibilities changed in 2014.

Is that correct?

Well, let me -- I'll -- let me refer you to the answer. And you don't have to respond. I'm just trying to reference something so you understand where I'm going back in your testimony.

I understood you to indicate that you have had substantially the same responsibilities, which you have now described --

A. Uh-huh.

Q. -- from approximately 2000 -- and I thought you said through 2014.

So, with that by way of reference, let me ask a question.

A. Uh-huh.

Q. Have the responsibilities you have had in the time period commencing in or about 2000 continued until some point in time?

I mean did they change at some point in time?

MR. SEARCY: Objection. Vague.

THE WITNESS: I mean I've been -- I've been predominantly involved in the U.S. cinema group from the time I got back from Australia till the

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

That the foregoing deposition testimony of the herein named witness, to wit, ELLEN M. COTTER, was taken before me at the time and place herein set forth;

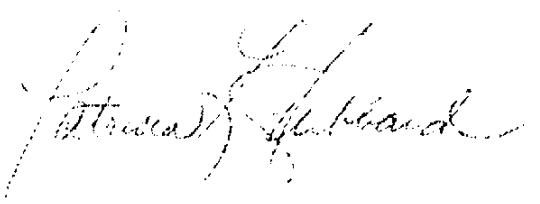
That prior to being examined, ELLEN M. COTTER was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

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

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

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

IN WITNESS WHEREOF, I have subscribed my name this 23rd day of May, 2016.



PATRICIA L. HUBBARD, CSR #3400

EXHIBIT B

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF MARGARET COTTER

TAKEN ON MAY 12, 2016

VOLUME I

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

Georgetown did you take any business courses?

A. I may have. I think I took accounting.

Q. Okay. Did you take any business -- strike that.

As an undergraduate at Georgetown did take any business courses other than an accounting course?

A. I don't recall.

Q. As a law student at Georgetown did you take any business courses?

A. They might have been affiliated with the law, like corporate law, but I didn't go out to the business school and take classes.

Q. Okay. And while a law student at Georgetown, did you take any business law courses other than those that were required to be taken?

A. I don't recall.

Q. Okay. Describe your employment history following graduation from law school.

A. I worked as an Assistant D.A. in Brooklyn. And I was there for about four years.

I left, and I started working for my father at his acres in -- near Fresno at Cecelia Packing House.

And then I went over and I started to

work for my father and his partner, Mike Foreman, as assistant general manager of these off-Broadway theaters that they had.

And from there I became general manager. And I've been -- the company is now called Liberty Theatres which is owned by Reading. I believe I started there with my father in 1998. And I'm still presently there.

Q. When you say you started there, are you referring to starting at Liberty Theatres?

A. It wasn't called Liberty when I began there. It was -- I believe it was called Off-Broadway Investments.

Q. Okay. Let me -- let's fill in some dates.

So you were an Assistant District Attorney in Brooklyn until 1997?

A. I believe so.

Q. And you handled what kind of cases?

A. All criminal.

Q. Were any of them business cases?

A. I recall -- I mean I went through all different divisions of the District Attorney's Office, including Grand Jury, and there were a lot of white collar crimes --

A. Money was going into separate accounts that my father and Mike Foreman didn't know about. Personal charges were being put through to the company.

Q. So, Ms. Cotter, when you became GM what were your -- strike that.

So, when you became GM of this company, Off-Broadway Investments or whatever the name was at the time, what were your responsibilities?

A. There was three theaters in New York City and there was one theater with four stages in Chicago that I needed to book. So I was trying to find shows for all the spaces.

I also had the staff that I referred to, the box office staff, the house staff.

I would, you know, license all the shows to go into the spaces. I was also acting as a property manager for each venue, making sure all the licenses were in place.

I went out and I got liquor licenses for two of the theaters; the Union Square Theatre and the Minetta Lane Theatre. You know, working with the city agencies when we needed to get permitting.

Q. The -- I'm sorry. I'm not sure this is clear.

When did you become GM?

A. I believe it was in 2000, sometime in 2000, end of 2000 maybe.

Q. And is that the position you've held since?

A. Yes.

Q. And has the -- today is it the same three theaters in New York and the same single four-stage theater in Chicago?

A. Yes. But recently we closed the Union Square Theatre. We closed that down at the beginning of January to develop that.

So now it's the two theaters in New York City and the theater in Chicago.

Q. And at approximately what point in time did the company that employed you become Liberty Theatres?

A. I believe it was either 2002 or 2006, Reading purchased all the properties, and Liberty Theatres was formed.

Q. And when you say "Reading purchased all the properties," what exactly happened? What properties did Reading purchase?

A. Reading took over, it was a lease, I believe, at the time, of the Union Square Theatre.

They purchased the Orpheum Theatre, the Minetta Lane Theatre.

Chicago was purchased in 1999 by Reading. So that wasn't transferred. Reading already owned that theater.

Q. And have your responsibilities during the time you've worked for Liberty Theatres been substantially the same as the general manager responsibilities you described earlier?

MR. SEARCY: Objection. Vague.

THE WITNESS: Have my responsibilities been the same as the general manager's?

I believe so. But I think that the property management role has been different from my predecessor. He didn't do any of -- property management.

BY MR. KRUM:

Q. And how has your property management role at Liberty Theatres been different than the prior property management role?

A. I was starting to meet with lawyers and work with the lawyers, work with architects on -- right when we acquired the Union Square property, which was, I believe, in 2000, we were noticed by the Landmarks Preservation Committee that they

wanted to landmark the building. So we needed to kind of work with them and try and figure out a plan for the -- for the property before it got landmarked.

Q. Why was that? Why did you need to try to figure out a plan for the property before it was landmarked?

A. The Landmarks Preservation Committee would have landmarked the building. And if they had landmarked the building, whether interior, exterior, it would have prevented us to develop the building to our liking.

Q. Was the notice from the Landmark -- what is it called? Landmark Planning Commission?

A. Landmarks Preservation Committee.

Q. Okay. Thank you.

The notice from the Landmark Preservation Committee that it intended to landmark the Union Square property was communicated or transmitted in 2000; is that right?

A. I believe it was around 2000, 2002. They wanted to meet with the new owners.

Q. So, who, if you know, on behalf of Liberty Theater between 2000 or 2002, as the case may be, when the Landmarks Preservation Committee

noticed or provided notice that they intended to landmark the Union Square property, had what dealings with the Landmarks Preservation Committee about that subject?

MR. SEARCY: Objection. Vague.

THE WITNESS: Who had dealings with them?

BY MR. KRUM:

Q. Yeah. If you know, who interfaced with the Landmarks Preservation Committee regarding the Union -- Union Square property starting in 2000 or 2002 when the Landmarks Preservation Committee provided notice that it intended to landmark the Union Square property?

A. I was present and Brett Marsh from our company was present.

Q. Is Brett Marsh still with the company?

A. No.

Q. When did Brett Marsh leave?

A. I don't know.

Q. Who was Brett Marsh? Meaning what position or positions did he hold?

A. Not quite sure. I think he was VP, and he had a real estate background.

Q. And when you said he was with a company,

A. No idea.

Q. Do you have any understanding as to how far behind they were on schedule?

A. No idea.

MR. SEARCY: Objection. Assumes facts, lacks foundation.

BY MR. KRUM:

Q. I'm not going to ask any Deutsche Bank questions.

Did you interview or -- strike that.

Did you interview any other persons or entities to serve the function as developer's representative prior to hiring Edifice?

A. I believe that there was one other company. I wasn't present. And I don't know the name of it.

Q. Okay.

A. But my father -- my father had interviewed with them.

Q. Okay. Liberty Theatres is owned by whom?

A. RDI.

Q. And you have been an employee of Liberty Theatres since it was formed, right?

A. Yes.

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

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

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

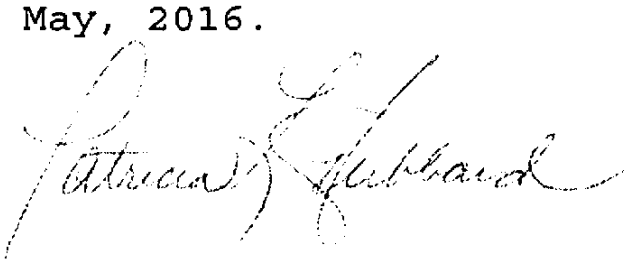
That prior to being examined, MARGARET COTTER was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

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

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

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

IN WITNESS WHEREOF, I have subscribed my name this 16th day of May, 2016.



PATRICIA L. HUBBARD, CSR #3400

EXHIBIT C

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs. Case No.

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

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

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

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

different relationship with my father.
BY MR. TAYBACK:
Q. So depending on the relationship determines whether or not they can and still be independent or not? 11:32:05
MR. KRUM: Same objection.
THE WITNESS: Again, it's a contextual analysis when viewing the decisions that they make.
But yes, I would question Mr. Kane's independence. 11:32:22
BY MR. TAYBACK:
Q. Does the contextual analysis have anything to do with the fact that Mr. Gould is the only one of the people that I've mentioned that supported you for CEO? 11:32:30
A. Absolutely not.
MR. KRUM: Objection, misstates the testimony --
BY MR. TAYBACK:
Q. That's coinc- --
MR. KRUM: -- assumes facts not in evidence.
BY MR. TAYBACK:
Q. That's coincidental?
MR. KRUM: Same objections. 11:32:36

BY MR. TAYBACK:
Q. That's just coincidence?
MR. KRUM: Asked and answered as well.
THE WITNESS: The answer was no.
BY MR. TAYBACK: 11:32:46
Q. Do you call Mr. Kane -- have you ever called him Uncle Ed?
A. At some point I did. But when I became more involved in Reading, I thought it was odd and I stopped. And I did not have the same level of 11:33:01 relationship with him and his family that my two sisters had.
Q. What does that mean, "the same level of relationship"?
They're just closer personally to him? 11:33:15
A. Yes.
Q. Do you perceive that he likes them better?
A. I think he's -- he is closer with both of them on a personal level.
Q. And do you -- did you always feel that way? 11:33:29
Let's say when you were younger, did you feel that he liked them more than you?
MR. KRUM: Objection, vague.
THE WITNESS: I mean, in the last 15 years, he's had a closer relationship with both of them. 11:33:44

He would often go out to dinner with the two of them and his family.
I really didn't have that level. So I would describe my two sisters' relationship with Ed Kane and his family to be different than the one 11:33:59 that I had.
BY MR. TAYBACK:
Q. And do you feel that was your choice or his choice to not have that kind of relationship with Mr. Kane? 11:34:08
A. I mean, I don't know what he was thinking. I just didn't have it with him. I mean, I --
Q. Were there occasions where you asked him to go to dinner more and he --
A. No.
Q. -- wouldn't?
A. No, no, no. No. I would never -- outside of Reading, my interaction with Ed Kane and his family was limited, or certainly much more limited than Ellen and Margaret's. 11:34:37
Q. Mr. McEachern, is he independent, in your view?
A. Yes. I mean, he's -- I mean, again, he's independent. He's got no relationship with Ellen and Margaret or, you know, no business relationship 11:34:58

with Ellen and Margaret. So --
Q. No business relationship -- Mr. Kane has no business relationship with Ellen and Margaret also; correct?
A. That's correct. 11:35:20
Q. So in your view, Mr. McEachern is independent and has always been independent?
MR. KRUM: Asked and answered.
THE WITNESS: Yeah, the testimony speaks for itself. 11:35:30
BY MR. TAYBACK:
Q. So the answer's yes?
MR. KRUM: Well, asked and answered. He said what he said.
BY MR. TAYBACK:
Q. Well, was your answer --
MR. KRUM: But it was yes with an explanation.
Do you want him to withdraw the explanation? 11:35:41
MR. TAYBACK: No. I was going to say, he's independent and he's always been independent.
BY MR. TAYBACK:
Q. I think you can answer it yes -- or not. But I think the answer's yes, and I want to make 11:35:48

A. They were.
Q. Were there -- how many are there? Two?
A. I believe so.
Q. And had there always been two, that is to say, that he started with two and there still exist two? 12:51:47
A. It's been awhile. So I know there are two.
Q. And did you know how Mr. Adams was compensated when he was brought on to handle this project? 12:52:01
A. At some point, he was given $50,000 a year from one of the entities, one of the agricultural entities on his work for not only the captive insurance companies, but he also started doing real estate work that my dad had involved him in. And I 12:52:25
can't tell you specifically what date Mr. Adams started on that.
But for overall, for Guy's involvement with my dad's personal real estate transactions, for Guy's involvement with the captive insurance 12:52:48
companies, Guy was paid a base of $50,000 a year, plus he received a carried interest in the real estate deals that he worked on for my dad.
Q. And those are terms -- that's an agreement that was negotiated between your father and 12:53:07

Mr. Adams; correct?
A. To my knowledge, yes.
Q. You weren't involved in that negotiation?
A. I wasn't involved in the actual signing of the agreement, no. I didn't review the agreement. 12:53:28
I understood roughly the terms. But I was not engaged in the actual agreement of the engagement letter.
Q. Or the negotiation of those terms?
A. That's correct. 12:53:44
Q. And those captive insurers are still in operation, correct, to your knowledge?
A. I don't know. I know that they were not funded with premiums last year. So I don't know what the expectation is for this year, whether 12:54:06
they're going to be funded.
Q. At some point, did you cease being the CEO of Cotter Orchards, Cecelia, and being whatever executive position you held at JC Farm Management?
A. Yes. 12:54:28
Q. When?
A. Well, roughly in -- when -- after I became -- or shortly before I became president of Reading, around June of 2013, my father said to me that he wanted me to give up the position of CEO of 12:54:46

Cecelia Packing and Cotter Orchards and convert -- and become a director of those entities, which is what we ultimately did.
Q. And when did you become -- well, around June of 2013, you became president of Reading. 12:55:11
Had you performed any functions at Reading, performed any tasks for Reading prior to that?
A. Yes.
Q. What?
A. Beginning around 2005, when I moved out to 12:55:26
California, I started becoming involved with my dad in attending executive management meetings with Reading and attending other meetings that the board of directors had and that the executives had on a periodic basis. 12:55:50
And then in 2007, September of 2007, I became vice chairman of Reading and started conducting weekly meetings with the Australian/New Zealand management team and also weekly meetings with the U.S. management team. I 12:56:12
chaired the meetings. I led the meetings and helped my father, as chairman, move the business forward.
Q. Okay. Let me break that down and ask you some specifics.
The period of time between 2005, when you 12:56:34

moved to California and started becoming involved in attending certain meetings, and 2000 -- September 2007 when you became vice chairman --
A. Right.
Q. -- between 2005 and 2007, did you actually 12:56:47
have a position with Reading?
A. No. No. Not to my knowledge.
Q. You would occasionally attend meetings on a periodic basis.
Were they always with your father? 12:56:57
A. I mean, it was a long time ago.
I can't say definitively. Probably.
Q. And did you have actual responsibilities at any of these meetings?
A. From 2005 until I was appointed vice 12:57:10
chairman in September of 2007, no, I don't believe I did.
Q. So you weren't -- actually, you weren't on the board and you weren't on a particular executive committee? 12:57:24
A. Oh, no, I was on the board. I was on the board of directors of Reading since March of 2002.
Q. Okay. So your first position at Reading was being on the board?
A. Yes. 12:57:36

counsel.
Q. Okay. Why did you dismiss the case against Mr. Storey?
MR. KRUM: Same objection and admonition.
Go ahead. 02:09:03
THE WITNESS: Same answer as the above.
BY MR. TAYBACK:
Q. Meaning independent of your conversations with Mr. Krum, you have no understanding as to why you made the decision to either sue him or dismiss 02:09:16 the case against Mr. Storey?
A. Right.
Q. If this case ended -- you put on your case and the court or the jury told you you win and you have the chance now to say I'm right and this is 02:09:31 what I want --
A. Right.
Q. -- what is it that you say, now that I've won, this is what you should do for me?
MR. KRUM: Objection -- 02:09:43
BY MR. TAYBACK:
Q. What's your response to that?
MR. KRUM: Objection --
BY MR. TAYBACK:
Q. What do you ask for? 02:09:45

MR. KRUM: Sorry.
MR. TAYBACK: No, that's all right.
MR. KRUM: You asked more than one question, I apologize.
Objection, asked and answered, compound, 02:09:51 calls for a legal conclusion.
You can answer without disclosing any communications with counsel.
THE WITNESS: Generally, what I want is for Reading International to be operated like a public 02:10:10 company with the corporate governance in place. That's generally what I want.
BY MR. TAYBACK:
Q. Through this lawsuit?
A. Yes. 02:10:22
Q. And when you say "generally," is there something else that you're thinking of specifically that's other than that?
A. No.
Q. All right. So when you became -- in 2007, 02:10:33 you became the vice chairman of Reading?
A. Yes.
Q. Describe for me what the position of vice chairman entailed in 2007 when you took that position? 02:11:08

A. In 2007, the position really was to support my father as chairman. And in 2007, I commenced holding executive management meetings with the executives in Australia and New Zealand, both for the property and cinema operations there, and also 02:11:31 executive management meetings at -- with the U.S. cinema team.
Met with them twice a week, put together agendas for both meetings. Spoke with executives to figure out what should be put on the agenda in order 02:11:55 to move the company forward under the direction of the chairman and CEO of the company.
Q. And had you had any experience at all in the cinema or theater business of any sort?
A. Well, I had been a director of Reading 02:12:27 since 2002.
Q. Other than your tenure as a director of Reading, had you had any experience with the --
A. No.
Q. -- business? 02:12:35
Is that also true with respect to your experience at that point in time in -- with respect to real estate, your time as a lawyer and then also your time on the board of Reading? Is that your only experience in the real estate business? 02:12:50

A. Well, I had worked on a number of real estate transactions as a corporate lawyer, and I also worked on cinema transaction with Reading as a lawyer. But outside of that, that was predominantly the extent of my experience. 02:13:06
Q. How about your experience internationally, that is to say, international business? You were working -- I think you said New Zealand?
A. No.
Q. I'm sorry. Where did you say that your -- 02:13:17 so your responsibilities in 2007 as vice chairman involved some international work; correct?
A. Well, starting in 2007, I started conducting weekly meetings with the management team in Australia -- 02:13:31
Q. Australia.
A. -- and New Zealand.
Q. And had you had any experience with business in Australia or New Zealand?
A. Outside of my experience as a director, 02:13:41 since 2002, no.
Q. As vice chairman, were you separately compensated? In other words, were you compensated in addition to the amounts that you were paid for being a board member? 02:13:58

No?
A. No.
Q. Did you -- have you ever seen board minutes or any document approved by the board of directors of Reading that adopts a succession plan? 02:23:59
A. No.
Q. In -- let's see. In 2013, you became the president of Reading; correct?
A. Yes.
Q. And at that point in time, did you cease 02:24:30 being the vice chairman?
A. No.
Q. So you continued to be the vice chairman, you continued to be on the board, and you also became president? 02:24:43
A. Yes.
Q. At the time you became president of Reading, did you leave your position as CEO of the orchards and Cecelia?
A. It was basically converted from being a CEO 02:24:57 of Cecelia to being a director of Cecelia and the other agricultural entities. And that was the expectation -- the agreement I had with my father, that he wanted me to stay involved to a degree at Cecelia and the orchards but that I had to curtail 02:25:20

my activity at those entities because of my appointment as president of RDI.
And so while -- and so at the point of becoming president, my father and I had an agreement that I would transition my role as president whereas 02:25:48 CEO of Cecelia and the agricultural entities into one as a director, and my activity would be curtailed to reflect the role as a director.
Q. And in fact, is that what happened?
A. Yes. 02:26:15
Q. So when you took on the title of president of Reading, what were the additional responsibilities, job responsibilities as president that you accepted?
A. Well, all of the responsibilities that a 02:26:25 president would normally accept, and spending, you know, all of -- almost all of my time focused on Reading, beginning, you know, in June of 2013.
Q. Okay. But if you could just elaborate for me, what were the -- what were those 02:26:54 responsibilities, those typical responsibilities of a president?
A. To -- I was reporting to the CEO, so I was helping the CEO implement his short-term and long-term vision. But I was also the primary 02:27:07

executive responsible for all of the day-to-day decisions. The executives reported to the president, and I ultimately reported to the CEO.
So it was more of an executive role with executive responsibilities because at that time, our 02:27:34 chief operating officer had resigned, and I had really stepped into an operating role to fill the void that he left with his resignation.
Q. Who was that COO?
A. John Hunter. 02:27:53
Q. And was he replaced?
A. He was not replaced. But I became president either at the same time, shortly after, or before his resignation as chief operating officer.
Q. Was there a president before you took the 02:28:07 position?
A. No.
Q. So the position was -- the title, at least, was created for you. That was, you were the first president, there was no prior president? 02:28:17
A. I don't know if that's the case. There may have been.
Q. But you didn't -- you didn't succeed anybody in that position?
A. There wasn't a president at the company at 02:28:29

the time I became president.
Q. Who were the executives that reported to you when you initially became president of Reading?
A. CFO. I don't know if there was a general counsel, but the principal senior executives would 02:28:52 have reported to me.
Q. But I'm -- guess that's what I'm asking.
Who were the principal senior executives?
You mentioned the CFO. I'm wondering who else it was. 02:29:04
A. Yeah, I mean, technically, all of the principal -- Wayne Smith, Matthew Bourke, Bob Smerling. I mean, I think that's it.
Q. What were their job titles?
A. Wayne Smith was the managing director of 02:29:23 our Australia and New Zealand operation. Andrzej Matyczynski was our chief financial officer. I mean, Craig Tompkins was an outside legal consultant. Bob Smerling was the president of the U.S. cinemas division. And my sister Margaret, 02:29:53 technically, who was a consultant in charge of the live theater operation.
Q. So and when you say the major company executives reported to you, you're including among those people people who weren't, strictly speaking, 02:30:15

at that point.
MR. KRUM: Chris, whenever it's convenient, let's adjourn. But I don't mean to interrupt you, by the way.
MR. TAYBACK: Yeah. You mind if I just ask -- I have like probably five questions. 05:39:00
MR. KRUM: Sure. Fine. Go ahead.
BY MR. TAYBACK:
Q. Since your termination, other than Reading board meetings, have you communicated with Tim Storey? 05:39:19
A. Brief, brief conversations with Tim Storey every now and then, once a month, once every two months.
Q. By phone or by some other method? 05:39:26
A. By phone, just checking in.
Q. And do you ever discuss the litigation with him?
A. No.
Q. Other than -- since your termination, other than at board meetings, have you communicated with Bill Gould? 05:39:34
A. Other than board meetings?
Q. Other than board meetings.
A. I don't recall discussing -- having any 05:39:49

communications with Bill Gould.
MR. TAYBACK: Okay. We can break now.
MR. KRUM: Okay. Thanks.
(Off the record.)
THE VIDEOGRAPHER: We are off the record at 5:40 p.m., and this concludes today's testimony given by James J. Cotter, Jr. 05:40:07
The total number of media used was four and will be retained by Veritext Legal Solutions.

(TIME NOTED: 5:40 p.m.)

I, JAMES COTTER, JR., do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

Executed this _____day of _____, 2016, at _____, _____.
(Los Angeles) (California)

_____
JAMES COTTER, JR.

I, JANICE SCHUTZMAN, Certified Shorthand Reporter of the State of California, do hereby certify:
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that the testimony of the witness and all objections made by counsel at the time of the examination were recorded stenographically by me, and were thereafter transcribed under my direction and supervision; and that the foregoing pages contain a full, true and accurate record of all proceedings and testimony to the best of my skill and ability.
I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.
IN WITNESS WHEREOF, I have subscribed my name this 19th day of May, 2016.

JANICE SCHUTZMAN
CSR No. 9509

EXHIBIT D

AMENDED AND RESTATED

BYLAWS

OF

READING INTERNATIONAL, INC.

A Nevada Corporation

TABLE OF CONTENTS

ARTICLE IV

OFFICERS

SECTION 1 ELECTION

The officers of the Corporation shall be elected annually at the first meeting by the Board of Directors held after each annual meeting of the stockholders and shall be a President, one or more Vice Presidents, a Treasurer and a Secretary, and such other officers with such titles and duties as the Board of Directors may determine, none of whom need be directors. The President shall be the Chief Executive Officer, unless the Board designates the Chairman of the Board as Chief Executive Officer. Any person may hold one or more offices and each officer shall hold office until his successor shall have been duly elected and qualified or until his death or until he shall resign or is removed in the manner as hereinafter provided for such term as may be prescribed by the Board of Directors from time to time.

SECTION 2 CHAIRMAN AND VICE CHAIRMAN OF THE BOARD

The Board of Directors at its first annual meeting after each annual meeting of the stockholders may choose a Chairman and Vice Chairman of the Board from among the directors of the Corporation. The Chairman of the Board, and in his absence the Vice Chairman, shall preside at meetings of the stockholders and the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect.

SECTION 3 PRESIDENT

The President shall be the chief operating officer of the Corporation, shall also be a director and shall have active management of the business of the Corporation. The President shall execute on behalf of the Corporation all instruments requiring such execution except to the extent the signing and execution thereof shall be expressly designated by the Board of Directors to some other officer or agent of the Corporation.

SECTION 4 VICE-PRESIDENT

The Vice-President shall act under the direction of the President and in the absence or disability of the President shall perform the duties and exercise the powers of the President. The Vice-President shall perform such other duties and have such other powers as the President or the Board of Directors may from time to time prescribe. The Board of Directors may designate one or more Executive Vice-Presidents or may otherwise specify the order of seniority of the Vice-Presidents. The duties and powers of the President shall descend to the Vice-Presidents in such specified order of seniority.

SECTION 5 SECRETARY

The Secretary shall act under the direction of the President. Subject to the direction of the President, the Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record the proceedings. The Secretary shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the President or the Board of Directors.

SECTION 6 ASSISTANT SECRETARIES

The Assistant Secretaries shall act under the direction of the President. In order of their seniority, unless otherwise determined by the President or the Board of Directors, they shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary. They shall perform such other duties and have such other powers as the President or the Board of Directors may from time to time prescribe.

SECTION 7 TREASURER

The Treasurer shall act under the direction of the President. Subject to the direction of the President, the Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the President or the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of such person's office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

SECTION 8 ASSISTANT TREASURERS

The Assistant Treasurers in the order of their seniority, unless otherwise determined by the President or the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer. They shall perform such other duties and have such other powers as the President or the Board of Directors may from time to time prescribe.

SECTION 9 COMPENSATION

The Board of Directors shall fix the salaries and compensation of all officers of the Corporation.

SECTION 10 REMOVAL; RESIGNATION

The officers of the Corporation shall hold office at the pleasure of the Board of Directors. Any officer elected or appointed by the Board of Directors, or any member of a committee, may be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof or by written consent. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise shall be filled by the Board of Directors for the unexpired portion of the term.

Any director or officer of the Corporation, or any member of any committee, may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board, the President, or the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein or, if the time is not specified, then upon receipt thereof. The acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V

CAPITAL STOCK

SECTION 1 CERTFICATED AND UNCERTIFICATED SHARES OF STOCK

Shares of stock in the Corporation shall be represented by certificates, or shall be uncertificated, as determined by the Board of Directors in its discretion. As to any shares represented by certificates, every stockholder shall be entitled to have a certificate signed by the Chairman or Vice Chairman of the Board of Directors, the President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such person in the Corporation. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of the various classes of stock or series thereof and the qualifications, limitations or restrictions of such rights, shall be set forth in full or summarized on the face or back of any certificate which the Corporation shall issue to represent such stock; provided, however, that except as otherwise provided in NRS 78.242, in lieu of the foregoing requirements, there may be set forth on the face or back of any certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests, the designations, preferences and relative, participating, optional or other special rights of the various classes or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

If a certificate representing stock is signed (1) by a transfer agent other than the Corporation or its employees or (2) by a registrar other than the Corporation or its employees, the signatures of the officers of the Corporation may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer before such certificate is issued, such certificate may be issued with the same effect as though the person had not ceased to be such officer. The seal of the Corporation, or a facsimile thereof, may, but need not be, affixed to any certificates representing stock.

SECTION 2 SURRENDERED; LOST OR DESTROYED CERTIFICATES

The Board of Directors or any transfer agent of the Corporation may direct a new certificate or certificates to be issued, or, if such stock is no longer certificated, a registration of such stock, in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, or new registration of uncertificated stock, the Board of Directors (or any transfer agent of the Corporation authorized to do so by a resolution of the Board of Directors) may, in its discretion and as a condition precedent to the issuance or registration thereof, require the owner, of such lost or destroyed certificate or certificates, or the owner's legal representative, to advertise the same in such manner as it shall require and/or give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost or destroyed.

EXHIBIT E

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

May 21, 2015

A duly noticed meeting of the Board of Directors (the "Board") of Reading International, Inc. (the "Company") was held in the Company's offices in Los Angeles on May 21, 2015 at approximately 11:15 a.m. (Los Angeles time).

Present were Ellen M. Cotter, Chairperson of the Board, and Board members Margaret Cotter, Vice Chairperson, James J. Cotter, Jr., William D. Gould, Edward L. Kane, Doug McEachern, Tim Storey and Guy Adams.

In attendance at the invitation of the directors were William D. Ellis, Company Secretary and General Counsel, and Craig Tompkins. Also in attendance at the request of the Chairperson were Company counsel, Gary McLaughlin and Frank Reddick, of Akin Gump Strauss Hauer & Feld, LLP. On behalf of James J. Cotter, Jr., Mark Krum of Lewis Roca Rothgerber LLP was also present.

Further, on May 19, 2015, Mr. James Cotter had requested the Chairperson to place on the agenda of this meeting the following matters: (x) a report by him on a Review of the Company's Operations and the search for a Director of Real Estate, (y) employment agreements for Ms. Ellen Cotter and Ms. Margaret Cotter and (z) his request that the Company repurchase 100,000 shares of Class A non-voting stock owned by him.

Call to Order

Ms. Ellen Cotter, Chairperson of the Board, called the meeting to order at approximately 11:15 a.m. (Los Angeles time) and did a roll call of the attendees. Ms. Ellen Cotter acted as recording secretary for the meeting and took these minutes.

Presence of Attorneys

Prior to moving to the agenda, the Board took up the question of whether counsel from Lewis Roca Rothgerber and Akin Gump Strauss Hauer & Feld should participate in the meeting. The Chairperson informed the board that non-board members are entitled to attend the meeting only at the invitation of the Board and that Mr. Krum did not represent the Company and had indicated an intention to file a lawsuit on behalf of Mr. James Cotter against each of the other directors. Following discussion, Mr. Adams made a motion, seconded by Mr. Kane, that Mr. Krum be requested to leave the meeting. Upon a vote of 7-1, with Mr. Cotter voting against, the motion was approved.

The Board then discussed whether it was appropriate for Messrs. Reddick and McLaughlin to be present at the Meeting. The Chairperson stated that Akin Gump Strauss Hauer & Feld had been engaged by the Company on employment and certain other matters for over ten years and Messrs. Reddick and McLaughlin were present at her request. Following discussion, Mr. McEachern made a motion, seconded by Mr. Kane, to invite Messrs. Reddick and McLaughlin to attend the meeting. By a vote of 5-3, with Messrs. Cotter, Storey and Gould voting against, the motion was adopted.

Mr. Krum then addressed the Board stating that, in his opinion, the Board had not engaged in an adequate process in order to make a determination to terminate Mr. Cotter as Chief Executive Officer and that Messrs. Adams and Kane were not disinterested directors. Mr. Ellis reported that he had consulted the Company's regular Nevada corporate counsel and had been advised that Messrs. Adams and Kane had no conflict that would preclude them as a matter of law in participating in the meeting and voting on any matter with respect to Mr. Cotter.

Review of Operations

Ms. Ellen Cotter then stated that she would like take up the last item on the agenda, Mr. Cotter's report on operations, out of order as the first order of business. Mr. Cotter stated that he was not prepared to make a presentation on the Company's operations but instead would like to address the Board on his performance as Chief Executive Officer and the reasons he believed it appropriate that he continue in that role. Mr. Cotter then proceeded to speak to the Board at length about his position of President and Chief Executive Officer of the Company. He told the Board that he firmly believed that his father, James J. Cotter, Sr., the Company's former Chairman and Chief Executive Officer, had intended for him to have this role and his continuation as Chief Executive Officer would be consistent with his father's wishes. He also took issue with the independence of Mr. Kane and Mr. Adams and repeated the statements his counsel had addressed to the Board urging that they be disqualified from voting with respect to any action to terminate him as Chief Executive Officer.

The Board then proceeded to discuss at length the performance of Mr. Cotter as Chief Executive Officer and President of the Company since he was appointed in August 7, 2014.

For over the next two hours the Board discussed Mr. James Cotter's performance as Chief Executive Officer. Messrs. Adams and Kane and Madams Ellen Cotter and Margaret Cotter each stated that it would be in the best interests of the Company and its shareholders that the Board conduct a search for a qualified chief executive officer and that Mr. Cotter be relieved of his positions as Chief Executive Officer and President of the Corporation and reviewed the reasons underlying this assessment. As part of that discussion, it was noted that the independent directors had met numerous times to discuss this matter and Mr. Cotter's progress in this role. Messrs. Adams and Kane and Madams Ellen Cotter and Margaret Cotter reviewed their assessment of deficiencies that they observed in Mr. Cotter's leadership, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes in the role of Chief Executive Officer. Messrs. Gould and Storey expressed their views on Mr. Cotter's performance and their conclusion that a decision to make a change in this position would not be in the best interests of the Company at this time.

At approximately 2:00 p.m. (Los Angeles time), Messrs. Gould, Kane, McEachern, Storey and Adams suggested that they continue the discussion in executive session and Ms. Ellen Cotter, Ms. Margaret Cotter, and Messrs. James Cotter, Ellis, Tompkins, McLaughlin and Reddick left the meeting.

Independent Directors Session

Messrs. Gould, Kane, McEachern, Storey and Adams continued in executive session for the next two hours during which time they continued their review of Mr. James Cotter's performance and the course of action that would be in the best interests of the Company.

Resumption of the Meeting with the Full Board

At approximately 4:00 p.m. (Los Angeles time), Ms. Ellen Cotter, Ms. Margaret Cotter, and Mr. James Cotter rejoined the meeting.

After much further discussion amongst Board members, Mr. Gould suggested that Mr. Cotter continue as President of the Company and the Board commence a search for a new Chief Executive Officer. Mr. Cotter twice refused to continue in the role of President under a new Chief Executive Officer.

After much further discussion, the Board determined to take no action at this meeting with respect to Mr. Cotter's position as Chief Executive Officer and President of the Company and that the Board would reconvene the meeting on May 29, 2015 to continue its deliberations. In the interim, the Directors would be provided the opportunity to reflect on the discussion during the meeting and Mr. Cotter indicated that he would give further consideration to continuing in the role of President of the Company under the leadership of a new Chief Executive Officer. At the request of the Board, Mr. Cotter agreed to maintain during the upcoming week a "low profile," to not take any significant corporate action and take some time out of the office.

Independent Director Compensation

The Board then discussed the inordinate amount of director time that had been spent addressing the management and personnel issues at the Company.

A motion was made by Mr. McEachern and seconded by Mr. Storey that each of the directors who are not employed by the Company or members of the Cotter family, receive a one-time bonus of $25,000 in recognition of the significant additional time required addressing these matters. Upon motion duly made, seconded and unanimously adopted, the Board approved such one-time bonus.

Ms. Ellen Cotter then adjourned the Meeting at approximately 5:00 p.m., to be reconvened on May 29, 2015 at 10:00 a.m. (Los Angeles time) at the Company's Los Angeles offices.

Ellen M. Cotter, Chairperson, Recording Secretary

EXHIBIT F

[redacted]

Timestamp: 5/27/2015 3:49 PM EDT

Confidential Settlement Memo of Understanding

The following is intended to be used as a part of confidential and "without prejudice" settlement negotiations between Ellen Cotter and Margaret Cotter, on the one hand, and James J. Cotter, Jr. ("JJC") on the other hand. It is provided under the understanding that the contents hereof are confidential and not to be used in any litigation or other proceeding.

The proposal outlined below sets forth the basis on which Ellen Cotter ("EMC") and Margaret Cotter ("AMC") would be willing to proceed towards a negotiated settlement, but, with respect to the items related to the Company's management structure only, is subject to the ultimate approval of the independent directors, in the exercise of their fiduciary duties and obligations. Nothing herein is intended to interfere with the appropriate exercise by the directors of their fiduciary duties and obligations.

If these terms are acceptable to JJC, then JJC should sign below to indicate his agreement. AMC and EMC will do the same. By signing below, the parties agree that the terms of this Understanding represent a binding agreement, subject to approval by the independent directors of the RDI management structure and necessary court approvals. However, the parties acknowledge that their agreement will be memorialized in a more formal document, and the parties agree to work diligently and good faith to prepare all required documentation that reflects the terms of this Understanding. The initial draft of such documentation will be prepared by counsel to Ellen Cotter and Margaret Cotter.

TERM/CONDITION	EMC/AMC SETTLEMENT TERMS AND CONDITIONS
Reading International Management Structure (JJC, EMC & AMC would cooperate in good faith in the implementation of this changes)	JJC would continue to serve as CEO and President under the terms of his existing contract, but in the overall management structure and subject to the limitations set forth below: *Executive Committee Structure* The existing Executive Committee would be renewed as a standing committee of the Board of Directors, as follows: • Members: EMC, AMC, JJC and Guy Adams (Chairman). • Delegated Authority to the Executive Committee would be as determined by the Board of Directors, but would include, at a minimum, the following: (i) Approval over the Hiring/Firing/Compensation of all senior level consultants/employees; (ii) Review and approval/disapproval of all contracts/commitments have an overall exposure to the Company in excess of $1 million, and (iii) Review and approval of annual Budget and Business Plan. Meetings would be held on a regularly scheduled basis weekly. Executive Committee members would naturally be free to attend and participate in internal meetings called by the CEO, and would

	endeavor to make themselves reasonably available to attend such meetings as to which they may be invited by the CEO Unless approved in advance by the Executive Committee, all investor relations would be handled by CFO in consultation with the GC, not CLO. All press releases and public filings would be subject to review and sign-off by the Executive Committee and the GC The Company would enter into employment agreements with EMC and AMC on substantially the same terms and conditions as JR EMC will be appointed President of the US Cinema division. Margaret Cotter will be appointed as Chairman of the NYC Real Estate Oversight Committee (members to include JJC, AMC, SCI and WE) It is recognized that the implementation of the above will require the adoption of various bylaws, policies and procedures.
Reading Voting Stock - Class B	JJC will decline to serve as Co-Trustee of the Voting Trust and renounces any intention or desire to serve as a successor trustee. Margaret Cotter will be the Sole Voting Trustee of the Voting Stock. JJC, EMC and AMC will sign an acknowledgement that there is an inconsistency in the 2014 Amendment between SR's expressed intent that AMC serve as Chair and another provision that says SR intended for rotation; JJC, EMC and AMC will agree that SR intended for AMC to serve as Chair and that neither EMC nor JR wish to serve as Chair.
Immediate Release and Waiver signed by JJC with respect to all litigation, including any matters covered by the specified litigation	1. California Superior Court case 2. Nevada case filed by JJC 3. All threats against Directors 4. All threats of Company Derivative Action 5. Agreement that Reading International, Inc. can drop the Interpleader action in Nevada and recognize the Estate as the owner of Class B Shares and Option 6. JJC further agrees to not sue Company over these matters or participate in any lawsuit related to the Company
2014 Trust Amendment	Subject to the terms and conditions herein, EMC and AMC will drop any challenge to the enforceability of the 2014 Amendment
Trustees of the Living Trust	JJC resigns as Trustee and renounces any intent or desire to serve as successor trustee while either EMC or AMC are alive.
Specific Bequests	Laguna Beach Condo will be sold immediately to provide liquidity to the Estate. The parties will agree to consent to such sale under terms determined by AMC and EMC in their sole discretion as Co-Trustees.

Ownership of Agriculture Assets	Cotter Family Farms, LLC Agreement amended • Majority rule for decision-making by Co-Managers; • Remove restrictions on distributions or sale of assets; • JJC, EMC and AMC will sign an agreement that they have unanimously agreed that the assets of the Citrus Trust, including ownership interests in the LLC, will be distributed pro rata to EMC, AMC, and JJC.
JJC's "Lead Director" Agreement with Cecelia - $200,000 per annum	JJC's "lead director" Agreement will be voided. JJC will relinquish any remaining rights in such Agreement.
$1.5 million Loan	As executors, EMC and AMC will work out a reasonable payment back to Estate over time, taking into due consideration JJC's ability to make such repayments.
Legal Expenses	All legal expenses and other professional fees incurred to date by JJC, FMC, AMC, the Trust, and the Estate relating to the litigation or administration issues will reimbursed by Trust or Estate as appropriate, and JJC will sign an acknowledgment that this is appropriate and reasonable.
Release by EMC and AMC	EMC and AMC will take all actions to have their claims pending in CA and NV over SR's estate and trust dismissed with prejudice, except to the extent such dismissal would be inconsistent with any term of this Agreement, such as with regard to the $1.5 million loan (in which case the parties will work to carve out such claims).
2014 Gifts	JJC delivers EMC check for $28,000.
James J. Cotter Foundation	AMC, EMC and JJC will become co-trustees and/or co-directors of the James J. Cotter Foundation. They further will agree that decision-making will be done by majority rule.
Court Approval	The parties will use their best efforts to obtain court approval in CA and NV of any settlement agreement.
Counseling	AMC, JJC and EMC will engage in professional counseling to determine how to work cooperatively together and with respect.

AGREED:

_____

James J. Cotter, Jr. (individually and in all representative capacities)

_____

Ellen Cotter (individually and in all representative capacities)

_____

Margaret Cotter (individual and in all representative capacities)

EXHIBIT G

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

May 29, 2015

A duly noticed meeting of the Board of Directors (the "Board") of Reading International, Inc. (the "Company") was held in the Company's Los Angeles office on May 21, 2015 and ultimately adjourned to May 29, 2010 at 11:00 a.m. (Los Angeles time).

Present were Ellen M. Cotter, Chairperson of the Board, and Board members Margaret Cotter, Vice Chairperson, James J. Cotter, Jr., William D. Gould, Edward L. Kane, Doug McEachern, Tim Storey and Guy Adams. In attendance at the invitation of the directors was William D. Ellis, Corporation Secretary and General Counsel.

Call to Order

Ms. Ellen Cotter, Chairperson of the Board, called the meeting to order at approximately 11:00 a.m. (Los Angeles time) and did a roll call of the attendees. Mr. William Ellis acted as recording secretary for the meeting and took these minutes.

Status of President and Chief Executive Officer

The Board continued its discussion of Mr. James Cotter, Jr.'s performance as Chief Executive Officer and President of the Company. Prior to adjournment on May 21, 2015, the Board discussed having Mr. Cotter continue as President of the Company and to immediately commence a search for a new Chief Executive Officer. At that time, Mr. Cotter twice informed the other directors that he found that arrangement to be unacceptable. Mr. Cotter informed

the Board that he had given further thought to a role as President and that he would not agree to remain employed as President of the Company under the leadership of a new Chief Executive Officer.

Mr. Adams explained his lack of confidence in Mr. Cotter's ability to "move the Company forward", principally based on Mr. Cotter's lack of leadership skills, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes in the role of Chief Executive Officer and President.

Mr. Adams' then made the following Motion:

> *I move to remove James Cotter, Jr. from his position as President and Chief Executive Officer and all other positions he holds with the Company, its subsidiaries and affiliates. Mr. Cotter's employment agreement provides that if he is terminated without cause he is entitled to severance pay. While I personally believe we may have cause in this situation, it is my proposal that we take this action to remove him "without cause" under the terms of his contract, which will provide him the benefit of the contractual severance pay, assuming there is no further breach of the agreement.*

The above Motion was seconded by Mr. McEachern.

Before Ms. Ellen Cotter opened the floor to discussion on this Motion, she read the Board the following statement:

> *I want to disclose for the record, and as all of you know, Margaret Cotter and I have an interest in litigation that has been filed in California and we are now parties to a lawsuit filed in Nevada by our brother concerning shares of stock and options formerly held by our father. Our brother is also interested in this litigation.*

Ms. Margaret Cotter confirmed for the Board that this statement also applied to her as well.

Mr. Cotter began the discussion by questioning the independence of Mr. Adams to vote on the Motion. Mr. Ellis told the Board that he had reviewed with the Company's regular Nevada counsel the substance of Mr. Brockmeyer' s report on his conversation with Mr. Krum, including the stated reasons that Mr. Adams was allegedly not disinterested and disqualified from voting on the matter before the Board. He reported to the Board that counsel had advised him that, based on the facts outlined by Mr. Krum (which were the same as those asserted by Mr. Cotter at the meeting), Mr. Adams did not have a conflict that would prevent him from voting on the above motion.

Mr. Cotter further reiterated that it was the intention of his father, the former Chairman and CEO of the Company, that he run the Company and that the Board should observe his wishes.

The Board had a lengthy discussion of Mr. Cotter's performance as Chief Executive Officer and President of the Company. Mr. Cotter disputed these characterizations of his performance and stated his belief that he was competent to continue to run the Company.

The Board then discussed various options regarding how the Company's senior management team should be structured, including terminating Mr. Cotter and appointing an interim Chief Executive Officer to run the Company until Mr. Cotter's successor could be appointed, continuing Mr. Cotter in the role as President and commencing a search for a new Chief Executive Officer (which Mr. Cotter had on three different occasions rejected), and deferring any decision with respect to Mr. Cotter's status as an officer of the Company and maintaining the "status quo" until the pending litigation between the members of the Cotter family is resolved, recognizing that the litigation could impact the control of the Company. Directors Storey and Gould urged Mr. Cotter, Ms. Ellen Cotter and Ms. Margaret Cotter to attempt to negotiate a universal settlement that would resolve issues relating to the control of the Company and provide certainty to management and stockholders alike.

Ms. Ellen Cotter then informed the Board that legal counsel for Ms. Ellen Cotter and Ms. Margaret Cotter had contacted Mr. Cotter's counsel during the last week and proposed a settlement of the litigation existing between the three of them and related trusts and estates. It was noted that settlement of the litigation could be beneficial to the Company and its shareholders because it would remove any questions regarding the voting of the Company's common stock held by the trust and estate of Mr. James Cotter, Sr., which represents a control position in the Company and may reduce or eliminate the tension and obstacles to working collaboratively as a team that currently exists among the three litigants.

Ms. Ellen Cotter then reviewed the terms of the proposal made by her and Ms. Margaret Cotter's counsel to Mr. Cotter's counsel to resolve their litigation matters. It was noted that, to the extent the proposal addressed the terms of any settlement of litigation between the family members and their related trusts and estates, it was a matter personal to the Cotter family and not a matter on which the Board would have a view. To the extent that the proposal addressed the structure of the senior management of the Company, that was a matter for the Board of Directors and could not be dictated by the terms of any settlement. However, recognizing the potential benefits to the Company and its stockholders of a settlement of the existing litigation among the Cotter family members and their related trusts and estates, the meeting went into recess at approximately 2:00 p.m. to permit Mr. Cotter and Madams Ellen Cotter and Margaret Cotter to continue their discussion of settlement terms.

The Board meeting reconvened at approximately 6:00 p.m. at the Los Angeles offices of the Company. Present in the Los Angeles office of the Corporation were Ellen M. Cotter, Chairperson of the Board, and Board members Margaret Cotter, Vice Chairperson, James J.

Cotter, Jr. and Guy Adams. Present telephonically were William D. Gould, Edward L. Kane, Doug McEachern and Tim Storey. In attendance telephonically at the invitation of the directors was William D. Ellis, Company Secretary. Each of the persons in attendance confirmed that they could hear one another.

Ms. Ellen Cotter reported that she, Ms. Margaret Cotter and Mr. James Cotter, Jr. had reached an "agreement-in-principle" regarding their various disputed issues. Ms. Ellen Cotter then proceeded to read the "agreement-in-principle" to the Board. The agreement in principle addressed the terms of the settlement of the litigation matters existing between the three Cotters and related trusts and estates and also addressed Mr. Cotter's continued role as an officer of the Company. Ms. Ellen Cotter acknowledged that she and Ms. Margaret Cotter had no authority to bind the Company or the Board as to matters related to the Company's management structure that were part of the settlement, and the Cotter parties could only agree to vote for the settlement of those issues if the Board indeed approved such matters. She further noted that the "agreement-in-principle" still had to be reviewed by counsel and documented to the Cotters' mutual satisfaction.

Adjournment

It was then determined to adjourn the meeting and to permit the Cotters to move forward to document their settlement. No action was taken by the board with respect to the motion made earlier in the meeting and no action was taken on any element of the agreement in principle arrived at between the Cotter family members and related trusts and estates.

William D. Ellis, Recording Secretary

EXHIBIT H

From: Kane
To: James Cotter JR
Sent: 5/27/2015 4:37:34 PM
Subject: Re: Confidential

Ellen is going to present you with a global plan to end the litigation and move the Company forward. If you agree to it, you, Ellen and Margaret will work in a collaborative manner and you will retain your title. There are some aspects that will not please you -- no compromise pleases anyone 100% -- but I truly believe that if you accept it as given, it will enhance the company, benefit you and your sisters and allow you to work together going forward until the next generation takes over.

-----Original Message-----
From: James Cotter JR
Sent: Wednesday, May 27, 2015 7:20 AM
To: 'Kane (elkane@san.rr.com)'
Subject: Confidential

I have tried reaching out to sisters. I spoke to Margaret last night about this proposal and have not heard back from her:

1. Engage in professional therapy over next 90 days to heal & rebuild family (including Nanna)

2. Provide sisters 3-5 year employment contracts with compensation deemed fair by Towers and Comp Committee

3. Complete standstill of all litigation and corporate maneuvering

4. Professional mediation to bring universal resolution and closure to estate

5. Professional mediation to find way to co-exist in company

6. Engage CEO consultant (i.e., McKinsey type consultant or veteran CEO) we all chose to work with us to move company forward for 90 days

7. Sisters do not report to me for 90 days and report on financial / large issue basis to CFO. We try to conduct business as normal with employees

8. Board provides me immediate review / feedback and monitors performance over next 90 days

9. Cease Tim's ombudsman role

10. Cotters meet once per week at set time so sisters are informed of all matters

11. Recast board with professional director chosen by girls (professional headhunter firm like Kom Ferry provides three independent directors with professional board experience and ability to take leadership Board role and sisters pick one)

12. If we can't co-exist after 90 days, sisters buy me out of RDI stock (Company pays me X and sisters pay additional share of estate with 5-10 year note secured by stock). Or I buy them out. Whatever they prefer. We divide estate and remain family.

Is there anything you can do to broker this?

We all have different views about what Dad wanted, but we all know that Dad would never want to see his son with three young children terminated and we all know Dad wanted the three of us to stick together.

- If we start with what we all agree Dad wanted, we can all find a solution that is in the best interest of the Company and the Cotters.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs. Case No.

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

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
Los Angeles, California
Tuesday, May 17, 2016
Volume II

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2312191
Pages 298 - 567

said it, the specific instance that you're describing here?

A. I can't.

Q. Can you remember where it was?

A. I can't. 12:18PM

Q. Can you remember who else was present?

A. I can't.

Q. There's a long list of grievances here you have with your sister Margaret that you put in this email. 12:18PM

What did you expect her reaction was going to be to this email as the cover email for her employment agreement?

A. Maybe realizing that her behavior, in doing these things, was unprofessional and she should think about the way she was behaving with me. 12:19PM

THE REPORTER: 192.

(Deposition Exhibit 192 was marked for identification.)

BY MR. TAYBACK:

Q. I'm showing you an email exchange between you and Mr. Kane, dated May 27th, 2015, entitled "Confidential."

Do you recognize this?

A. I do. 12:21PM

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

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

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

IN WITNESS WHEREOF, I have subscribed my name this 20th day of May, 2016.

JANICE SCHUTZMAN

CSR No. 9509

EXHIBIT I

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

A. Presently?

Q. -- so this year.

A. Presently, Jim -- Jim Cotter Farms or Cotter Family Farms, Reading International and GWA Capital. There's another company, GWA Advisors, LLC. It's an investment -- it's not a registered investment advisor but I do some private equity deals in that one as well. So those two entities, Cotter Family Farms and Reading International.

Q. And so far this year, how much money have you been paid by each of the four entities you just identified?

A. Well, the -- it's easier to answer GWA Capital and GWA Advisors was zero so far this year. I don't know the exact amount for Cotter Farms and Reading.

Q. In 2015, did you have any sources of income other than those four entities, Cotter Family Farms, Reading, GWA Capital and GWA Advisors?

A. 2015, I had an investment that was sold and there was the proceeds from that.

Q. What was that investment?

A. Real estate. It was in my name. It wasn't in the name of the company.

Q. What was the real estate?

A. A condo.

Q. Where was it located?

A. Santa Barbara.

Q. What were the proceeds from the sale of the Santa Barbara condo?

MR. TAYBACK: Objection; vague as to "proceeds," whether profits or revenue.

BY MR. KRUM:

Q. How much money did you net on the sale of the Santa Barbara condo?

A. Roughly, maybe $300,000.

Q. When did you acquire that condo?

A. Approximately 2009. 2008, 2009.

Q. And that was acquired and held in your name personally; is that correct?

A. No, it was held in my name and my ex-wife's name.

Q. Did the two of you acquire it together?

A. Yes, we did.

Q. Did you receive the Santa Barbara condo as part of the judgment or settlement, as the case may be, of your divorce case?

A. No, she had to buy my portion of the Santa Barbara entity.

Mr. Kane's email --

A. Yes.

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

A. Yes.

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

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

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

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

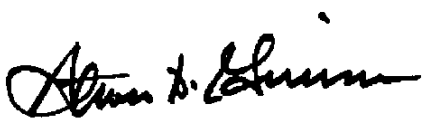
(Discussion held off the record.)

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

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

EXHIBIT J

Electronically Filed
05/12/2016 01:46:35 PM



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN THE MATTER OF JAMES J. COTTER, Deceased	CASE NO. P-082942 A-719860
	DEPT. NO. XI
	Transcript of Proceedings
And related cases and parties	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TELEPHONE CONFERENCE RE STIPULATION AND ORDER FOR BRIEFING SCHEDULE AND HEARING DATES

WEDNESDAY, JULY 22, 2015

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

APPEARANCES:

MARK E. FERRARIO, ESQ.
LEIGH GODDARD, ESQ.
AARON D. SHIPLEY, ESQ.
ALAN D. FREER, ESQ.
HARRY P. SUSMAN, ESQ.
ADAM STREISAND, ESQ.

LAS VEGAS, NEVADA, WEDNESDAY, JULY 22, 2015, 3:59 P.M.

(Court was called to order)

THE COURT: Counsel, can I do a roll call, please.

MR. FREER: Alan Freer.

MR. SHIPLEY: Aaron Shipley.

MR. SUSMAN: Harry Susman.

MS. GODDARD: Leigh Goddard.

MR. STREISAND: Adam Streisand.

MR. FERRARIO: Mark Ferrario.

THE COURT: So, Mr. Streisand, your last name is S-T-R-E-I-S-A-N-D?

MR. STREISAND: Exactly right.

THE COURT: Okay. Is Mr. Susman joining us, or have we got everybody we need?

MR. SUSMAN: I'm on, Your Honor.

THE COURT: Oh. Okay. So I asked for Laura to set this up because I got your stip and order regarding briefing schedule and hearing dates and was very confused. What are you guys trying to do?

MR. STREISAND: This is Adam Streisand, Your Honor. What we tried to do is streamline things to simplify the issue before the Court. And so what we're going to do is present only issue to the Court, which is that the will is a pour-over will to the trust and requires that the assets be distributed to the trust. We understand that the executors will claim

that it is -- that it is not time yet, it's premature to distribute the assets to the trust because there are certain creditors' claims, and they have other arguments. We will explain that their claims are late filed and they're not viable claims, therefore there's no reason why the assets should be retained in the trust. So we're just trying to simply streamline and simplify it so that we can present that issue to the Court.

THE COURT: So is it your intention to take off all of our pending issues?

MR. STREISAND: It is now intentioned simply to amend our petition to request only the relief based on the pour-over will and not secretly based on any other Hickstead basis, which would involve the various assignments that were signed by the decedent.

MR. FERRARIO: This is Mark Ferrario. And then while the -- until that issue is resolved the stock will be controlled by the co-executors of the estate; correct?

MR. STREISAND: I'm sorry. I could not make out what was just said.

MR. FERRARIO: Until the issues are resolved by the Court the stock's going to be in the estate, and to extent there needs to be any voting in the stock or controlling the stock it'll be handled by the co-executors [unintelligible]; correct?

MR. STREISAND: Yes, of course. Until there's an order from the Court --

MR. FERRARIO: Right.

MR. STREISAND: -- that the stock is an asset of the estate and the executors are the executors.

MR. FERRARIO: Okay.

MR. SUSMAN: Your Honor, it's Harry Susman. To answer your question, my understanding was that the intent is, yes, to take all of the stuff that was addressed in the pages of briefing that you got and kind of take that off your docket. That's no longer going to be the issue. There's this different issue that maybe I think was touched on in the papers that it's just the time has come to distribute the stock over to the trust, which is a new kind of legal issue for which there will be a new petition filed and new briefing. That's my understanding of what's going on and why we agreed to this.

MR. STREISAND: Not really a new issue. It was one of the issues. And when Your Honor suggested that we have a trial in September on all these issues everybody realized that would involve a great deal of discovery and that -- and so forth, and, you know, we all agreed that let's just streamline this, we'll go forward with one issue, and we think that'll make it much more efficient for the parties and the Court.

THE COURT: Okay. So I've got to ask the question,

because I still don't understand. And usually I'm not this dense. Are you asking me to vacate your evidentiary hearing and put you on solely for an argument on a motion calendar limited to 10 minutes per side?

MR. STREISAND: I think that is the intention. I'll let others speak to it, but I believe that is the intent.

THE COURT: Does anybody disagree?

MR. SUSMAN: Well, Your Honor, this is Harry Susman. And without seeing the amended petition, it's not clear to me whether we will or won't need an evidentiary hearing. I suppose if Mr. James Cotter's claims are purely legal and don't, for example, dispute the factual validity of a claim that's been made against the estate, then maybe it is something that will be done on 10 minutes', you know, argument. But I could see -- again, [unintelligible] petition yet where we might need actual evidence. I just -- I don't know at the moment how long we'll need. If there were a factual hearing, though, it's -- I guess I would say I can't imagine it requiring more than an hour or two. And I understand the issue that they intend to raise. It's going to be pretty narrow.

THE COURT: So you do not need the days that I have set aside of September 8th through September 11th is what you're telling me?

MR. STREISAND: Well, I can't imagine -- yeah, we

won't need that. I think might need at most one -- I think we asked for one of those days to do this argument. And we might need a little more than 10 minutes on that day, depending how things play out, if that's possible, to kind of let it play out there till you've seen some more of the briefing.

THE COURT: Well, if you're telling me you don't want those days, I'm going to erase your name from the pencilled-in portion I have of you, and I will give those days to somebody else, probably Mr. Ferrario's partner. But the problem I'm having is once you give up those days you're not getting them back. And that's why I'm trying to ask you these questions.

MR. STREISAND: Well, I think Mr. Susman raises a fair point, that they have not seen our petition. And it may be -- he may conclude or we may conclude that there are some evidentiary issues. But I would agree with Mr. Susman that at most we're talking about, you know, an hour or two. So I would suggest, if the Court would agree, that we try to reserve, you know, either a morning or an afternoon, and then you could vacate the rest of those days.

THE COURT: Well, I'm not going to do that. But I am going to vacate the evidentiary hearing I've set. After you've had a chance to look at the petition if somebody thinks you need a special setting, I guess you'll tell me.

Anything else, counsel?

MR. SUSMAN: No. Thank you, Your Honor.

THE COURT: All right. I'm going to set it for September 15th, and I'm going to set it at the 8:30 hearing, although you have 8:00 o'clock written in here. If someone decides you want to be set at 8:30 -- or at 8:00 o'clock instead of 8:30, please let me know.

MR. STREISAND: Fair enough, Your Honor.

THE COURT: Okay.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: 'Bye.

THE PROCEEDINGS CONCLUDED AT 4:08 P.M.

* * * * *

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

5/11/16

DATE

EXHIBIT K

REGISTER OF ACTIONS

CASE NO. P-14-082942-E

In the matter of: James Cotter, Deceased

§
§
§
§
§
§

Case Type:	**Probate - General Administration**
Date Filed:	**11/04/2014**
Location:	**Department 11**
Cross-Reference Case Number:	**P082942**

RELATED CASE INFORMATION

Related Cases
A-15-719860-B (Coordinated - Certain Matters)

PARTY INFORMATION

Decedent	**Cotter, James J**	DOD: 09/13/2014	**Lead Attorneys** **Mark G. Krum** *Retained* 702-949-8200(W)
Other	**Cotter, James J, Jr.**		**Leigh T. Goddard** *Retained*
Other	**Gould, William**		**Donald A. Lattin** *Retained* 775-827-2000(W)
Other	**Nationwide Theatres Corp.**		**Bradley Joe Richardson** *Retained* 702-692-8000(W)
Other	**Parties Receiving Notice**		
Other	**Reading International, Inc**		**Kara B. Hendricks** *Retained* 702-792-3773(W)
Other	**Storey, Timothy**		**Donald A. Lattin** *Retained* 775-827-2000(W)
Petitioner	**Cotter, Ann Margaret**		**Alan D. Freer** *Retained* 702-853-5483(W)
Petitioner	**Cotter, Ellen Marie**		**Alan D. Freer** *Retained* 702-853-5483(W)
Special Administrator	**Cotter, Ann Margaret**		**Alan D. Freer** *Retained* 702-853-5483(W)
Special Administrator	**Cotter, Ellen Marie**		**Alan D. Freer** *Retained* 702-853-5483(W)

EVENTS & ORDERS OF THE COURT

09/18/2015 **Hearing** (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)
Hearing: Amended Petition

Minutes
09/15/2015 8:30 AM

09/18/2015 8:30 AM

09/18/2015 8:30 AM
- Appearances continued: Attorney Adam Streisand, Pro Hac Vice, for Ellen Cotter and Ann Margaret Cotter; Attorney Alex Robertson for Intervenor Plaintiffs in related case A719860. Mr. Robertson and Mr. Krum participated by telephone. Arguments by Ms. Goddard, Mr. Susman, and Mr. Richardson. COURT ORDERED, at this time it appears premature to make a distribution until there is a determination of the estate tax liability; therefore, the amended petition is DENIED WITHOUT PREJUDICE.

Parties Present

Return to Register of Actions

EXHIBIT L

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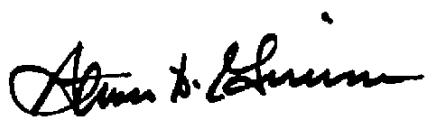

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.	.	
Plaintiff	.	CASE NO. A-719860 P-082942
vs.	.	DEPT. NO. XI
MARGARET COTTER, et al.	.	**Transcript of Proceedings**
Defendants	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON T2 PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THURSDAY, MAY 26, 2016

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

THE COURT: I think we all agree that it would be nice if the three Cotter siblings could get along. But that doesn't mean that the relief you're requesting here is the appropriate relief.

MR. ROBERTSON: Well, but it also doesn't mean that the inspector of elections can go beyond the face of the stock certificates or the stock register and -

THE COURT: Right. But I made a determination in preparation for last year's meeting. I don't know why anybody would ask me -- nobody's given me any reason to change that at this point.

MR. ROBERTSON: Well --

THE COURT: I know that you're still frustrated about the state of this litigation and your clients are very frustrated about it. I had hopes that the California settlement conference would do something to move this along. But I can't make other people do their job.

MR. ROBERTSON: I understand, Your Honor. And what's new for us is the fact that just weeks before we filed this motion we got an email through discovery from the inspector of elections to RDI that explained, hey, I had three proxies from the three Cotter siblings and so two out of three wins, majority wins. That's the new evidence. We didn't know how the votes were going to be counted at the election. We brought this motion five months after that election, on the

eve of next week's election, so that this doesn't happen again.

THE COURT: I understand. Anything else?

MR. ROBERTSON: No, Your Honor.

THE COURT: Anything else from anybody?

Mr. Krum, anything else you want to add?

MR. KRUM: No, Your Honor. Thank you.

THE COURT: Okay. So my position has not changed. So we'll proceed with the meeting just like we did last year.

MR. ROBERTSON: Thank you, Your Honor.

THE COURT: The inspector has the discretion to make a determination as to whether the shares are properly voted, but I've given my direction. And my direction has not changed.

MR. ROBERTSON: Thank you, Your Honor.

MR. FERRARIO: Your Honor, can we address another matter?

THE COURT: How about I address mine first.

MR. FERRARIO: Okay.

THE COURT: You've got several motions on the chambers calendar which are not typically the type of motions that I would have on the chambers calendar. They are Cotter's motion to compel plaintiff James Cotter to produce an adequate privilege log, Reading's joinder to the motion to disqualify the intervening plaintiffs, and the Cotter parties' motion to

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

6/2/16

DATE

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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

Plaintiffs,

vs.

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

CASE NO. A-15-719860-B
DEPT. NO. XI

Coordinated with:

CASE NO. P-14-082942-E
DEPT. NO. XI

CASE NO. A-16-735305-B
DEPT. NO. XI

Jointly administered

PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO DEFENDANT GOULD'S MOTION FOR SUMMARY JUDGMENT

[Business Court Requested: [EDCR 1.61]

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

TOMPKINS, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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TABLE OF CONTENTS

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

TABLE OF AUTHORITIES

Page

Cases

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Statutes

Rules

Other Authorities

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff James J. Cotter, Jr., ("JJC" or "Plaintiff"), by and through his attorney Mark G. Krum of Lewis Roca Rothgerber Christie LLP, files this Opposition to Defendant Gould Motion for Summary Judgment (the "Motion"), as follows.

I. INTRODUCTION

The motion for summary judgment (the "Motion") brought by defendant William Gould "(Gould") should be denied, for a number of independent reasons.

First, the Motion fundamentally misapprehends, or purposefully mischaracterizes, the nature of the allegations made in this action, which assert an ongoing course of self-dealing undertaken for entrenchment purposes, not a series of unrelated fiduciary breaches. That matters, both as a matter of fact, in terms of what evidence is to be considered in assessing the actual claims made, as a matter of law.

Second, the Motion is predicated on an incomplete and inaccurate depiction of the actual facts. As the evidence cited herein shows, there are at a minimum significant disputed material facts concerning both (i) affirmative actions by Gould as a RDI director and, separately, (ii) affirmative choices by Gould to fail to act in the face of a known duty to act, thereby demonstrating a conscious disregard for his duties. Moreover, the Motion entirely ignores certain matters, such as Gould's response to the Offer, for example, and in other instances (Gould causing or allowing RDI to issue inaccurate and/or materially misleading SEC filings and RDI press releases), invokes reliance on the advice of counsel he has not produced.

Third, the Motion scrupulously avoids any discussion of the applicable legal standards given the actual facts, which goes to the threshold issue (beyond the Rule 56 summary judgment standard) of which party bears what burden. Separately, where, as here, the director defendant is sued for breaches of the duty of loyalty and the duty of disclosure, as distinct from only for breach of the duty of care, the entire legal rubric changes. Independent of that, the Motion also fails to address the meaning of applicable operative language, "intentional misconduct," from the exculpatory statute it erroneously attempts to invoke.

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Simply put, the Motion is a feel-good exercise that ignores disputed material facts that required that it be denied and is based upon erroneous legal analyses which, independently, require denial of the Motion.

II. STATEMENT OF FACTS

A. Gould Admittedly Fails to Fulfill His Fiduciary Responsibilities

The record regarding the circumstances of the termination of Plaintiff as President and CEO of RDI is reflected in Plaintiff's motion for summary judgment and the MSJ No. 1 of the Interested Director Defendants. The record reflects that a majority of the non-Cotter directors determined to pre-empt the ombudsman process and terminate Plaintiff as President and CEO if he did not acquiesce to his sisters' demands to resolve their trust and estate disputes on terms satisfactory to the two of them.

Remarkably, Gould had advance notice of this scheme to seize control RDI, but took no action to prevent it until it was a *fait accompli*. (Appendix Ex. [1] (Guy Adams Depo 4/28/16 83:12-90:10).) Instead, Gould sent untimely e-mails that served only to acknowledge that he and the other director defendants had breached their fiduciary duties by, among other things, failing to have a genuine process leading to the determination to terminate the President and CEO of a RDI, a public company. (Appendix Ex. [2] (Edward Kane Depo Ex. 115).)

At the supposed board meeting of May 21, 2015, Plaintiff raised the issue of Adams' financial dependence on companies controlled by EC and MC. (Appendix Ex. [3] (William Gould Depo. 6/8/16 30:14-32:8).) Gould was present for this and full well knew, as evidenced by his subsequent observation that Adams was conflicted from serving on the Board of Directors compensation committee and deciding compensation of any of the Cotter family members, that this was a critical issue that needed to be resolved. (*Id.* at 32:14-34:24.) That was because Adams' vote to terminate Plaintiff broke a two to tie has among the non-Cotter directors.. Nevertheless, Gould did not insist that Adams disclose this information, instead acquiescing to a course of fiduciary breaches that would not have been occurred that he done then what he did later, which was to observe that Adams was conflicted.

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Having just witnessed and effectively acquiesced to the seizure of control of RDI by Plaintiff's sisters and those beholden to them, Gould promptly exhausted his last ounce of fiduciary conscience. First, he failed to object to the appointment of an executive committee that he knew or should have known, based on the events of the previous Fall, including an October 22, 2014 e-mail from EC proposing that she and MC report to an executive committee rather than their brother as CEO, was a means by which EC and MC would circumvent and undermine the function of RDI's Board of Directors. Next, when EC asserted that Plaintiff was required to resign from the RDI Board of Directors based on a provision in his executive employment agreement, into which he has entered years after becoming a director, Gould mustered his last ounce of fiduciary responsibility and stated that that was not what Plaintiff's executive employment agreement provided.

When EC wrote Plaintiff on June 15, 2015 and told Plaintiff that he must resign from the RDI Board of Directors or he would be in breach of his executive employment agreement, Gould took no action. (Appendix Ex. [3] (William Gould Depo 6/8/16 244:16 – 246:6).) When RDI filed the Form 8-K on or about June 18, 2015, which Form 8-K erroneously asserted that Plaintiff was required to resign as a director upon termination of his employment has an executive at RDI, Gould took no action. This was the beginning of Gould's sad role as a collaborator.

Gould's role as a collaborator, who affirmatively chose not to do what he thought and sometimes acknowledged should be done, began soon thereafter. At a board meeting at which the board was asked to approve minutes from the (supposed) special board meetings of May 21 and 29, 2015 and June 12, 2015, at which Plaintiff objected and voted against approving the minutes because they contained significant factual inaccuracies, at which Tim Storey abstained, reflecting that he that too thought the minutes inaccurate (as he testified unequivocally in deposition in this case), Bill Gould voted to approve the minutes. When Plaintiff asked him afterwards why he had voted to approve inaccurate minutes, he said that, although he could not remember the meetings well enough to state that the minutes were accurate, he thought the ultimate descriptions of actions taken, meaning the termination of Plaintiff, the appointment of EC as interim CEO and the

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Las Vegas, NV 89169-5996

repopulation and activation of the executive committee, were accurate, and that he did not want him to fight about them.

B. Gould Watches as Storey is Involuntarily "Retired" and Acquiesces to Stacking the RDI Board With Unqualified Friends of EC and MC, after What He Acknowledged Was an Inadequate "Process"

In order to further secure their control of RDI, in addition to using the executive committee --to which Gould never objected-- to circumvent the full RDI Board of Directors, EC and MC used a supposed special nominating committee of Adams and McEachern to select nominees to stand for election at the 2015 annual shareholders meeting. (Appendix Ex. [4] (Guy Adams Depo 4/29/16 42:8-17).) EC and MC advised Adams and McEachern that they would not vote to reelect Storey, and Adams and McEachern communicated that to Storey and secured his "retirement." (*Id.* at 33:13 – 34:2.) The supposed special nominating committee selected Judy Codding, a 30 year family friend of Mary Cotter, Ellen's and Margaret's mother with whom Ellen lives, and Michael Wrotniak, a long-time personal friend of Margaret, for whom Wrotniak's wife is one of her best friends. (*Id.* at 283:20-285:9).

Gould was advised of Codding's nomination only days before it happened . (Appendix Ex. [3] (William Gould Depo 6/8/16 170:6-171:22).) Gould objected to having inadequate time to perform his duties as a director but nevertheless agreed to add Codding to the RDI Board. (*Id.* at 174:16-175:3.) Promptly after the Company disclose the addition of cutting to the RDF board, the company learned that she was embroiled in a highly publicized affair involving a criminal investigation and substantial bad press. (*Id.* at 176:23-178:24.)

Although Gould touts the supposed process in his Motion, his approval as a director of the hiring of MC as the (highly paid) senior executive at RDI responsible for development of the Company's valuable New York real estate—at a compensation level that his Motion shows was pegged to the position, not to MC, who had no prior real estate development experience and was completely unqualified for the position she was given—was an affirmative choice by Gould to waste Company monies (paid to MC) and risk the Company's valuable New York real estate, to acquiesce to the wishes of EC and MC.

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C. Gould Acts as a Collaborator in Ongoing Entrenchment Conduct—the CEO Search Committee

When Gould was included on the CEO search committee with EC, MC and McEachern, Gould had the opportunity to demand fulfillment of fiduciary responsibilities. He failed to do so, instead voluntarily effectuating the plan of EC and MC to secure control of RDI. The supposed CEO search committee is the subject and MSJ No. 5. Plaintiff respectfully refers the Court to his opposition to MSJ No. 5 regarding the CEO search committee, and incorporates it herein by reference.

What happened is that the CEO search committee failed to deliver on the promise of a completed search for a CEO, chose not to provide the full Board of Directors the final three candidates for interview and affirmatively pre-empted the Korn Ferry proprietary assessment process. In short, the CEO Search Committee aborted a search process and effectively fired the search firm touted to RDI shareholders, all to make EC, an ostensibly controlling shareholder, the CEO.

On or about August 4, 2015, the Board of Directors belatedly was provided draft minutes from the supposed board meetings of May 21, 2015, May 29, 2015 and June 12, 2015. The draft board minutes were dishonest fiction, prepared in an effort fabricate a record of deliberation where none in reality existed, to defend this lawsuit's claim of breach of fiduciary duty arising from the termination of Plaintiff as President and CEO of RDI. Plaintiff objected to the minutes and said as much. (Appendix Ex. [5] (James Cotter Depo 7/6/16 662:23-664:21).) Director Storey abstained from the vote to approve the minutes. (Appendix Ex. [6] (Timothy Storey Depo 2/12/16 164:20-166:5).) At his deposition, however, he testified that he viewed the minutes as materially inaccurate, stating that it would have taken him hours to correct them. (*Id.* at 165:13-166:3.) The critical point is that Gould, as a lawyer and a director decision-maker, full well understood that fictional minutes, depicting a course of deliberation that did not occur because the decisions have been made prior to the first supposed board meeting, were false and purposefully so, but he nevertheless voted to approve them.

D. Gould Does Not Dispute that He Stood by Idly as RDI Filed Inaccurate SEC Filings and Mislead Its Shareholders

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Las Vegas, NV 89169-5996

Gould admits that he knew that the statements made by EC at the June 12, 2015 board meeting to the effect that Plaintiff was required to resign as a director upon termination of his employment as executive officer were inaccurate. (Appendix Ex. [3] (William Gould Depo 6/8/16 244:16-245:14).) Gould said so at the time. (*Id.* at 244:16-245:14).) Nevertheless, after the Company on or about June 18, 2015 filed a Form 8-K with the SEC and issued a press release, both of which made the same statement that Gould new to be inaccurate, namely, that Plaintiff's executive employment agreement required him to resign as director upon termination of his executive employment, Gould took no action. He did not raise the issue with EC. He did not raise the issue with the Board. He simply acquiesced to the Company making a false SEC filing and issuing a false press release.

This purposeful and affirmative abdication of directorial responsibilities ia a practice Gould followed previously and since. Gould caused or allowed RDI to disseminate materially misleading if not inaccurate information to its public shareholders and/or affirmatively chose to allow RDI SEC filings and press release that contained materially misleading if not inaccurate information to remain uncorrected. Gould did so with respect to the following press release(s) and/or SEC filings, each of which was misleading if not inaccurate by omission, commission or both:

a. RDI on June 15, 2015 issued a press release stating that its board of directors "has appointed [EC] as interim President and [CEO], succeeding [JJC] . . . ." This press release was misleading because, among other things, it failed to address the circumstances of the purported termination of JJC as President and CEO, much less disclose that he purportedly had been terminated, much less that the purported termination was without cause, or even that JJC had filed this action;

b. On or about June 18, 2015, RDI filed with the SEC a Form 8-K which was materially misleading if not inaccurate in several respects, including that it stated

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Las Vegas, NV 89169-5996

that JJC was "required to tender his resignation as a director of [RDI] immediately upon termination of his employment [, that he had not done so and that RDI] considers such refusal as a material breach of [the] employment agreement [] and has given [JJC] thirty (30) days in which to resign . . ." The employment agreement in question, which is an exhibit to the Form 10-Q for period ending June 30, 2013 filed by RDI with the SEC, on its face not only does not require JJC to resign as a director in the event that he is terminated as an executive officer, but on its face contemplates that he may continue to serve as a director, which position he in fact held for many years prior to becoming an officer and entering into the subject employment agreement. Separately, the employment agreement contains a thirty (30) day cure provision with respect to breaches of the agreement which may constitute a basis for termination of JJC for cause, which defendants do not claim occurred here. Therefore, the characterization in the Form 8-K of what the Company has done for thirty (30) days is misleading both as to what the employment agreement provides and what the Company has done, which in fact is to assert that JJC is breach of an agreement which the Company purports to have terminated previously. Additionally, the Form 8-K is materially misleading in describing this action;

c. RDI has failed to file a Form 8-K with respect to the EC Committee, which is a development that materially deviates from the prior practices of RDI and RDI's SEC disclosures with respect to those practices.

d. On or about October 13, 2015, RDI filed with the SEC a Form 8-K which was materially misleading if not inaccurate. In particular, the description in that Form 8-K of defendant Storey "retir[ing]" from the RDI Board of Directors is misleading if

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not inaccurate. As alleged herein, Mr. Storey had been told that he would not be nominated to stand for reelection and he effectively was forced to resign as a director. The Form 8-K also is misleading if not inaccurate insofar as its descriptions of new board members Judy Codding and Michael Wrotniak suggest that their respective experiences described in the Form 8-K, such as Codding having experience in the field of education and/or Wrotniak having "considerable experience in international business, including foreign exchange risk mitigation," were the reasons those two persons were made Directors of RDI. The Form 8-K also is misleading if not inaccurate with respect to those two persons being made directors of RDI because it fails to disclose their respective personal relationships with Cotter family members. As alleged herein, Codding is a personal friend of Mary Cotter and Wrotniak and/or his wife are personal friends of MC.

e. On or about January 11, 2016, the Company issued a Form 8-K attaching a press release of that date. The press release included a statement by defendant Gould that said: "After conducting a thorough search process, it is clear that Ellen is best suited to lead Reading moving forward." That statement is materially misleading if not inaccurate, including because it implies erroneously that the selection of EC was the result of a (supposedly) "thorough search process."

f. On or about March 15, 2016, RDI filed with the SEC a Form 8-K which stated, among other things, that the RDI Board of Directors Compensation Committee and its Audit and Conflicts Committee each had approved payment of so-called "additional consulting fee compensation" of $200,000 to MC "for services rendered by her to the Company in recent years outside the scope" of a Theater Management Agreement dated January 1, 2002, between the Company's subsidiary, Liberty

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Theaters, Inc. and OBI, LLC, an entity wholly-owned by MC. The Form 8-K also stated that the RDI Board of Directors approved "additional special compensation" of $50,000 to be paid to Adams "for extraordinary services provided the Company and devotion of time in providing such services." The Form 8-K was materially misleading if not inaccurate because, among other things, those payments were awarded for reasons other and/or additional to those set in the Form 8-K.

g. On or about July 18, 2016, after failing to file a Form 8-K regarding the offer, the Company issued a press release regarding the offer. It stated that the "Board of Directors, after receiving input from management and its outside advisors, carefully evaluated the [offer]. Following this review, the Board of Directors determined that our stockholders would be better served by pursuing our independent, stand-alone strategic business plan…" The press release was materially misleading if not false because, among other things, no "independent, standalone strategic business plan" has been delivered by management to the Individual Director Defendants, either in connection with the offer or otherwise.

III. ARGUMENT

A. Summary Judgment Standard

Summary judgment is only appropriate "where 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law.'" *Fergason v. LVMPD,* 364 P.3d 592, 595 (2015) (*citing* NRCP 56(c) (emphasis added)). "'[T]he moving party will bear the burden of persuasion, [and] that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.'" *Id.* (*citing Cuzze v. Univ. & Cmty. Coll. Sys.,* 172 P.3d 131, 134 (2007)).

"'Put more simply: 'The burden of proving the nonexistence of a genuine issue of material fact is on the moving party.'" *Id.* (*citing Maine v. Stewart,* 857 P.2d 755, 758 (1993)). "When the

party moving for summary judgment fails to bear his burden of production, 'the opposing party has no duty to respond on the merits and summary judgment may not be entered against him.'" *Id.* (*citing Maine,* 857 P.2d at 759 (reversing summary judgment where burden of production never shifted) (*citing Clauson v. Lloyd,* 103 Nev. 432, 435, 743 P.2d 631, 633 (1987) (reversing summary judgment where movant did not meet the test in NRCP 56)); *see* NRCP 56(e) (summary judgment burden shifts to the non-movant only when the motion is "made and supported as provided in this rule")).

"[I]n deciding whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the party against whom summary judgment is sought." *Ferreira v. P.C.H. Inc.,* 774 P.2d 1041, 1042 (1989).

B. The Motion Mischaracterizes the Allegations and Claims Made and Ignores Law Regarding Them, to Create "Straw Man" Claims Against Which to Move

Gould's motion for summary judgment mischaracterizes the nature of the claims made in this case. Contrary to what the motions assume, Plaintiff has not made a smorgasbord of unrelated claims. Although Plaintiff's initial complaint, filed the day he was terminated, addressed the only actions about which he had prior knowledge, namely, the actions of the Interested Director Defendants to threaten him with termination if he did not resolve trust and estate disputes with EC and MC on terms satisfactory to them and, when he failed to do so, execution on that threat, Plaintiff's FAC and now pending SAC assert an ongoing course of conduct that amounts to entrenchment. The SAC pleads various actions and omissions, including but not limited to the matters raised in Gould's Motion, including Gould aborting the CEO search to make EC the new CEO, and Gould and other director defendants giving MC a highly compensated executive position for which she has no prior professional experience or educational qualifications, all as part of the ongoing course of entrenchment and self-dealing.[1]

[1] For example, although Gould ignores it altogether, the Offer has been parsed out to be the sole subject of MSJ No.3, as if the response of the individual director defendants must be assessed solely in view of the record they attempted to create at the single board meeting at which they supposedly deliberated about the Offer, and without regard to their historical conduct and relationships. (That said, their carefully prepared minutes of that one meeting clearly evidence the wishes of EC and MC to retain control of RDI and the fact that the other director defendants acceded to the wishes of MC and EC in failing to take no action in response to the Offer.)

Lewis Roca ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

Simply put, in his MSJ, Gould has assumed out of existence the plain allegations of Plaintiff's SAC and the very nature of the complained of course of conduct. He has done so in an effort to create discrete stand-alone "straw man" claims to challenge in his motion for summary judgment. In doing so, he ignores well-developed law that the various complained of acts and omissions upon which Plaintiff's claims are based must be viewed and assessed collectively, not separately and in isolation, as the Interested Director Defendants' multiple MSJs ask the Court to do. *See, e.g., In re Ebix, Inc. Stockholder Litig.*, 2016 WL 208402 (Del. Jan. 15, 2016) (rejecting director defendants' contention that bylaw amendments should be viewed individually rather than collectively); *Carmody v. Toll Brothers., Inc.*, 723 A.2d 1180, 1189 (Del. Ch. 1998) (finding that particularized allegations that directors acted for entrenchment purposes sufficient to excuse demand); *Chrysogelos v. London*, 1992 WL 58516, at *8 (Del. Ch. 1992) ("None of these circumstances, if considered individually and in isolation from the rest, would be sufficient to create a reasonable doubt as to the propriety of the director's motives. However, when viewed as a whole, they do create such a reasonable doubt . . ."); *Cal. Pub. Emps.' Ret. Sys. v. Coulter*, 2002 WL 31888343, at *__ (Del. Ch. 2002) (concluding that allegations that individually would be insufficient to show a lack of disinterestedness or independence were, taken together, sufficient to do so).

C. Directors' Fiduciary Duties

1. Director Defendants' Fiduciary Duties

The power of directors to act on behalf of a corporation is governed by their fiduciary relationship to the corporation and to its shareholders. *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1178 (Nev. 2006) (citations omitted). Generally, those duties are described as the duty of care and is the duty of loyalty. (*Id.*) The duty of good faith may be viewed as implicit in the duties of care and loyalty, or as part of a "triumvirate" of fiduciary duties.

a. The Duty of Care

The duty of care typically is described as requiring directors to act on an informed basis. *Schoen*, 137 P.3d at 1178. Whether directors acted on an informed basis "turns on whether the directors have informed themselves "prior to making a business decision, of all material

information reasonably available to them." *Smith v. Van Gorkom*, 488 A. 2d 858, 872 (Del. 1985) (*quoting Aronson v. Lewis*, 473 A. 2d 805, 812 (Del. 1984). Due care thus is a function of the decision-making process, not the decision. *See, e.g., Citron v. Fairchild Camera & Instrument Corp.*, 569 A. 2d 53, 66 (Del. 1989). This necessarily raises "[t]he question [of] whether the process employed [in making the challenged decision] was either rational or employed in a good faith effort to advance the corporate interests." *In re Greater Se. Cmty. Hosp. Corp. I*, 353 B.R. 324, 339 (Bankr. D.D.C. 2006).

b. The Duty of Loyalty

The director's duty of loyalty requires that directors "maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Schoen*, 137 P.3d at 1178 (citations omitted). The duty of loyalty was described in the seminal Delaware Supreme Court case of *Guth v. Loft, Inc.* as follows:

> "Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and [to] its shareholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate . . . director, peremptorily and inexorably, the most scrupulous observance of his duty [of loyalty], not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation [or its shareholders] . . . The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interests."

Guth v. Loft, Inc., 5 A.2d 503, 510 (Del. 1939).

The duty of loyalty is "unremitting." *See, e.g., Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998). The duty of good faith, discussed elsewhere herein, is one element of the duty of loyalty. *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006). The terms "loyalty" and "good faith," like the terms "independence" and "candor," are "words pregnant with obligation" and "[d]irectors should not take a seat at the board table prepared to offer only conditional loyalty, tolerable good faith, reasonable disinterest or formalistic candor." *In re Tyson Foods, Inc., Consol. S'holder Litig.*, 2007 WL 2351071, at *4 (Del. Ch. Aug. 15, 2007).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

c. The Duty of Good Faith

The element of good faith requires the director to act with a "loyal state of mind." *Hampshire Group, Ltd., v. Kuttner*, 2010 WL 2739995, at *12 (Del. Ch. July 12, 2010). The concept of good faith is particularly relevant in cases in which there is a "controlling shareholder with a supine or passive board." *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). In such cases, "[g]ood faith may serve to fill [the] gap [between a fiduciary duties of care and loyalty] and insure that the persons entrusted *by shareholders* to govern [the] corporation do so with an honesty of purpose and with an understanding of whose interests they are there to protect." *Id.*

d. The Duty of Disclosure

"Whenever directors communicate publicly or directly with shareholders about the corporation's affairs . . . directors have a fiduciary duty to shareholders to exercise due care, good faith and loyalty." *Malone v. Brincat*, 722 A.2d at 10. "Shareholders are entitled to rely upon the truthfulness of all information disseminated to them by the directors [of the corporation]." *Id.* at 10-11. When directors communicate with stockholders, they must do so with "complete candor." *In re Tyson Foods*, 2007 WL 2351071, at *3. *Backman v. Polaroid Corp.*, 910 F.2d 10, 16 (1st Cir. 1990) identifies two complimentary notions, one that the disclosures must not be "so incomplete as to mislead[,]" and the other that there is a duty to update in the event a prior disclosure becomes materially misleading in light of subsequent events. *Id.* at 16 and 17. Here, RDI to make disclosures that were misleading because they were incomplete and, with respect to at least the dynamic between Plaintiff and his sisters, and the EC Committee, misleading in light of subsequent events.

Any suggestion that directors of a public company have no responsibility for the SEC filings made by the company of which they are directors not only contradicts the allegations of the FAC, it is erroneous. One need only look at the Delaware Supreme Court opinion in *Malone v. Brincat*, 722 A.2d 5, 12 (Del. 1998) to see that it is viewed as an unremarkable proposition that directors are responsible for, and may have liability on account of, the disclosures of the company of which they are directors:

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

> "shareholders are entitled to rely upon the truthfulness of all information disseminated to them by the directors they elect to manage the corporate enterprise. Delaware directors disseminate information in at least three contexts: public statements made to the market, including shareholders; statements informing shareholders about the affairs of the corporation without a request for shareholder action; and, statements to shareholders in conjunction with a request for shareholder action. Inaccurate information in these contacts may be the result of a violation of the fiduciary duties of care, loyalty or good faith..."

Malone, 722 A.2d at 11.

An affirmative failure to cause an inaccurate or materially misleading disclosure, or even an affirmative choice not to correct one, constitutes a breach of the duty of loyalty, duty of disclosure or both. *O'Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902, 914-15, 920, n.34 (Del. Ch. 2014) ("complaint alleges or pleads facts sufficient to support the inference that the disclosure violation was made in bad faith, knowingly or intentionally, the alleged violation implicates the duty of loyalty" and is relevant to the availability of the exculpatory provisions of section 102(b)(7)): *In re Wheelabrator Techs., Inc. S'holders. Litig.*, 1992 Del. Ch. LEXIS at *41 n.18, 1992 WL 212595, at *12 n.18 (Del. Ch. Sept. 1, 1992) (§102(b)(7) did not require dismissal where the plaintiffs pleaded that "the breach of the duty of disclosure wasn't intentional violation of the duty of loyalty"). The business judgment rule does not apply to duty of disclosure claims, because the issue in such instances is "whether shareholders have . . . been provided with appropriate information upon which an informed choice on a matter of fundamental corporate importance may be made." *In re Anderson, Clayton S'holders Litig.*, 519 A.2d 669, 675 (Del Ch. 1986).

e. Directors' Fiduciary Duties Are Owed to All Shareholders, Not Just the Controlling Shareholder(s)

Directors owe all stockholders, not just the stockholders who appointed them, "an uncompromising duty of loyalty." *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 36 (Del. Ch. 2013). Under some circumstances, it is a breach of loyalty for directors not to act to protect the minority stockholders from a controlling stockholder. *Louisiana Mun. Police Emp. Ret. Sys. v. Fertitta*, 2009 WL 2263406, at *8 (Del. Ch. July 28, 2009) (finding that the failure to act in the face of a controlling stockholder's threat to the corporation and its minority stockholders

supported a reasonable inference that the board of directors breached its duty of loyalty by deciding not to cross the controlling stockholder); *see also McMullin v. Beran*, 765 A.2d 910, 919 (Del. 2000) (finding that directors are required to make informed, good faith decisions about whether to the sale of a corporation to a third party that had been proposed and negotiated by a controlling stockholder would maximize the value for minority stockholders).

2. The Business Judgment Rule Is a Rebuttable Presumption, Rebutted Here

The business judgment rule is a rebuttable presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was taken in the best interests of the company." *See, e.g., In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006) (*quoting Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984).[2] In Nevada, the business judgment rule is codified in NRS 78.138.3, which provides that "[d]irectors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation."

The business judgment rule typically is articulated as consisting of four elements, namely, (i) a business decision, (ii) disinterestedness and independence, (iii) due care and (iv) good faith. *See, e.g., Roselink Investors, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 2016 (S.D.N.Y. 2004) (internal citations omitted). The presumptions of the business judgment rule are rebutted where it is shown that any of the four elements above was not present. *Id.* at 216-17. Here, at least each of the last three elements is absent.

As to MC and EC, there is no dispute that, as to at least any and all matters of disagreement between them and JJC, including but not limited to ultimate control of RDI by controlling the voting trust as trustee(s), immediate control of RDI, whether by removing JJC as CEO, constraining his authority as CEO and/or having a newly activated and repopulated executive committee, and matters involving the employment status, titles and compensation of MC and EC, among other things, MC and EC lack disinterestedness and lack independence. The

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[2] Due to the development of Delaware case law with respect to issues of corporate law, Nevada courts find Delaware case law persuasive authority. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 26, 62 P.3d 720, 737 (2003) (noting that "the case law . . . [of] Delaware is persuasive authority" when interpreting Nevada's corporate law).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Interested Director Defendants admit that in their summary judgment motions, including as follows:

> The Individual Defendants, for the purposes of this motion [regarding "director independence"], do not contest the independence of Ellen and Margaret Cotter as RDI directors with respect to the transactions and, or corporate conduct at issue---which are addressed in the Individual Defendants' other, contemporaneously-filed summary judgment motions.

("Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: the Issue of Director Independence" at p. 14, fn. 2.)

a. Individual Defendants' Lack of Disinterestedness

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

As the Interested Director Defendants acknowledge, EC and MC lack disinterestedness with respect to the challenged actions, starting with the threat to terminate Plaintiff as President and CEO of RDI unless he resolved the California Trust Action and other matters on terms satisfactory to EC and MC and continuing thereafter to date, including each of the matters raised in Gould's Motion.

The same is true, for largely the same reasons, for defendant Kane, who is called "Uncle Ed" by EC and MC and who, by his conduct throughout demonstrated that he acted as "Uncle Ed" throughout to effectuate what he thought were JJC, Sr.'s wishes, and not as a disinterested RDI director exercising disinterested business judgment.

Likewise, Adams repeatedly demonstrated his lack of disinterestedness by, among other things, vigorously pursuing the EC and MC agenda, starting with the termination of Plaintiff as President and CEO and the activation and repopulation of the executive committee with him as a

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

member, and continuing to date with his reliable support for EC and MC to secure senior executive positions at, and rich compensation from, RDI.

b. Individual Defendants' Lack of Independence

Independence, as used in the context of an element of the business judgment rule, requires that a director is able to engage, and in fact engages, in decision-making "based on the corporate merits of the subject before the board rather than extraneous considerations or influences." *Gilbert v. El Paso, Co.*, 575 A.2d 1131, 1147 (Del. 1990); *Rales*, 634 A.2d at 936. "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Assessing directorial independence therefore "focus[es] on impartiality and objectiveness." *In re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 920, 938 (Del. Ch. 2003) (*quoting Parfi Holding AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1232 (Del. Ch. 2001), *rev'd in part on other grounds,* 817 A.2d 149 (Del. 2002), *cert. denied,* 538 U.S. 1032 (2003). *See also Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) ("[w]e have generally defined a director as being independent only when the director's decision is based entirely on the corporate merits of the transaction and is not influenced by personal or extraneous considerations"), *modified in part on other grounds,* 636 A.2d 956 (Del. 1994).

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

Independence is lacking in situations in which a corporate fiduciary "derives a benefit *from the transaction* that is not generally shared with the other shareholders. In situations in which the benefit is derived by another (e.g., by EC and MC from Plaintiff acceding to their demands to resolve trust and estate disputes on terms acceptable to the two of them), the issue is whether the [corporate fiduciary]'s decision (e.g., Adams and/or Kane) resulted from that director being *controlled* by another." *Orman v. Cullman*, 794 A.2d 5, 25 n.50 (Del. Ch. 2002) (explaining the distinction between interest and independence). Control may exist where a corporate fiduciary has close personal or financial ties to or is beholden to another. (*Id.*)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

A close personal friendship in which the director and the person with whom he or she has the questioned relationship are "as thick as blood relations" would likely be sufficient to demonstrate that a director is not independent. *In re MFW S'holders Litig.*, 67 A.3d 496, 509 n.37 (Del. Ch. 2013).

Similarly, a director who is financially beholden to another person, such as a controlling stockholder, is not independent of that person. *In re Emerging Commc'n, Inc. S'holders Litig.*, 2004 WL 1305745, at *33 (Del. Ch. May 3, 2004). The Court of Chancery has found that directors who derive a substantial portion of their income from a controlling stockholder are not independent of that stockholder *Id.* at *34.

"In such circumstances, a director cannot be expected to exercise his or her independent business judgment without being influenced by the . . . personal consequences resulting from the decision." *Beam v. Stewart*, 845 A.2d 1040, 1049 (Del. 2004) (*quoting Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993)).

Here, the evidence demonstrates that (1) with respect to all matters raised in Gould's Motion, EC and MC were not independent but, on the contrary, consistently had a personal stake in the disposition of those matters.

Kane's personal relationship with JJC, Sr., Kane's view of JCC, Sr.'s intentions, Kane's unwavering support of MC and EC, together with their personal stakes in the matters raised in Gould's Motion, evidence Kane's lack of independence.

As shown by his own sworn testimony in his Los Angeles Superior Court divorce proceeding and in this case, Adams as a general matter is not independent of EC and MC, because he is financially dependent upon income he receives from companies that EC and MC control.

For such reasons, among others, each of Kane and Adams (and MC and EC) lacked independence and the presumptions of the business judgment rule have been rebuffed.

c. Individual Defendants' Lack of Good Faith

The element of good faith requires the director to act with a "loyal state of mind." *Hampshire Group, Ltd., v. Kuttner*, 2010 WL 2739995, at *12 (Del. Ch. July 12, 2010). The concept of good faith is particularly relevant in cases in which there is a "controlling shareholder

with a supine or passive board." *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). In such cases, "[g]ood faith may serve to fill [the] gap [between a fiduciary duties of care and loyalty] and insure that the persons entrusted *by shareholders* to govern [the] corporations do so with an honesty of purpose and with an understanding of whose interests they are there to protect." *Id.*

d. The Individual Defendants Failed to Exercise Due Care

Even had the individual defendants acted in good faith and in a manner that each reasonably could have believed to be in the best interests of RDI in taking the actions complained of herein, which was not the case, they failed to engage in a process to decide and act on an informed basis in view of the nature and importance of the decisions made, for the reasons described herein, including but not limited to aborting the CEO search process.

3. Gould Cannot Satisfy the Entire Fairness Standard

a. Entire Fairness Is The Standard

In *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), the Nevada Supreme Court adopted the entire fairness doctrine, citing *Oberly v. Kirby*, 592 A.2d 445, 469 (Del. 1991). *Id.* at 640 n.61, 137 P.3d at 1185 n.61 Under that doctrine, when a transaction is effected or approved by directors with an interest therein, the director defendants "bear the burden of proving the entire fairness of the transaction in all its aspects, including both the fairness of the price and the fairness of the directors' dealings." *Oberly*, 592 A.2d at 469; *accord Reis v. Hazelett Strip-Casting Corp.*, 28 A.3d 442, 459 (Del. Ch. 2011) ("Once entire fairness applies, the defendants must establish to the court's satisfaction that the transaction was the product of both fair dealing and fair price.") (quotation omitted).

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

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

which defendants cite for the platitude that the business judgment rule applies to claims of breach of fiduciary duty against a director, is not to the contrary and does not address circumstance of where, as here, the plaintiff has rebutted the presumptions of the business judgment rule.

Gould's Motion simply ignores the factual and legal issues of disinterestedness, independence and entire fairness.

b. The Test Is a Fair Process and a Fair Result

Under the entire fairness test, "[d]irector defendants therefore are required to establish to the *court's* satisfaction that the transaction was the product of both fair dealing and fair price." *Cinerama, Inc.* v. *Technicolor,* 663 A.2d 1156, 1163 (Del. 1995) (*quoting Cede & Co. v. Technicolor*, 634 A.2d 345, 361 (Del. 1993)). Thus, a test of entire fairness is a two-part inquiry into the fair-dealing, meaning the process leading to the challenged action and, separately, the end result. *In re Tele-Commc'ns Inc. S'holders Litig.,* 2005 WL 3642727, at *9 (Del. Ch. Sept. 29, 2005).

The Motion makes no mention of this standard. In addition the Motion does not discuss the "omnipresent specter" that the Defendants were acting primarily in their own interests or for entrenchment purposes. *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985); *see also eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 36 (Del. Ch. 2010).

The entire fairness requirement entails "exacting scrutiny" to determine whether the challenged actions were entirely fair. *Paramount Commc'ns, Inc. v. QVC Network Inc.,* 637 A.2d 34, 42 n.9 (Del. 1994), *quoted in Krasner v. Moffett,* 826 A.2d 277, 285, n.26, 287 n.40 (Del. 2003). Under the entire fairness standard, the challenged action itself must be objectively fair, independent of the beliefs of the director defendants. *Geoff v. IIC Indus., Inc.,* 902 A.2d 1130, 1145 (Del. Ch. 2006), subsequent proceedings, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006); *see also Venhill Ltd. P'ship v. Hilman*, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008).

"The fairness test therefore is "an inquiry designed to access whether a self-dealing transaction should be respected or set aside in equity." *Venhill*, 2008 WL 2270488 at *22. Here, Defendants cannot carry their burden of proving the entire fairness of their actions, as part of an ongoing course of entrenchment oriented conduct, aborting the CEO search they touted to RDI

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

shareholders and the public to select EC for regions that had nothing to do with the skills and experience they had previously determined was necessary to even be a candidate for RDI's CEO position.

c. The Threat to Terminate Plaintiff, the Termination of Plaintiff and the Implementation of an Executive Committee

For the reasons explained in Plaintiff's motion for summary judgment and in his opposition to the interested director defendants' MSJ No. 1, these actions give rise to breaches of the duties of care and loyalty. Gould, who had advance warning from Adams of what was afoot, indisputably failed to take action to preserve the ombudsman process, which indisputably was aborted, as part of a scheme to threaten Plaintiff with termination, and if the threats failed, to terminate him and implement a long sought after executive committee, the purpose of which Gould full well knew was to enable EC and MC to avoid reporting to the RDI Board of Directors. Gould effectively argues that, although he breached his duty of care by failing to preserve the ombudsman process and by failing to cause a proper process to occur before Plaintiff was terminated, breaches of the duty of care does not give rise to liability. That analysis is erroneous because it incorrectly assumes that Gould has been sued solely for breach of the duty of care, which is not the case (See infra §III. C.5). Indeed, by his actions and purposeful inaction described herein, Gould has engaged in what constitutes intentional misconduct, such that he cannot avail himself of Nevada's exculpatory statute, which applies only to duty of care claims alone. (Id.)

d. Gould Made an Affirmative Choice to Abdicate His Fiduciary Responsibilities in Acquiescing to Stacking RDI's Board of Directors With Unqualified Loyalists

By his motion for summary judgment, Gould effectively admits that he did not have the opportunity to fulfill and did not fulfill his duty of care with respect to the addition of at least Codding, if not both Codding and Wrotniak, to the RDI Board of Directors. He effectively attempts to depict his conduct in this regard as mere negligence, for which he contends that he can have no liability because it does not constitute intentional misconduct. As observed herein, because Gould also has been sued for breach of the duty of loyalty, including the duty of disclosure, he cannot avail himself of Nevada's exculpatory statute, NRS 78.138(7). Even if he could, however, he made an affirmative choice not to fulfill his fiduciary duty of care, which

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

amounts to intentional misconduct as a director. (*Id.*) Finally, the suggestion in Gould's Motion (Motion at 17:14-17) that a controlling shareholder's rights under NASDAQ Listing Rules somehow limits or eliminates Gould's fiduciary duties as a director is both nonsensical and, as shown herein, wrong as a matter of law.

e. Gould's Conduct in Connection With the CEO Search Constitutes Breaches of the Duties of Care and Loyalty

Working with Korn Ferry, the CEO search committee created a position specification document that was agreed to be used to identify candidates, vet candidates, select those to be interviewed and, ultimately, select a new CEO. (Appendix Ex. [7] (William Gould Depo Ex. 115).) That was done right up to the point when EC declared her candidacy and was interviewed and the decision was made to simply disregard the approximate two dozen qualifications that have been agreed as those that would be used to select the new CEO.

First, as to the process, the evidence shows that the CEO search process was aborted and that Korn Ferry effectively was terminated promptly after EC announced her candidacy and was "interviewed." The Korn Ferry proprietary assessment of the full board interviews of three finalists likewise disappeared into the ether.

The fact that the CEO search committee approved a position specification document with approximately 2 dozen criteria, and simply ignored it after EC belatedly declared her candidacy, alone evidences breaches of the duties of care and loyalty. What possible explanation is there for utterly abandoning the criteria they had agreed should be used to identify candidates and select the new CEO other than that the CEO they selected was a controlling shareholder? In so acting, Gould demonstrated unremitting loyalty—to EC.

Equally damning is the fact that, position specification criteria notwithstanding, Gould and McEachern each solicited EC to become a candidate, according to EC, notwithstanding the fact that she failed to even approximate the criteria set out in the position specification. [EC Depo. 6/16/16 3:12 – 94:21]. Once EC declared her candidacy and met with the CEO search committee, the search promptly was aborted and Korn Ferry effectively was terminated. To insure that Korn Ferry's proprietary assessment did not show EC to be as unqualified as the position specification

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

did, the CEO search committee directed that no assessments be performed, even though the Company had paid for that previously. Finally, in an effort to fabricate evidence suggesting that Korn Ferry had vetted EC, Tompkins instructed Korn Ferry—after EC had been selected – to create an EC resume in the Korn Ferry format, which evidences both a plan and an effort to conceal it. . (Appendix Ex. [8] (Robert Mayes Depo 8/18/16 63:21-64:23).) (Appendix Ex. [9] (Mayes Depo Ex. 422).) Separately, with respect to disclosure, the directors told RDI shareholders that the search would be conducted with an outside search firm.).) (Appendix Ex. [10] (Ellis Depo Ex. 347 Form 8K dated 6/12/15).) But they aborted the search and terminated the Korn Ferry and the search process. Nevertheless, in announcing the selection of EC, they issued a press release that touted the supposedly thorough process, further misleading RDI shareholders about what transpired. (Appendix Ex. [11] (Gould Depo Ex. 390).)

The agreed search process was to have resulted in the three final candidates being presented to the full Board of Directors for interview. The CEO search committee did not do that and not one board member other than Plaintiff objected. (Appendix Ex. [12] (McEachern Depo Ex. 119).) The agreed process was that Korn Ferry would perform a proprietary assessment of the finalists. The CEO search committee affirmatively insured that that did not happen and not one board member other than Plaintiff objected. . (Appendix Ex. [12] (McEachern Depo Ex. 119).) Simply put, the full board agreed to a process, the search committee began it and then aborted it to select EC, which the full board (excluding Plaintiff), including two directors (Codding and Wrotniak) who had been on the board for less than three months, accepted as if the process had never been discussed, much less agreed. Had they attempted to make a record of making a decision solely to accede to the wishes of EC and MC, they would have done little different. Indeed, one of the reasons stated for selecting EC was that she and MC were controlling shareholders.

The facts described herein, including immediately above, show that the January 11, 2016 press release that said the selection of EC was the result of a "thorough search process" was materially misleading if not inaccurate. The search process may or may not have been thorough through the interviews that occurred on or about November 22, 2015, but it was aborted and

Lewis Roca
ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

ignored to select EC. The Company's disclosures before and after the search, that it employed an outside search firm, which was Korn Ferry, likewise were materially misleading because they create the misimpression that the search firm participated in the selection of the EC when, in fact, the search firm was terminated so EC could be selected without interference from it.

Simply put, the individual director defendants themselves made a thorough record of what they should have done and what they did, which did not approximate what they themselves agreed they should have done, but which, consistent with their prior and subsequent conduct, amounted to acceding to the wishes of EC and MC.

Likewise, as to the end result, the individual defendants cannot satisfy their burden of showing that the selection of EC, who woefully failed to even approximate satisfying the criteria the CEO search committee set, is entirely fair to RDI and its shareholders, particularly after she made MC the head of real estate development for New York.

f. Gould Knowingly Allowed RDI to Issue Inaccurate and Materially Misleading SEC Filings and Press Releases, and Knowingly Failed to Act to Correct Them, Thereby Breaching His the Duties of Disclosure and Loyalty

As described above, Gould repeatedly allowed RDI to make inaccurate and materially misleading SEC filings and public disclosures. For example, he did that on or about June 18, 2015 when he took no action whatsoever to stop or correct the Form 8-K and the June 15, 2015 press release issued by the Company, which announced the termination of Plaintiff and which erroneously (according to Gould himself at the time) asserted that Plaintiff was required to resign from the RDI Board of Directors due to his termination. Gould did so previously when he took no action whatsoever with respect to the Company's inaccurate and materially misleading SEC filings stating that the director Storey had "retired." Cotter siblings were working together cooperatively. He did so repeatedly when he failed to take any action whatsoever to have the Company correct its recurring inaccurate disclosures that omitted to disclose that Adams was financially dependent on and beholden to the Cotter sisters. He did so doubly when he allowed the Company to disclose that EC had been selected as the new CEO following hanging "thorough search." This is an ongoing course of conduct that Gould's Motion seeks to excuse by inviting reliance on Company counsel -- without producing the advice on which Gould claims to have

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

relied. Plaintiff either is entitled to Rule 56(f) discovery or Gould cannot invoke reliance on the advice of counsel.

g. Gould Breached His Fiduciary Duties in Failing to Take Any Action to Make a Good Faith, Informed Decision Regarding the Offer

As summarized in the accompanying declarations of Plaintiff, Gould and the other director defendants failed to take any actions whatsoever to place themselves in position to make an informed, good faith decision regarding how to respond to the Offer. Instead, they asked what the controlling shareholders wanted to do and agreed to do what the controlling shareholders wanted to do. Gould, as a lawyer supposedly well-versed in matters of corporate governance, full well knew that nothing, or next to nothing, did not satisfy his duty of care. He also full well knew that he owes fiduciary duties to all shareholders, not just a controlling shareholders. He nevertheless failed act in a manner that reflected that knowledge.

4. Use of an Executive Committee Here Is Additional Evidence of the Alleged Entrenchment Scheme, to Which Gould Acquiesced

The fact that delegation to an executive committee is not a violation of the Company's by-laws or Nevada law does not mean that, as it was done here, it does not constitute a breach of fiduciary duty with respect to which equitable relief is appropriately awarded. *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971) ("inequitable action does not become permissible simply because it is legally possible").

Moreover, and contrary to what the Motion assumes, the right of a board of directors to delegate is not unlimited, and delegation by a board of directors may give rise to a claim for breach of fiduciary duty. *Grimes v. Donald*, 1995 WL 54441, at *9 (Del. Ch. Jan. 11,1995), quoted in *Quickturn Design Sys., Inc., v. Shapiro*, 721 A.2d 1281, 1292 n.43 (Del. 1998) (a board "may not either formally or effectively abdicate its statutory power and its fiduciary duty to manage or direct management of the business and affairs of th[e] corporation.") *CA, Inc., v. AFCSME Emps. Pension Plan*, 953 A.2d 227, 239 (Del. 2008) ("internal governance contracts" such as bylaws are invalid if they "prevent the directors from exercising their full managerial

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power in circumstances where their fiduciary duties would otherwise require them" to act in a manner contrary to the contract or bylaw.)

In view of such law, it is no surprise that respected commentators have suggested that "to the extent a board may exclude a director through the use of a board committee, it could only do so if the director faces a specific and direct conflict of interest with respect to the matter under discussion." J. Travis Laster and John Mark Zeberkiewicz, *The Rights and Duties of Blockholder Directors*, THE BUS. LAWYER, Winter 2014-2015, at 59. Furthermore, if a "director has been excluded for an extended period of time, and if the committee has been tasked with the full power of the board and is effectively carrying out the board's role, then the excluded director may have powerful equitable arguments in his favor" in light of the fact that "the ability of a board majority to exclude minority directors stands in tension with the concepts of director involvement and collective deliberation . . ." (*Id.* at 60.)

5. N.R.S. 78.138(7) Does Not Preclude Liability in This Case

The individual director defendants in most if not all of their MSJs cite to NRS 78.138(7) and, in particular, to the portion that requires that fiduciary breaches "involve[] intentional misconduct, fraud, or a knowing violation of law" and, based on that language, and cases that quote that language, conclude that they are "protected" or "immune" from liability. (*See e.g.*, MSJ No. 4 at 8:3-8.) In doing so, they invariably provide no substantive discussion of the notion of "intentional misconduct." Indeed, they cite only one case, a Federal District Court case from the 10th Circuit, for the proposition that intentional misconduct and a knowing violation of law "both require knowledge that the conduct was wrongful." In other words, the complained of conduct needs to be something beyond and unintentional breach of the duty of care.

First, invocation of Nevada's exculpatory statute, NRS 78.138.7, misapprehends the function of the statute, which is to limit monetary liability and recovery, not to serve as a means by which the legal sufficiency of a fiduciary duty claim is assessed. *Emerald Partners v. Berlin*, 787 A.2d 85, 92 (Del. 2001) ("a Section 102(b)(7) provision does not operate to defeat the validity of a plaintiff's claim on the merits," but "it can operate to defeat the plaintiff's ability to recover monetary damages.")

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Second, even if the exculpatory statute were properly invoked, which it is not, it has no application where, as here, duty of loyalty (and disclosure) claims also are made. *McMillan v. Intercargo Corp.*, 768 A.2d 492, 501 n. 41 (Del. Ch. 2000) (the exculpatory statute does not apply to breaches duty of loyalty because "conduct not in good faith, intentional misconduct, and knowing violations of law" are "quintessential examples of disloyal, i.e., faithless, conduct"). Here, the complained of or challenged conduct also and obviously entails breaches of the duty of loyalty (and disclosure). *Orman v. Cullman*, 794 A.2d 5, 41 (Del. Ch. 2002) (plaintiff pleaded a breach of the duty of loyalty claim where it "pled facts which made it reasonable to question the independence and disinterest of a majority of the Board that decided what information to include in the Proxy Statement"); *O'Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902, 914-15, 920, n.34 (Del. Ch. 2014) ("right complaint alleges or pleads facts sufficient to support the inference that the disclosure violation was made in bad faith, knowingly or intentionally, the alleged violation implicates the duty of loyalty" and is relevant to the availability of the exculpatory provisions of section 102(b)(7)): *In re Wheelabrator Techs., Inc. S'holders Litig.*, 1992 WL 212595, at *12 n.18 (Del. Ch. Sept. 1, 1992) (§ 102(b)(7) did not require dismissal where the plaintiffs pleaded that "the breach of the duty of disclosure wasn't intentional violation of the duty of loyalty").

"Intentional misconduct" is one of three ways in which a fiduciary can fail to act in good faith. *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006). The first occurs "where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation." *Id.* The second occurs "where the fiduciary acts with the intent to violate applicable positive law." *Id.* *The third occurs "where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." Id.*

Gould is guilt of both the first and third type of intentional conduct. Plaintiff has proffered substantial evidence of an ongoing course of self-dealing and entrenchment undertaken for the purpose of protecting and furthering the personal financial and other interests of EC and MC, as well as other individual director defendants, including for example maintaining Adams' principal sources of income. These actions on their face and by their very nature were and are "intentional[]

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acts with a purpose other than that of advancing the best interests of [RDI].” Does Gould really expect the Court to determine on summary judgment that the activation and repopulation of an executive committee, which Gould full well knew was intended to and had the effect of limiting the function of RDI’s board, was not an intentional act with a purpose other than advancing the best interests of RDI? Does he really expect the Court to determine on summary judgment that, in effectively firing Korn Ferry and in completely ignoring the criteria set by the CEO search committee for identifying candidates and hiring a new CEO, was not an intentional act with a purpose other than advancing the best interests of RDI? Does he really expect the Court to decide on summary judgment that hiring and paying MC as if she had decades of experience in real estate development when, in fact, she had no prior experience, was not an intentional act with a purpose other than advancing the best interests of RDI?

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully submits that MSJ No. 5 should be denied.

DATED this 13th day of October, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this _13th___ day of October, 2016, I caused a true and correct copy of the foregoing to be electronically served to all parties of record via this Court's electronic filing system to all parties listed on the E-Service Master List.

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

AND ALL RELATED CLAIMS.

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

PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 1) RE PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS

TABLE OF CONTENTS

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

TABLE OF AUTHORITIES

Page

Cases

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Statutes

Other Authorities

Lewis Roca ROTHGERBER CHRISTIE
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Plaintiff James J. Cotter, Jr., ("JJC" or "Plaintiff"), by and through his attorney Mark G. Krum of Lewis Roca Rothgerber Christie LLP, files this Opposition to **INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 1) RE: PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS** filed by Reading International, Inc. (the "Motion"), as follows.

I. INTRODUCTION[1]

This matter concerns breaches of fiduciary duty by individual defendants as directors of Reading International, Inc. ("RDI" or the "Company"), a public company, in threatening to terminate plaintiff James J. Cotter, Jr. ("Plaintiff" or "JJC") as President and Chief Executive Officer ("CEO") of RDI, if he did not resolve disputes between him and his sisters, EC and MC, on their terms and, when Plaintiff did not acquiesce to the threat, voting to terminate him.

The first (breach of the duty of care), second (breach of the duty of loyalty) and fourth (aiding and abetting breach of the duty of loyalty) claims made in Plaintiff's Second Amended Complaint ("SAC") are based in part on the conduct of certain director defendants in threatening to terminate Plaintiff as President and CEO of RDI, if he did not resolve disputes he had with EC and MC on terms satisfactory to them and, after he failed to do so, terminating him as President and CEO. The undisputed material facts are the following:

- Plaintiff was President and CEO of RDI until he purportedly was terminated by the RDI board of directors on June 12, 2015.
- On January 15, 2015, all five of the non-Cotter members of the RDI board of Directors unanimously agreed and resolved that, for the RDI board of directors to terminate Plaintiff, a majority of the outside directors would be required to vote in favor of doing so.
- In May 2015, Plaintiff was told that three of five outside directors of RDI, namely, Adams, Kane and McEachern, were prepared to vote to terminate him as President and CEO if he failed to resolve certain disputes he had with EC and MC.

[1] Defendants' Summary Judgment Motion No. 1 is in some respects the counterpart to Plaintiff's motion for summary judgment, and Plaintiff therefore incorporates the evidence and arguments from his motion by way of reference.

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